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Lobbying by 501(c)(3) Organizations: The Basics

The general rule is that 501(c)(3) organizations are limited in lobbying by the requirement that “no substantial part of the activities be used for carrying on propaganda or otherwise attempting to influence legislation.” Because this vague rule was difficult to interpret and apply, Congress modified the tax code to permit certain 501(c)(3) organizations to *elect* to lobby under prescribed limits, which provide a safe harbor for the lobbying activities of the organizations. An organization that chooses not to elect to follow the safe harbor limits of the tax code can still lobby, but only if lobbying does not constitute a substantial part of the activities of the organization.

A 501(c)(3) organization may choose to *elect* to participate in lobbying activities under the safe harbor provisions of the tax code by filing form 5768 with the Internal Revenue Service. Once the election has been made, the organization is subject to specific expenditure limits for lobbying activities rather than the more vague “no substantial part” rule. (Election is optional; the organization may prefer to rely on the general rule, particularly if lobbying activities are minimal.) The expenditure limits under the election rules are graduated beginning at 20% of the first \$500,000 of the organization’s expenditures for charitable “exempt function” purposes, plus 15% of the second \$500,000 of charitable “exempt function” expenditures, plus 10% of the third \$500,000, plus 5% of any additional expenditures, subject to a maximum of \$1,000,000 for any one year.

It is important to understand the activities that will constitute “lobbying” for the purposes of these requirements. Lobbying activities are activities that seek to influence specific legislation. Legislation, in turn, is defined as action by Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment or similar procedure. Lobbying is broken down into two categories. *Direct lobbying* includes contacting members and employees of legislative bodies, such as congressmen, senators, state legislators, city council members, their staffs, or others who formulate legislation. *Grass-roots lobbying* is an attempt to influence the general public on legislative matters. Within the limits on lobbying expenditures, a separate limitation is placed on “grass-roots” lobbying. Only 25% of the permitted lobbying expenditures may be made on “grass-roots” lobbying.

A critical distinction for nonprofit organizations considering these activities is the difference between *lobbying* and *political activity*. While 501(c)(3) organizations may lobby within the limitations noted above, they are *prohibited* from engaging in political activity, and may lose their tax exempt status if they do so. Political activity is defined as participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office.

This thumbnail description of lobbying and political activity is a summary to assist organizations in identifying these issues. This brief description is not intended as legal advice. Organizations should seek the advice of qualified legal counsel if they are considering engaging in lobbying or similar activities. For more information, see “Lobbying by Historic Preservation Organizations: Understanding the Rules,” by Stephanie Ann Ades, 13 Preservation Law Reporter 1107 (June 1994).

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