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March 23, 1978

Mr. Ralph L. Harding, Jr.
President
The Society of the Plastics
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355 Lexington Avenue
New York, New York 10017

Re: SPI-PAC--Definition of Grassroot Lobbying for Purposes of the Internal Revenue Code

Dear Ralph:

Following up on our letter to Tom McGrath dated March 20, 1978, and our telephone conversation on March 21, we are taking this opportunity to comment on two recent Revenue Rulings concerning lobbying activities of trade associations. Copies of these Rulings, 78-113 and 78-114, which were issued on March 20, 1978, are enclosed. In light of the increased attention that this area is getting as a result of Congressman Rosenthal's investigation, these clarifying statements by the IRS are indeed timely. As we see it, the new Revenue Rulings have changed the ground rules somewhat. Thus, we thought it would be appropriate--indeed, very important--for us to update our previous advice regarding correspondence with members urging contact with their elected representatives.

As you requested, we are including a copy of a March 29, 1976, letter to you in which we originally discussed the type of language that SPI could properly use in advising members of their right to contact their legislators while avoiding the use of language which specifically urged the members to contact their Senators or Representatives on specific bills. This discussion appears briefly on page 7 of the March 29 letter; the principle was explained more fully in a May 4, 1976, letter to F. Reed Estabrook that we are also enclosing.

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As we discussed in our recent letter to Tom McGrath, §162 of the Internal Revenue Code of 1954 (IRC) provides a deduction from gross income for all ordinary and necessary business expenses. IRC § 162(e) provides that this deduction is allowed for direct lobbying expenses, but not for indirect lobbying expenses. Indirect lobbying expenses are defined in IRC § 162(e)(2) as any amount paid or incurred:

> (A) for participation in, or intervention in, any political campaign on behalf of any candidate for public office, or
>
> (B) in connection with any attempt to influence the general public, or segments thereof, with respect to legislative matters, elections or referendums.

Indirect lobbying of this type is popularly referred to as "grassroot lobbying."

One of many ambiguities concerning the above definition of grassroot lobbying is the phrase "the general public, or segments thereof." It was our concern in 1976 that this language could be construed so broadly as to include correspondence between a trade association and its members that led us to advise against SPI specifically urging members to contact their Congressmen and Senators. We believed that SPI could avoid this risk, while still communicating properly with individual members, by merely "reminding" each member "of his right to voice his views to elected representatives and suggesting timely action on his part *vis-a-vis* legislation which would affect his business."

The enclosed new Revenue Rulings have clarified the meaning of the language "general public, or segments thereof" in a way that eliminates much of our previous concern. According to these rulings, correspondence between a trade association and its members does not constitute contacting a segment of the general public. Accordingly, with respect to legislation that is of direct interest to SPI's members (and, hence, a legitimate activity for a §501(c)(6) trade association), SPI may properly urge its members to contact their elected representatives without engaging in lobbying activities that are nondeductible under IRC §162(e). In effect, the expenses of a grassroot lobbying campaign directed specifically to SPI members, with respect to legislation of immediate interest to the members, is an ordinary and necessary business expense deductible by the member.

As you will see from the attached Revenue Rulings, however, any extension of a grassroot campaign beyond the association's members will result in the campaign being classified as directed to a segment of the general public and, therefore, a nondeductible expense. Accordingly, any correspondence which might recommend that members of SPI urge their employees or customers to contact their Congressmen would be an appeal to a segment of the general public. Likewise, if such correspondence were directed to prospective members of SPI, it would again be considered an attempt to influence a segment of the general public. That portion of a members' dues which finances correspondence that attempts to influence a segment of the general public is potentially nondeductible to the member and would have to be disbursed through the IRC § 162(e)(2) Account discussed in our March 20, 1978, letter, assuming the accounting concept we discussed is put into operation.

We trust that these comments and the attached correspondence will adequately explain the current situation. Of course, it is possible that the rules in this regard may change again depending upon what action, if any, comes of Congressman Rosenthal's investigation. If and when such changes occur, we will be sure to advise you about their effect. In the meantime, please do not hesitate to contact us if you should have any questions or comments.

Cordially yours,

Arnold H. Hackman

Enclosures

cc: Mr. Thomas J. McGrath
Mr. E. S. Nuspliger
Mr. Edward Collins
Mr. Richard Titus
Mr. F. Reed Estabrook

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