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Executive Order Highlights Risks to Nonprofit Tax-Exempt Status

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President Trump's executive order (EO) "Restoring Public Service Loan Forgiveness," issued March 7, 2025, sets limits on student loan forgiveness under the Public Service Loan Forgiveness (PLSF) program. But the language used in the EO to describe organizations excluded from forgiveness suggests that the administration believes such organizations do not qualify for tax exemption under existing case law.

The EO orders the Secretary of Education to propose regulations that exclude from the definition of public service jobs, for purpose of the PLSF program, charitable organizations whose activities have a "substantial illegal purpose," which it defines to include:

1. aiding or abetting violations of 8 U.S.C. 1325 or other federal immigration laws;
2. supporting terrorism, including by facilitating funding to, or the operations of, cartels designated as Foreign Terrorist Organizations consistent with 8 U.S.C. 1189, or by engaging in violence for the purpose of obstructing or influencing federal government policy;
3. child abuse, including the chemical and surgical castration or mutilation of children or the trafficking of children to so-called transgender sanctuary states for purposes of emancipation from their lawful parents, in violation of applicable law;
4. engaging in a pattern of aiding and abetting illegal discrimination; or

5. engaging in a pattern of violating state tort laws, including laws against trespassing, disorderly conduct, public nuisance, vandalism, and obstruction of highways.

The term “substantial illegal purpose” appears nowhere else in federal law, except for a single tax court case—the 1984 case *Church of Scientology v. Commissioner of Internal Revenue*. In that case, the Church of Scientology’s tax exemption was revoked due in part to a finding of criminal activities, which the court deemed to be a “substantial illegal purpose.” The court held that revocation was appropriate because engaging in illegal activities was against public policy, and a nonprofit entity may lose exemption for engaging in activities that violate public policy.

From this, it is highly likely that the administration has already considered using the IRS to revoke tax exemption for organizations it deems to fit in one of the above five categories. And it is important to note that the above categories, read in context with the administration’s other EOs, are not limited to organizations that have actually violated the law. For example, the administration has ordered agency heads to develop a plan to identify potential civil compliance investigations of diversity, equity, and inclusion programs of organizations, including large nonprofits, state and local bar and medical associations, and institutions of higher education with endowments of over \$1 billion. And Vice President Vance has publicly targeted charitable organizations that provide services to migrants and refugees as being involved in illegal immigration. It is likely that such organizations may face revocation of tax exemption in the near future.

What this means to you

A nonprofit with activities in the areas implicated by the above categories should be prepared for the possibility that it will be audited by the IRS and should assume, if an audit notice is received, that its tax exemption is at risk. Nonprofits may wish to review their programs to see if steps can be taken to avoid arguments that such programs are against public policy; however, that may not eliminate risk, as past activities in open audit periods could constitute sufficient grounds for revocation of exemption even if they are no longer ongoing. We recommend that nonprofits receiving audit notices—and that believe they have any risk—promptly contact an attorney to help them evaluate these risks and possible statutory and constitutional defenses.

Contact us

For more information, or assistance with any of your tax issues, please contact Robert Romashko or your Husch Blackwell attorney.