

Chapter V

LOBBYING ACTIVITIES

- As tax-exempt institutions organized under Section 501(c)(3) of the Internal Revenue Code, nonprofits are subject to the provision that “no substantial part of an organization’s activities” may consist of “carrying on propaganda, or otherwise attempting to influence legislation.” Moreover, 501(c)(3) organizations may not participate or intervene in a political campaign for or against any candidate for public office.
- In 1976, Congress added section 501(h) to the Code. The rules under section 501(h) limit lobbying at the local, state, or national level to a quantifiable percentage of an organization’s exempt purpose expenditures, provided that the organization elects to be covered by these rules. The penalty for violation of the specific standards set out under this section is the payment of an excise tax or, for substantial and repeated violations, loss of exempt status.
- A tax-exempt organization that does not elect to be governed by the terms of section 501(h) makes a de facto election to be covered under the “substantial part” test.
- In addition to the Internal Revenue Code, state laws, postal laws, and federal lobbying statutes define permissible lobbying activities.
- The U.S. Supreme Court has upheld lobbying restrictions as constitutional. The court reasoned government cannot force nonprofits not to engage in certain conduct but may withhold tax exempt status where an organization unlawfully participates in lobbying.

A. The Code

- The Internal Revenue Code, beginning in 1934 has provided restrictions on the amounts and types of lobbying a nonprofit organization may undertake.

Purpose

- The lobbying provisions are designed to prevent the tax system from subsidizing the influencing of legislation.

Institutions Affected

- Almost all nonprofits are subject to lobbying rules. Churches, their affiliates, and private foundations are the principal tax-exempt organizations that do not qualify for the 501(h) election.

Effective Date

- Since 1934 laws and regulations have been enacted to limit charitable organizations' lobbying activities.

The Code Details What Lobbying Activities Are Permitted

- Attempting to influence legislation, or lobbying, is defined as:
 - (1) contacting or urging the public to contact members of a legislative body to propose, support, or oppose legislation; or
 - (2) advocating the adoption or rejection of legislation.
- Lobbying is further divided into two categories:
 - (1) Direct lobbying--communication with any member or employee of a legislative body, or a government official, or an employee who may participate in the formulation of legislation. This definition includes situations where the general public acts as legislator (i.e., referenda or ballot initiatives) and attempts to influence US Senate confirmation of judicial nominees.

V. Lobbying Activities

- (2) Grassroots lobbying--attempting to influence legislation by communicating with the general public.
- The advocacy of legislative issues is severely restricted for 501(c)(3) organizations unless they make the 501(h) election which limits lobbying at the local, state, or national level to a quantifiable percentage of an organization's exempt purpose expenditures.
- Only certain forms of 501(c)(3) nonprofits are allowed to make the 501(h) election:
 - (1) educational organizations;
 - (2) hospitals and medical research organizations;
 - (3) organizations supporting government schools; and
 - (4) publicly supported charities.
- After making the 501(h) election, nonprofits still may not participate in political campaigns and must pass a legislative activity expenditure test.
- Under the expenditure test, a 25% excise tax on excess lobbying is applied to both direct and grassroots lobbying expenditures. An excess lobbying expenditure is the amount by which lobbying expenditures exceed nonlobbying expenditures.
- Under section 4911(d)(2) of the Internal Revenue Code there are five exclusions from the definition of lobbying. The following nonlobbying activities may be undertaken by tax exempt organizations:
 - (a) The dissemination of the results of nonpartisan analysis, study, or research.
 - (b) The presentation of oral or written testimony or technical advice to legislative committees or other governmental bodies upon written request.
 - (c) The appearance before legislative bodies whose decisions might affect the power, duties, or existence of the organization's tax-exempt status or the deductibility of contributions to it. This exemption also covers the discussion of broad social, economic, and similar issues.

However, this exemption does not cover appearances in connection with the programs or appropriations that benefit the organization.

- (d) Communications between the nonprofit and its “bona fide” members with respect to legislation or proposed legislation of direct interest to the organization and its members. The statute does not define the term “bona fide.” This exception is limited to passive communication, such as legislative status reports. If the communication urges a member to take action, the communication would be considered lobbying. If more than 15 percent of the copies of an institution’s publication which urges legislative action go to nonmembers, the expenditures may be treated as grassroots lobbying.
- (e) Routine communications with governmental officials or employees when the substance of the communication is not an attempt to influence legislation.

Enforcement

- Nonprofits that engage in political activity or unauthorized legislative activity may lose their tax exempt status and thereafter are not eligible to become tax exempt organizations under 501(c)(4). A 501(c)(4) organization, different from a 501(c)(3) organization, is an advocacy group which operates solely for the promotion of social welfare.
- Substantial and repeated violation of the expenditure test’s limits over a four year period may result in the loss of an organization’s tax-exempt status.
- The Internal Revenue Service, in determining whether a nonprofit is operated exclusively for their tax exempt purpose will look to see if the group is an “action organization,” one whose primary objectives can be accomplished only by legislative activity is an action organization. 501(c)(3) organizations are not allowed to be primarily engaged in teaching and advocating adoption of doctrine or theory that can be effected only through legislation.

Compliance Agency

- Information on compliance can be obtained through:

Internal Revenue Service
Tax Exempt and Government Entities Division
Room 4010
P.O. Box 2508
Cincinnati, Ohio 45201
Toll-free 1-877-829-5500

B. LOBBYING DISCLOSURE ACT OF 1995

The Act

- Nonprofits that lobby at the national level may be required to register and file semiannual reports with the U.S. House of Representatives and Senate.
- The Act broadens the definition of lobbying to include communications with certain executive and legislative branch officials.
- The Act does not apply to grassroots lobbying activities.

