

# Form 990 Schedule C: Mastering Complex Reporting of Political Campaign and Lobbying Activities

Avoiding Excise Taxes, Penalties, Fines, and Revocation of Tax-Exempt Status Due to Noncompliance

TUESDAY, APRIL 4, 2017, 1:00-2:50 pm Eastern

## IMPORTANT INFORMATION FOR THE LIVE PROGRAM

This program is approved for 2 CPE credit hours. To earn credit you must:

- **Participate in the program on your own computer connection (no sharing)** - if you need to register additional people, please call customer service at 1-800-926-7926 x10 (or 404-881-1141 x10). Strafford accepts American Express, Visa, MasterCard, Discover.
- **Listen on-line** via your computer speakers.
- **Respond to five prompts during the program plus a single verification code.** You will have to write down only the final verification code on the attestation form, which will be emailed to registered attendees.
- To earn full credit, you must remain connected for the entire program.

## WHO TO CONTACT DURING THE LIVE EVENT

For Additional Registrations:

-Call Strafford Customer Service 1-800-926-7926 x10 (or 404-881-1141 x10)

For Assistance During the Live Program:

-On the web, use the chat box at the bottom left of the screen

If you get disconnected during the program, you can simply log in using your original instructions and PIN.

# Form 990 Schedule C

Mastering Complex Reporting of Political Campaign and Lobbying Activities

*Supplementary Handouts*

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**SCHEDULE C**  
**(Form 990 or 990-EZ)**

**Political Campaign and Lobbying Activities**

OMB No. 1545-0047

**2016**

**Open to Public Inspection**

Department of the Treasury  
Internal Revenue Service

**For Organizations Exempt From Income Tax Under section 501(c) and section 527**

▶ **Complete if the organization is described below.** ▶ **Attach to Form 990 or Form 990-EZ.**  
▶ **Information about Schedule C (Form 990 or 990-EZ) and its instructions is at [www.irs.gov/form990](http://www.irs.gov/form990).**

**If the organization answered "Yes," on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then**

- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
- Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
- Section 527 organizations: Complete Part I-A only.

**If the organization answered "Yes," on Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then**

- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
- Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.

**If the organization answered "Yes," on Form 990, Part IV, line 5 (Proxy Tax) (see separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (see separate instructions), then**

- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization	Employer identification number
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**Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.**

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. (see instructions for definition of "political campaign activities")
- 2 Political campaign activity expenditures (see instructions) . . . . . ▶ \$
- 3 Volunteer hours for political campaign activities (see instructions) . . . . .

**Part I-B Complete if the organization is exempt under section 501(c)(3).**

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 . . . . . ▶ \$
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 . . . . . ▶ \$
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? . . . . .  Yes  No
- 4a Was a correction made? . . . . .  Yes  No
- b If "Yes," describe in Part IV.

**Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).**

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities . . . . . ▶ \$
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities . . . . . ▶ \$
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b . . . . . ▶ \$
- 4 Did the filing organization file **Form 1120-POL** for this year? . . . . .  Yes  No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-.	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-.
(1)				
(2)				
(3)				
(4)				
(5)				
(6)				

**Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).**

- A** Check  if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).  
**B** Check  if the filing organization checked box A and "limited control" provisions apply.

<b>Limits on Lobbying Expenditures</b> (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
<b>1a</b>	Total lobbying expenditures to influence public opinion (grass roots lobbying) . . . . .														
<b>b</b>	Total lobbying expenditures to influence a legislative body (direct lobbying) . . . . .														
<b>c</b>	Total lobbying expenditures (add lines 1a and 1b) . . . . .														
<b>d</b>	Other exempt purpose expenditures . . . . .														
<b>e</b>	Total exempt purpose expenditures (add lines 1c and 1d) . . . . .														
<b>f</b>	Lobbying nontaxable amount. Enter the amount from the following table in both columns.														
<table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If the amount on line 1e, column (a) or (b) is:</th> <th style="text-align: left;">The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.	Over \$17,000,000	\$1,000,000.		
If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:														
Not over \$500,000	20% of the amount on line 1e.														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.														
Over \$17,000,000	\$1,000,000.														
<b>g</b>	Grassroots nontaxable amount (enter 25% of line 1f) . . . . .														
<b>h</b>	Subtract line 1g from line 1a. If zero or less, enter -0- . . . . .														
<b>i</b>	Subtract line 1f from line 1c. If zero or less, enter -0- . . . . .														
<b>j</b>	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year? . . . . .		<input type="checkbox"/> Yes <input type="checkbox"/> No												

**4-Year Averaging Period Under section 501(h)**  
 (Some organizations that made a section 501(h) election do not have to complete all of the five columns below.  
 See the separate instructions for lines 2a through 2f.)

