

## Public Charities Can Lobby: Guidelines for 501(c)(3) Public Charities

501(c)(3)s public charities (including public foundations) CAN lobby within the generous limits allowed by federal law. How much lobbying the organization can do depends on which of two sets of rules the organization chooses to fall under -- the "501(h) expenditure test" or the "insubstantial part test." In issuing regulations on lobbying, the Internal Revenue Service stated that, under either test, public charities "may lobby freely" so long as lobbying is within specified limits (see *Lobbying by Public Charities*). Private foundations that lobby create a taxable expenditure for their foundation. Consequently private foundations do not engage in any lobbying activity (see *Lobbying by Private Foundations*, 55 Fed. Reg. 35,579 (June 29, 1990)).

### Remember These Key Points

- ▶ Electing to use the 501(h) expenditure test can maximize the organization's lobbying activity.
  - The organization only counts lobbying activity that it spends money on. Cost-free activities, such as volunteer time, do not count against the organization's lobbying limits because an organization does not pay its volunteers.
  - 501(h) provides a clear dollar limit on the amount of money an electing 501(c)(3) can spend on lobbying. The limits vary depending on the size of the organization's budget. Small organizations that spend less than \$500,000 a year can often expend as much as 20% of their budget on lobbying.
  - An electing 501(c)(3) may spend up to a quarter of its overall lobbying limit on "grass roots" lobbying (urging the general public to communicate the organization's position on legislation to legislators) or up to the entire amount on "direct" lobbying (telling legislators or their staff to support or oppose legislation or urging the organization's members to do so).
  - An electing 501(c)(3) can take advantage of some specific exceptions for activities that otherwise might appear to fit the definition of lobbying. Among these exceptions is a "nonpartisan analysis, study or research" or a substantive report that fully discusses the pros and cons of a legislative proposal.
  - A 501(c)(3) may elect the 501(h) expenditure test to govern its lobbying activity by filing the simple Form 5768 once with the IRS.
- ▶ If the 501(c)(3) has not elected 501(h), it may still lobby as long as its lobbying activities do not become a "substantial" part of the 501(c)(3)'s overall activities.
- ▶ Working on or contributing to a ballot measure campaign is permissible lobbying activity under these rules. 501(c)(3) organizations are able to engage in a wide range of advocacy regarding these ballot measures, so long as they do not exceed their lobbying limits.
- ▶ If a 501(c)(3) wishes to engage in more lobbying than is permitted for 501(c)(3) organizations, consider creating an affiliated 501(c)(4) organization. A 501(c)(4) can engage in an unlimited amount of lobbying.

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