



September 20, 2004

Ms. Rosie Johnson
Director, EO Examinations
Internal Revenue Service – T:EO:E
1100 Commerce St., MS 4900 DAL
Dallas, TX 75242

Dear Ms. Johnson:

I write to request that the Internal Revenue Service take immediate action against Catholic Answers, Inc. (EIN 95-3754404), which has violated its status as a public charity under Internal Revenue Code (IRC) Section 501(c)(3) by intervening in campaigns for public office. The enclosed Catholic Answers voter guide and related materials contain the organization's explicit directions to Catholic voters to oppose candidates that support positions opposed by the organization. This flagrant, willful, and overt effort to oppose these candidates constitutes a clear violation of Section 501(c)(3). I request that you immediately exercise your authority to revoke the tax-exempt status of Catholic Answers and bring an action to enjoin this organization from again distributing this guide through national newspaper advertisements in October.

Charities are subject to an absolute prohibition that they may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." IRC Section 501(c)(3). In addition to revocation of its tax-exempt status, an organization violating this restriction and the organization's managers are subject to excise taxes under IRC Section 4955. Furthermore, the law provides for swift action in the case of flagrant violations of this restriction. When the Internal Revenue Service (IRS) finds that a charity has engaged in such activities, it is required to immediately assess any taxes owed (IRC Section 6852) and is authorized to bring action in court to enjoin the political expenditures (IRC Section 7409).

Catholic Answers produced the enclosed voter guide and has distributed it widely. In addition to making the guide available on its website (www.catholic.com), Catholic Answers has published the guide in full page advertisements in regional issues of *USA Today* and, according to the organization, expects to distribute "several million" printed copies. The organization is seeking "tax deductible" funds to run the voter guide in all editions of *USA Today* in October. (See the enclosed web page seeking donations and the enclosed issue of [Catholic Answers' founder and

president] *Karl Keating's E-Letter* dated August 31, 2004. A copy of the *USA Today* ad is also enclosed.)

The voter guide highlights “Five Non-Negotiable Issues” (derived from Catholic Answers’ selective interpretation of Catholic doctrine) and instructs Catholic voters “how to vote” as follows:

1. For each office, first determine how each candidate stands on each of the issues that will come before him and involve non-negotiable principles.
2. Rank the candidates according to how well their positions align with these non-negotiable moral principles.
3. Give preference to candidates who do not propose positions that contradict these principles.
4. Where ever [sic] candidate endorses positions contrary to non-negotiable principles, choose the candidate likely to do the least harm. If several are equal, evaluate them based on their views on other, lesser issues.
5. Remember that your vote today may affect the offices a candidate later achieves.

In a variety of informal guidance, the IRS has made clear that providing this type of mechanism to measure candidates against standards set by a charity is strictly prohibited. As explained in the IRS professional education article on “Election Year Issues,” the problem is a 501(c)(3) communication that “invites its audience to compare a candidate’s positions with the organization’s own views.” (Judith E. Kindell and John Francis Reilly, “Election Year Issues,” *IRS Continuing Professional Education Manual for FY 2002* at 376.) There could be no clearer example of such prohibited activity than the Catholic Answers voter guide.

Catholic Answers touts the fact that its voter guide does not mention specific candidates by name. (See, e.g., *Karl Keating's E-Letter* of February 24, 2004.) Presumably, the organization is attempting to justify its political activities under the analysis the IRS used in *Technical Advice Memorandum 1999-07-021* (May 20, 1998). In that ruling the IRS held that an organization’s “I’m Fed Up with Congress” communications did not violate the prohibition on 501(c)(3) campaign intervention because the IRS lacked evidence that the communication “was aimed at a specific candidate, specific candidates, or a specific ticket of candidates.” However, the TAM acknowledged that the communication presented “a close call” and made clear that a 501(c)(3) communication could violate the 501(c)(3) electioneering ban without identifying a specific candidate if it were to “contain some relatively clear directive that enables the recipient to know the organization’s position on a specific candidate or a specific slate of candidates.”

Here, the organization’s position on specific candidates could not be clearer. The Catholic Answers’ voter guide gives readers instructions for how to determine the positions of local, state, and federal candidates on the guides “Five Non-Negotiable Issues.” It directs these voters not to vote for candidates who fail this litmus test.

This guide is further distinguished from the facts in *TAM 1999-07-021* because there is, in this case, additional evidence that this guide targets at least one specific candidate: Democratic presidential nominee, John Kerry. *Karl Keating's E-Letter* of April 13, 2004 states:

Kerry is nominally Catholic, and he is vociferously pro-abortion. So far as I can tell, he flunks the test given in Catholic Answers' *Voter Guide for Serious Catholics*: He is wrong on all five "non-negotiable" issues listed there. [quotation marks in original]

It is certainly clear to Catholic Answers' Keating, and undoubtedly all of his readers, which candidates Catholic Answers opposes.

In this election year, the IRS has already reminded the charitable sector about its obligation to comply with the absolute ban on political activities. See, e.g., News Release 2004-59 (advising charities not to engage in political activities and citing previous IRS guidance on the point) and News Release 2004-79 (reminding political parties of the restrictions on political activities by charities). This work to ensure compliance with the law will be fatally undermined if the IRS fails to act swiftly to enforce the law in the face of such flagrant abuses. I look forward to your prompt attention to this matter.

Sincerely,

Frances Kissling
President

CC: Mr. Steven T. Miller, Director, Exempt Organizations, Internal Revenue Service
Senator Charles Grassley (R-IA), Chairman, US Senate Finance Committee
Senator Max Baucus (D-MA), Ranking Democratic Member, US Senate Finance Committee
Congressman William M. Thomas (R-CA), Chairman, House Committee on Ways and Means
Congressman Charles B. Rangel (D-NY), Ranking Democratic Member, House Committee on Ways and Means

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