

February 27, 2014

John Koskinen  
Commissioner of Internal Revenue  
CC:PA:LPD:PR (REG-134417-13), Room 5205  
Internal Revenue Service  
P.O. Box 7604, Ben Franklin Station  
Washington, DC 20044

**Re: Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities**

On behalf of the 6,000 members of the American Road and Transportation Builders Association (ARTBA), I respectfully offer comments on the United States Internal Revenue Service (IRS) proposed “Guidance for Tax-Exempt Social Welfare Organizations on Candidate-Related Political Activities.”

ARTBA is a section 501 (c)(6) trade association whose membership includes public agencies and private firms and organizations that own, plan, design, supply and construct transportation projects, including transit projects, throughout the country. Our industry generates more than \$380 billion annually in U.S. economic activity and sustains more than 3.3 million American jobs.

Through its proposed guidance, the IRS seeks to define the amount of “candidate related political activity” in which tax-exempt organizations may be involved. Further, the guidance expands the current definition of what constitutes “candidate related political activity.”

A clear definition of “candidate related political activity” is essential to any 501 (c) organization as there are limits as to exactly how much such activity an organization can be involved in while still maintaining tax-exempt status. While the guidance is initially only applicable to 501 (c)(4) “social welfare” organizations, the IRS asks commenters whether similar rules should be expanded to both 501(c)(5) labor unions and 501(c)(6) trade associations as well.

Before discussing the specifics of the proposed guidance, it must be understood that the central mission of any member-based 501 (c) organization is advocacy on behalf of its membership. Advocacy speech is not automatically political speech and should not be seen by the IRS as such. Organizations take positions on issues of interest to their members and advocate those positions to the federal government. In ARTBA’s case, our central mission is to advocate for greater federal investment in transportation construction.

Traditionally, the IRS has used a case-by-case approach in considering whether or not actions taken by 501 (c) organizations should be deemed “candidate related political activity.” Such analysis would focus on the individual facts and circumstances of each situation and examine

factors such as the primary motivation of the action taken and whether the timing of the action coincides with an election.

The proposed guidance, however, would do away with a case-by-case approach and set broad limits which would significantly expand what constitutes “candidate related political activity.” Specifically, under the new guidance, any communication released within 60 days of an election which includes the name of a candidate for re-election and a specific piece of legislation would be deemed a “candidate related political activity.”

A core activity of any advocacy organization, including ARTBA, is communicating with its members to provide them with relevant and factual information about policy developments at the federal level. In ARTBA’s case specifically, both individuals and businesses voluntarily choose to become ARTBA members because they desire to become informed about issues concerning transportation construction. A major part of this information relates to legislation introduced by elected officials which could directly impact the livelihood of ARTBA members.

Under the proposed guidance, any information sent out by ARTBA (such as a one-time issue alert or a weekly newsletter) to our members about legislation within 60 days of an election mentioning the legislation’s sponsor, would be considered “candidate related political activity” regardless of the actual content of the message. Similarly, any article in ARTBA’s bi-monthly magazine within 60-days of an election pertaining to legislation and a particular sponsor would be similarly labeled as “candidate related political activity.” Such a broad designation of “candidate related political activity” could unfairly endanger ARTBA’s 501(c) status simply because we are fulfilling our duty to keep our membership informed.

If this proposed guidance were enacted, the result would be less transparency about federal legislative and regulatory activities. Many pieces of legislation, congressional actions and regulatory proceedings are too obscure or narrow to draw attention from the mainstream media. Yet such developments can have significant consequences for individual economic sectors. As such, trade associations are often the only source of information on certain federal actions. The IRS proposal would effectively establish a blackout period that would impede broad segments of the U.S. economy and citizenship from having information about their government.

Further, the IRS should also take note of the myriad regulatory requirements which ARTBA and other 501(c) organizations already meet in order to separate political activities from other forms of advocacy. ARTBA, for example, has a political action committee (PAC) and members of ARTBA’s staff are registered federal lobbyists. On a monthly basis ARTBA submits reports to the Federal Election Commission (FEC) detailing all receipts and expenditures made by our PAC. These reports are available to the public on the FEC website. Similarly, on multiple occasions every year as required by the “Honest Leadership and Open Government” Act, ARTBA files reports with the House of Representatives and the Senate detailing the individual contributions of each of our lobbyists as well as the issues on which they lobby the federal government. Again, these reports are available to the public. Thus, all of the information the IRS is seeking is already available through other public forums.

In conclusion, ARTBA urges IRS to abandon the proposed guidance and work towards monitoring political activity in a manner which does not infringe upon the central mission of tax-exempt associations

Sincerely,

A handwritten signature in black ink, reading "T. Peter Ruane". The signature is written in a cursive, flowing style with a large initial "T" and a long, sweeping underline.

T. Peter Ruane  
President & C.E.O