Nonprofits and Tax-Exempt Organizations

ALERT

AUGUST 2016

Election Year Reminders: Cautionary Guidance for Employers That Sponsor PAC/Charity Matching Programs

As we head into the final stretch of the presidential election cycle, employers — both for-profit and nonprofit — may wish to offer employee programs to encourage civic participation, including facilitating political contributions through payroll deduction plans.

Some corporate employers that sponsor affiliated political action committees offer to match an employee's contributions to the company PAC with contributions to charities selected by the employee. While charity/PAC matching gift programs of this nature have been approved by the Federal Election Commission for election law purposes as recently as 2016, the IRS recently ruled that corporate taxpayers may not claim business expense deductions for expenses associated with these programs.

Tax deductions are generally not relevant to tax-exempt corporations. However, section 501(c)(3) employers do have to contend with the prohibition on political activity. Fortunately, the IRS has ruled that a charitable employer may establish a payroll deduction plan through which employees may contribute to PACs as long as employees may contribute to the PACs of their choice and the charity does not solicit or encourage contributions to any affiliated PACs.

1. No Business or Charitable Deductions for Company PAC/Charity Match Programs

Charity/PAC matching programs have long been allowed by the FEC (*see, e.g.*, FEC MUR 6873, FEC Advisory Opinion 1989-7). However, when considering the costs of implementing such programs, companies should note that their program expenses are not tax-deductible as either business expenses or charitable contributions.

In a recent private letter ruling (PLR 201616002), the IRS concluded that a corporation could not take a business expense deduction for expenses associated with a charity/PAC matching program. Under the program at issue, the company matched each employee's contributions to a company PAC with a contribution (in the employee's name) to charities of his or her choice. Reasoning that the employee's contributions to the PAC and the corporation's matching contributions to a charity were "inextricably linked," the IRS found that the matching contributions were "in connection with" a political campaign on behalf of a candidate for public office and therefore were not deductible business expenses pursuant to Internal Revenue Code section 162(e)(1)(B).

This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.

In prior guidance, the IRS has also opined that contributions made to charities under company PAC matching programs are not deductible as charitable contributions under section 170. (*See* GCM 39877 (8/21/92); Judith E. Kindell and John F. Reilly, "Election Year Issues," 1993 IRS EO Continuing Professional Education Text, at 441.)

2. Business Expense Deductions Allowed for Broader Employer-Sponsored Civic Programs

The IRS has ruled that employers may deduct as ordinary and necessary business expenses the costs of administering programs intended to promote civic engagement and involvement in the political process. In a 1962 revenue ruling (Rev. Rul. 62-156, 1962-2 C.B. 470), the IRS considered corporate employers' programs that included advertisements encouraging people to vote, paid time off to vote and a payroll deduction plan under which employees could contribute to "whatever political candidate, cause, or party the employee chose to designate." In that ruling, the IRS reasoned that the business expense deductions were justified because, among other things, the expenses improved employee morale and enhanced the reputation of the employer.

Applying this 1962 revenue ruling, it stands to reason that if an employer set up a charity/PAC matching program that gave the employee the freedom to contribute to the PAC of his or her choice and was part of a broader civic engagement effort of the sort described in the revenue ruling, the expenses associated with the program would be deductible.

3. Payroll Deduction Plans for Charitable Employers

The IRS has ruled that a charitable organization may establish and fund a PAC payroll deduction plan for its employees without jeopardizing its tax-exempt status under section 501(c)(3) as long as: (i) employees are free to choose the PAC and (ii) the charitable employer is politically impartial in its actions. (See PLR 201127013.) In a 2011 private letter ruling, the IRS explained that under these conditions, contributions made through a charitable organization's voluntary payroll deduction plan may include the option of contributing to PACs established by a section 501(c)(4) organization that is controlled by the 501(c)(3) charity, provided the charitable organization does not "solicit or encourage contributions to the affiliated PACs." By contrast, the IRS has ruled that a section 501(c)(3) organization's payroll deduction plan would result in political campaign intervention (and hence would jeopardize tax-exempt status) when the only PAC to which contributions were made was one selected and endorsed by the employer. (See TAM 200446033.)

