501(c)(3) Organizations
Lobbying and Political Activity

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July 13, 2011
Types of Tax-Exempt Organizations

- 501(c)(3) – Charitable, Educational, Religious
  - Goodwill, Cato Institute, Christian Broadcasting Network
- 501(c)(4) – Social Welfare/Advocacy
  - Sierra Club, National Rifle Association
- 501(c)(6) – Trade Associations
  - National Association of Realtors, Chamber of Commerce
- Restrictions apply with Benefits of 501(c)(3) Status
Overview

A 501(c)(3) tax-exempt organization is:

• Generally allowed to attempt to influence legislation (i.e. lobby) **IF** it is not a substantial part of its activities

• Prohibited from engaging in political campaign activities
Lobbying Definitions

- Lobbying
  - Attempts to influence legislation
- Legislation
  - Action by Congress, State or local legislature, or public referenda
    - Includes bills, resolutions and Senate confirmation hearings
    - Does not include actions by executive, judicial or administrative bodies (e.g., school boards, zoning authorities, etc...)
Types of Lobbying

- **Direct Lobbying**
  - Communications to a member or employee of a legislative body for the purpose of influencing legislation
  - Communications by an association to its members directly encouraging them to engage in direct lobbying

- **Grass Roots Lobbying**
  - Communications to the public encouraging action with respect to specific pending or proposed legislation
  - Communications to members directly encouraging them to urge nonmembers to lobby
What is Not “Lobbying”

- Nonpartisan analysis, study or research
- Technical advice to a legislative committee
- Self-defense – for legislation that directly impacts an organization’s existence, powers or status
- Communications with members about legislation or proposed legislation of direct interest to the organization or members
Measuring Lobbying Activity

How Much is TOO Much?

• **Substantial Part Test**
  – Default Test
  – IRS looks at all pertinent facts and circumstances to determine whether lobbying is a substantial part of organization’s activities

• **Expenditure Test – 501(h) Election**
  – Alternative test that an organization may choose
  – Lobbying activity is measured by an organization’s lobbying expenditures
Substantial Part Test

• Factors IRS considers
  – Time devoted to lobbying by both compensated and volunteer workers
  – Expenditures made by organization to support lobbying activity

• Penalties for Excessive Lobbying
  – Organization loses tax-exempt status
  – Excise tax imposed equal to 5% of lobbying expenditures for the year in which tax-exempt status lost
  – An additional 5% tax may also be imposed against organization’s managers for making expenditures knowing it would result in loss of tax-exempt status
Expenditure Test

• Expenditure Limits
  – Generally based upon the size of the organization and may not exceed $1 million

<table>
<thead>
<tr>
<th>If the amount of exempt purpose expenditures is:</th>
<th>Lobbying nontaxable amount is:</th>
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<tbody>
<tr>
<td>≤ $500,000</td>
<td>20% of the exempt purpose expenditures</td>
</tr>
<tr>
<td>&gt;$500,00 but ≤ $1,000,000</td>
<td>$100,000 plus 15% of the excess of exempt purpose expenditures over $500,000</td>
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<tr>
<td>&gt; $1,000,000 but ≤ $1,500,000</td>
<td>$175,000 plus 10% of the excess of exempt purpose expenditures over $1,000,000</td>
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<tr>
<td>&gt;$1,500,000</td>
<td>$225,000 plus 5% of the exempt purpose expenditures over $1,500,000</td>
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Expenditure Test (cont’d)

• Penalties for Excessive Lobbying
  – Expenditures may occasionally exceed limits but subject to 25% excise tax on excessive lobbying expenditures
  – If excessive lobbying occurs over a 4-year period, organization may lose its tax-exempt status
Making the 501(h) Election

• File Form 5768 – *Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*

• Can be filed any time during the tax year for which it is to be effective

• Election remains in effect until withdrawn by organization
Benefits of 501(h) Election

• Provides definite expenditure limits allowing for clear lines between permitted and excessive funding
• Shows to IRS that organization is aware of lobbying limits
  – Should not increase likelihood of IRS audit
• Penalty tax as opposed to loss of tax-exempt status for exceeding lobbying limits
Political Campaign Activities

• 501(c)(3) organizations are prohibited from engaging in political campaign activities, including
  – Offering endorsements
  – Contributing to a campaign
  – Working for a campaign
  – Otherwise supporting or opposing a candidate
Political Action Committees

- 501(c)(3) organizations cannot use resources to engage in political activity, which includes establishing a PAC
- Organizations may create a 501(c)(4) or other tax-exempt affiliate, which in turn can set up a PAC
- No resources or assets of a 501(c)(3) organization may be used to fund or support such a tax-exempt affiliate
- Employees, officers, members or directors of a 501(c)(3) are allowed to participate in and contribute to PACs only as private citizens, not on behalf of the 501(c)(3) organization
  - Organization resources such as staff time, stationery and stamps should also never be used
What is Not a “Political Campaign Activity”?

• **Informational Tours and Meetings**
  – 501(c)(3) organization should be able to host incumbent public officials, but should not during campaign seasons
  – Hosting candidates not currently holding public office may be engaging in political campaigning
  – Sponsored travel and lobbyist attendance restrictions

• **Get Out the Vote Efforts**
  – Must be nonpartisan both as to content and target of distribution
What is Not a “Political Campaign Activity”? (cont’d)

- Publishing Voting Records or Voter Guides*
  - Must cover a wide variety of issues
  - Must involve all candidates
  - Must avoid any editorializing or implicit bias
  * Voter Guides cannot rank or rate candidates

- Publishing Legislator Scorecards
  - Must be done on a regular basis not coinciding with elections
  - Must include all and only legislators

- Hosting Debates
  - Must involve all candidates
  - Must avoid any editorializing or implicit bias
Summary

• Donations to 501(c)(3) organizations are deductible as charitable contributions, and 501(c)(3) organizations are exempt from many taxes; however, benefits come with restrictions

• A 501(c)(3) may engage in some lobbying activities and may make a 501(h) election, which provides certain benefits

• A 501(c)(3) may not engage in any political campaigning on behalf of a candidate