<b>Lobbying Expenditures During 4-Year Averaging Period</b>					
Calendar year (or fiscal year beginning in)	(a) 2013	(b) 2014	(c) 2015	(d) 2016	(e) Total
<b>2a</b>	Lobbying nontaxable amount				
<b>b</b>	Lobbying ceiling amount (150% of line 2a, column (e))				
<b>c</b>	Total lobbying expenditures				
<b>d</b>	Grassroots nontaxable amount				
<b>e</b>	Grassroots ceiling amount (150% of line 2d, column (e))				
<b>f</b>	Grassroots lobbying expenditures				

**Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).**

For each "Yes," response on lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.

	(a)		(b)
	Yes	No	Amount
<b>1</b> During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:			
<b>a</b> Volunteers?			
<b>b</b> Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?			
<b>c</b> Media advertisements?			
<b>d</b> Mailings to members, legislators, or the public?			
<b>e</b> Publications, or published or broadcast statements?			
<b>f</b> Grants to other organizations for lobbying purposes?			
<b>g</b> Direct contact with legislators, their staffs, government officials, or a legislative body?			
<b>h</b> Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?			
<b>i</b> Other activities?			
<b>j</b> Total. Add lines 1c through 1i			
<b>2a</b> Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?			
<b>b</b> If "Yes," enter the amount of any tax incurred under section 4912			
<b>c</b> If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
<b>d</b> If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

**Part III-A Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6).**

	Yes	No
<b>1</b> Were substantially all (90% or more) dues received nondeductible by members?	<b>1</b>	
<b>2</b> Did the organization make only in-house lobbying expenditures of \$2,000 or less?	<b>2</b>	
<b>3</b> Did the organization agree to carry over lobbying and political campaign activity expenditures from the prior year?	<b>3</b>	

**Part III-B Complete if the organization is exempt under section 501(c)(4), section 501(c)(5), or section 501(c)(6) and if either (a) BOTH Part III-A, lines 1 and 2, are answered "No," OR (b) Part III-A, line 3, is answered "Yes."**

<b>1</b> Dues, assessments and similar amounts from members	<b>1</b>	
<b>2</b> Section 162(e) nondeductible lobbying and political expenditures (do not include amounts of political expenses for which the section 527(f) tax was paid).		
<b>a</b> Current year	<b>2a</b>	
<b>b</b> Carryover from last year	<b>2b</b>	
<b>c</b> Total	<b>2c</b>	
<b>3</b> Aggregate amount reported in section 6033(e)(1)(A) notices of nondeductible section 162(e) dues	<b>3</b>	
<b>4</b> If notices were sent and the amount on line 2c exceeds the amount on line 3, what portion of the excess does the organization agree to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year?	<b>4</b>	
<b>5</b> Taxable amount of lobbying and political expenditures (see instructions)	<b>5</b>	

**Part IV Supplemental Information**

Provide the descriptions required for Part I-A, line 1; Part I-B, line 4; Part I-C, line 5; Part II-A (affiliated group list); Part II-A, lines 1 and 2 (see instructions); and Part II-B, line 1. Also, complete this part for any additional information.

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**Part IV** Supplemental Information *(continued)*

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# Instructions for Schedule C (Form 990 or 990-EZ)

## Political Campaign and Lobbying Activities

Section references are to the Internal Revenue Code unless otherwise noted.

### Future Developments

For the latest information about developments related to Schedule C (Form 990 or 990-EZ) and its instructions, such as legislation enacted after they were published, go to [www.irs.gov/form990](http://www.irs.gov/form990).

## General Instructions

**Note.** Terms in **bold** are defined in the *Glossary* of the instructions for Form 990.

### Purpose of Schedule

Schedule C (Form 990 or 990-EZ) is used by:

- Section 501(c) organizations, and
- Section 527 organizations.

