

New York State Codifies the Johnson Amendment

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On October 23, 2019, Governor Andrew M. Cuomo, signed [legislation](#) incorporating the federal Johnson Amendment into New York law. As [previously described](#), the Johnson Amendment denies tax-exempt status under section 501(c)(3) of the Internal Revenue Code (the “Code”) to (and imposes excise taxes on) any organization that engages in political campaign activities. The [new legislation](#) amended section 1116 of New York Tax Law, which will now deny tax-exempt status for N.Y tax purposes to any organization that engages in political campaign activities, either on behalf or in opposition of any candidate for public office.

Governor Cuomo stated that this new legislation is a response to President Trump’s statements and actions since taking office about the President’s intention to repeal the Johnson Amendment, including the [signing](#) of an executive order that directs the executive branch to limit its enforcement of the Johnson Amendment.^[1] A repeal of the Johnson Amendment would allow section 501(c)(3) organizations to engage in political campaign activities. As a result of the executive order, section 501(c)(3) organizations that engage in political campaign activities are not subject to loss of federal exemption or punitive federal excise taxes. As a result of the new legislation, if the Johnson Amendment is repealed from federal law, tax exempt organizations that conduct activities in New York will lose their exempt status and thus be subject to N.Y. state (and local) income, sales, and property tax. Governor Cuomo expressed hope that this new legislation will further protect New Yorkers’ right to free and fair elections without unjustified interferences.^[2] Generally, a tax-exempt organization that conducts no activities in New York, other than contributing to political campaigns, would not be affected by this new legislation.

The Johnson Amendment provides that tax exempt organizations must “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” in order to qualify as tax exempt. Section 4955 imposes a 10% punitive excise tax on the political expenditures of section 501(c)(3) organizations (and additional excise taxes on the organization and its management) if the expenditure is not corrected). Prohibited activities include contributing funds to a political campaign and making public statements, either oral or written, endorsing or opposing a candidate for public office. However, engaging in non-partisan activities like voter education activities and other activities that encourage individuals’ participation in the electoral process are not prohibited activities.

Prior to the amendment, section 1116 of New York Tax Law prohibited tax exempt organizations “to participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of any candidate for public office.”^[3] The new legislation added language to section 1116 of New York Tax Law to also prohibit tax exempt organizations from opposing a candidate for public office.^[4] Most importantly, the new legislation specifically provides that the prohibition regarding political campaigning would be interpreted consistently with how section 501(c)(3) of the Code has been interpreted as of October 23, 2019.^[5]

^[1] New York State, Pressroom, [Governor Cuomo Signs Legislation Restricting Non-Profit Corporations from Endorsing or Opposing Any Political Candidate](#).

^[2] *Id.*

^[3] N.Y. Tax Law § 1116(a)(4).

^[4] *Id.*

^[5] *Id.*

Related Professionals

- **Amanda H. Nussbaum**
Partner

- **David S. Miller**

Partner

- **Yomarie S. Habenicht**

Associate