If you have questions about the issues discussed in this alert, please contact Preston Quesenberry (202.524.8470, pquesenberry@loeb.com), Diara Holmes (202.618.5012, dholmes@loeb.com) or Marc Owens (202.618.5014, mowens@loeb.com).

Loeb & Loeb LLP's Nonprofits and Exempt Organizations Practice

Loeb & Loeb's leading national Nonprofits and Tax-Exempt Organizations Practice offers the full spectrum of services to help nonprofit organizations grow, innovate and succeed in the face of increasing regulatory and marketplace challenges. Our distinguished practice team includes some of the nation's leading nonprofit legal authorities, including former top regulators at the federal and state levels, offering unique insight and regulatory perspective that do not exist elsewhere.

The nonprofit legal landscape is challenging for even the most sophisticated organizations. Our experienced lawyers offer skilled guidance on what tax-exempt entities need to know to stay compliant with both federal and state legal requirements. Our core nonprofit practitioners work closely with the firm's other leading practices — corporate, trusts and estates, litigation, intellectual property, advertising and promotions, real estate, digital media and technology, executive compensation, and employment law — to provide our clients with a truly integrated platform at an exceptional value.

This report is a publication of Loeb & Loeb LLP and is intended to provide information on recent legal developments. This report does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

© 2016 Loeb & Loeb LLP. All rights reserved

Loeb & Loeb's Nonprofits and Exempt Organizations Practice

Name	Email	Phone
LAURA B. BERGER	LBERGER@LOEB.COM	310.282.2274
LEAH M. BISHOP	LBISHOP@LOEB.COM	310.282.2353
DEBORAH J. BROSS	DBROSS@LOEB.COM	310.282.2245
TARIN G. BROSS	TBROSS@LOEB.COM	310.282.2267
REGINA I. COVITT	RCOVITT@LOEB.COM	310.282.2344
LINDA N. DEITCH	LDEITCH@LOEB.COM	310.282.2296
PAUL N. FRIMMER	PFRIMMER@LOEB.COM	310.282.2383
ELIOT P. GREEN	EGREEN@LOEB.COM	212.407.4908
RACHEL J. HARRIS	RHARRIS@LOEB.COM	310.282.2175
DIARA M. HOLMES	DHOLMES@LOEB.COM	202.618.5012
KAREN L. KUSHKIN	KKUSHKIN@LOEB.COM	212.407.4984
JASON R. LILIEN	JLILIEN@LOEB.COM	212.407.4911
TALIA G. METSON	TMETSON@LOEB.COM	212.407.4285
ANNETTE MEYERSON	AMEYERSON@LOEB.COM	310.282.2156
MARCUS S. OWENS	MOWENS@LOEB.COM	202.618.5014
RONALD C. PEARSON	RPEARSON@LOEB.COM	310.282.2230
ALYSE N. PELAVIN	APELAVIN@LOEB.COM	310.282.2298
PRESTON QUESENBERRY	PQUESENBERRY@LOEB.COM	202.524.8470
TZIPPORAH R. ROSENBLATT	TROSENBLATT@LOEB.COM	212.407.4096
BRANDON A.S. ROSS	BROSS@LOEB.COM	202.618.5026
CRISTINE M. SAPERS	CSAPERS@LOEB.COM	212.407.4262
JENNIFER TAM	JTAM@LOEB.COM	202.618.5023
STUART P. TOBISMAN	STOBISMAN@LOEB.COM	310.282.2323
JESSICA C. VAIL	JVAIL@LOEB.COM	310.282.2132
DANIEL M. YARMISH	DYARMISH@LOEB.COM	212.407.4116