These organizations must use Schedule C (Form 990 or 990-EZ) to furnish additional information on **political campaign activities** or **lobbying activities**, as those terms are defined later for the various parts of this schedule.

### Who Must File

An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 3, 4, or 5, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990. An organization that answered "Yes" on Form 990-EZ, Part V, line 46 or Part VI, line 47, must complete the appropriate parts of Schedule C (Form 990 or 990-EZ) and attach Schedule C to Form 990-EZ. An organization that answered "Yes" on Form 990-EZ, Part V, line 35c, because it is subject to the section 6033(e) notice and reporting requirements and proxy tax, must complete Schedule C (Form 990 or 990-EZ), Part III, and attach Schedule C to Form 990-EZ.

If an organization has an ownership interest in a **joint venture** that conducts **political campaign activities** or **lobbying activities**, the organization must report its share of such activity occurring in its **tax year** on Schedule C (Form 990 or 990-EZ). See Instructions for Form 990, Appendix F. *Disregarded Entities and Joint Ventures—Inclusion of Activities and Items*.

### Part I. Political campaign activities.

*Part I* is completed by section 501(c) organizations and section 527 organizations that file Form 990 (and Form 990-EZ). If the organization answered "Yes" on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46, then complete the specific parts as follows.

- A section 501(c)(3) organization must complete Parts I-A and I-B. Do not complete *Part I-C*.
- A section 501(c) organization other than section 501(c)(3) must complete Parts I-A and I-C. Do not complete *Part I-B*.
- A section 527 organization that files the Form 990 or Form 990-EZ must complete *Part I-A*. Do not complete Parts I-B and I-C.

**Part II. Lobbying activities.** *Part II* is completed only by section 501(c)(3) organizations. If the organization answered "Yes" on Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47, then complete the specific parts as follows.

- A section 501(c)(3) organization that elected to be subject to the lobbying expenditure limitations of section 501(h) by filing Form 5768 and for which the election was valid and in effect for its **tax year** beginning in the year 2016, must complete *Part II-A*. Do not complete *Part II-B*.
- A section 501(c)(3) organization that has not elected to be subject to the lobbying expenditure limitations of section 501(h) (or has revoked such election by filing Form 5768 for which the revocation was valid and in effect for its **tax year** beginning in the year 2016) must complete *Part II-B*. Do not complete *Part II-A*.

### Part III. Section 6033(e) notice and reporting requirements and proxy tax.

*Part III* is completed by section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that received membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19, 1998-7 IRB 30, section 5.01 as adjusted by Rev. Proc. 2015-53, 2015-44 IRB 615, section 3.28 at [www.irs.gov/irb/2015-44\\_IRB/ar04.html](http://www.irs.gov/irb/2015-44_IRB/ar04.html) (or latest annual update), and that answered "Yes" on Form 990, Part IV, line 5 or "Yes" on Form 990-EZ, line 35c, regarding the proxy tax.

If an organization is not required to file Form 990 or Form 990-EZ but chooses to do so, it must file a complete return and provide all of the information requested, including the required schedules.

## Definitions

Definitions in this section are applicable throughout this schedule, except where noted. The following terms are defined in the *Glossary*.

- **Joint venture.**
- **Legislation.**
- **Lobbying activities.**
- **Political campaign activities.**
- **Tax year.**

**TIP** See Revenue Ruling 2007-41, 2007-25 I.R.B. 1421, for guidelines on the scope of the tax law prohibition on campaign activities by section 501(c)(3) organizations.

**Section 527 exempt function activities.** Section 527 exempt function activities include all functions that influence or attempt to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.

**Political expenditures.** Any expenditures made for **political campaign activities** are political expenditures. An expenditure includes a payment, distribution, loan, advance, deposit, or gift of money, or anything of value. It also includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable.

**Specific legislation.** Specific **legislation** includes (1) legislation that has already been introduced in a legislative body and (2) specific legislative proposals that an organization either supports or opposes.

### Definitions (Part II-A)

Definitions in this section are applicable only to *Part II-A*.