Purpose

- The Lobbying Disclosure Act of 1995 was enacted to modify lobbying registration laws and make lobbying activities more transparent.

Institutions Affected

- Depending on the level of lobbying activities, any 501(c)(3) nonprofit organization could be affected.

Effective Date

- The Act became effective January 1, 1996.

The Act Provides for Lobbyist Registration and Reporting

- Under the Act, a nonprofit is required to register and file semi-annual reports on its lobbying activities if: (1) the institution has at least one employee who is a lobbyist under the Act's definition; i.e., one who makes at least two lobbying contacts and devotes at least 20 percent of his or her time to lobbying activities, and (2) the organization incurs, or expects to incur, expenditures on lobbying activities of \$20,000 or more in a six-month period (January-June, July-December).
- A nonprofit required to register must file a registration statement with the Secretary of the Senate and the Clerk of the House of Representatives within 45 days after an employee of the institution who qualifies as a lobbyist first makes, or agrees to make, a lobbying contract. The registration statement (Form LD-1) must contain the following information:
 - (1) statement of the general and specific issues lobbied or to be lobbied;
 - (2) names of employees who lobby;
 - (3) former position of any employee lobbyist who was a covered executive or legislative branch official in the preceding two years;
 - (4) identify information on the registrant (or client);
 - (5) names, addresses and places of business of contributors in excess of \$10,000 in the six-month reporting period;
 - (6) identify information on foreign entities contributing in excess of \$10,000 and exercising significant ownership or control; and
 - (7) the date the registrant was retained to lobby for a client, or date on which first contact was made, whichever is earlier.
- Semiannual reports identify lobbying activities and their expenditures, who was contacted, and the nature of the contact. Where a

nonprofit pays an outside person or organization for lobbying activity, the nonprofit must report the name of the person or organization and the amount paid.

Matters to Review

- The nonprofit should advise its employees and managerial staff of limitations on lobbying and the prohibition on engaging in partisan political activity.
- The organization should establish a policy concerning who has the authority to lobby on behalf of the institution.
- The charitable organization should review its charter and state law to determine whether the 501(h) election is available to the organization.
- Regardless of whether the 501(h) election is made, the organization should establish record keeping procedures for expenses resulting from lobbying activities, which should be periodically monitored.
- Nonprofits should determine their permissible lobbying expenditures under section 501(h), regardless of whether the 501(h) election is made, to serve as a guide for all internal decision-making. If the group chooses not to elect under section 501(h), and if it determines, after a year of internal monitoring, that its expenditures exceed 50 percent of the statutory limits, the institution should consider making the 501(h) election for the following year.
- Due to several important differences between the Lobbying Disclosure Act and tax law definitions of lobbying, some nonprofits whose semiannual tax law lobbying expenditures exceed the \$20,000 registration threshold may fall below the threshold if they determine lobbying expenditures under the Act's definitions. Unlike the tax law definition, the Act's definition of lobbying activities excludes all efforts to influence state and local legislative bodies, as well as grassroots lobbying activities at the

federal level. On the other hand, the Act's definition includes significant federal level activities that are not lobbying for tax purposes, including most self-defense lobbying, as well as efforts to influence decisions of the federal executive branch through contacts with Members of Congress or their staffs or with senior executive branch officials. As a result, the organization should carefully review the type and extent of its lobbying activities to determine the proper method of recording and reporting lobbying expenses.

- Before making its election under the alternate lobbying provisions of the Internal Revenue Code, a charitable organization needs to calculate both its exempt-purpose expenditures and its lobbying expenditures. Records of these calculations should be retained for the possibility of an IRS audit. The records should include a breakdown of professional compensation, secretarial/clerical expenses, travel expenses, telephone, printing, reproduction, postage expenses, as well as an appropriate proportion of overhead expenses.
- All lobbying activities undertaken by the nonprofit should be monitored and well documented. Accurate records must be kept identifying the specific issues being lobbied, including bill numbers.

Enforcement

- Penalties for violation of the Act include civil fines up to \$50,000 for knowingly violating the law and for failing to correct reporting defects within sixty days of receiving notice of the defects.
- Any person who knowingly fails to remedy a defective lobbying registration filing within 60 days after receiving notice from the Secretary or the Clerk, or who knowingly fails to comply with any other provision of the Act, will be subject to civil fine of up to \$50,000, with the amount of the fine “depending on the extent and gravity of the violation.”
- The Clerk of the U.S. House of Representatives and the Secretary of the Senate have issued a Consolidated Guidance dated July 14,

1998 with instructions and guidance for complying with the Lobbying Disclosure Act (LDA). The LDA was amended by the Lobbying Disclosure Technical Amendments Act of 1998. The Amendments broadened the definition of covered executive branch officials, clarified an exception to the definition of “lobbying contact”, and provided that an organization that elects to use its tax reporting system must use tax law definitions for executive branch lobbying and the LDA definitions for legislative branch lobbying.

Compliance Agency

- Information on compliance can be obtained through:

Clerk of the House of Representatives
Legislative Resource Center
B-106 Cannon Building
Washington, DC 20515
(202) 226-5200

Secretary of the Senate
Office of Public Records
232 Hart Building
Washington, DC 20510
(202) 224-3121