**Expenditure test.** Under the expenditure test, there are limits both upon the amount of the organization's

grassroots lobbying expenditures and upon the total amount of its direct lobbying and grassroots lobbying expenditures. If the electing public charity does not meet this expenditure test, it will owe a section 4911 excise tax on its excess lobbying expenditures. Moreover, if over a 4-year averaging period the organization's average annual total lobbying or grassroots lobbying expenditures are more than 150% (1.50) of its dollar limits, the organization will lose its exempt status.

**Exempt purpose expenditures.** In general, an exempt purpose expenditure is paid or incurred by an electing public charity to accomplish the organization's exempt purpose.

Exempt purpose expenditures include:

1. The total amount paid or incurred for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals, or to foster national or international amateur sports competition (not including providing athletic facilities or equipment, other than by qualified amateur sports organizations described in section 501(j)(2));

2. The allocable portion of administrative expenses paid or incurred for the earlier purposes;

3. Amounts paid or incurred to try to influence legislation, whether or not for the purposes described in 1 earlier;

4. Allowance for depreciation or amortization; and

5. Fundraising expenditures, except that exempt purpose expenditures do not include amounts paid to or incurred for either the organization's separate fundraising unit or other organizations, if the amounts are primarily for fundraising.

See Regulations section 56.4911-4(c) for a discussion of excluded expenditures.

**Lobbying expenditures.** Lobbying expenditures are expenditures (including allocable overhead and administrative costs) paid or incurred for the purpose of attempting to influence legislation:

- Through communication with any member or employee of a legislative or similar body, or with any government official or employee who may participate in the formulation of the legislation, and
- By attempting to affect the opinions of the general public.

To determine if an organization has spent excessive amounts on lobbying, the organization must know which expenditures are lobbying expenditures and which are not lobbying expenditures. An electing public charity's lobbying expenditures for a year are the sum of its expenditures during that year for direct lobbying communications (direct lobbying

expenditures) plus grassroots lobbying communications (grassroots lobbying expenditures).

**Direct lobbying communications (direct lobbying expenditures).** A direct lobbying communication is any attempt to influence any legislation through communication with:

- A member or employee of a legislative or similar body;
- A government official or employee (other than a member or employee of a legislative body) who may participate in the formulation of the legislation, but only if the principal purpose of the communication is to influence legislation; or
- The general public in a referendum, initiative, constitutional amendment, or similar procedure.

A communication with a legislator or government official will be treated as a direct lobbying communication if, but only if, the communication:

- Refers to specific legislation, and
- Reflects a view on such legislation.

**Grassroots lobbying communications (grassroots lobbying expenditures).** A grassroots lobbying communication is any attempt to influence any legislation through an attempt to affect the opinions of the general public or any part of the general public.

A communication is generally not a grassroots lobbying communication unless (in addition to referring to specific legislation and reflecting a view on that legislation) it encourages recipients to take action about the specific legislation.

A communication encourages a recipient to take action when it:

1. States that the recipient should contact legislators;
2. States a legislator's address, phone number, or similar information;
3. Provides a petition, tear-off postcard, or similar material for the recipient to send to a legislator; or
4. Specifically identifies one or more legislators who:
  - a. Will vote on legislation;
  - b. Opposes the communication's view on the legislation;
  - c. Is undecided about the legislation;
  - d. Is the recipient's representative in the legislature; or
  - e. Is a member of the legislative committee that will consider the legislation.

A communication described in item 4 earlier generally is grassroots lobbying only if, in addition to referring to and reflecting a view on specific legislation, it is a communication that cannot meet the

full and fair exposition test as nonpartisan analysis, study, or research.

**Exceptions to lobbying.** In general, engaging in nonpartisan analysis, study, or research and making its results available to the general public or segment of members thereof, or to governmental bodies, officials, or employees is not considered either a direct lobbying communication or a grassroots lobbying communication. Nonpartisan analysis, study, or research may advocate a particular position or viewpoint as long as there is a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.

A communication that responds to a governmental body's or committee's written request for technical advice is not a direct lobbying communication.

A communication is not a direct lobbying communication if the communication is an appearance before, or communication with, any legislative body concerning action by that body that might affect the organization's existence, its powers and duties, its tax-exempt status, or the deductibility of contributions to the organization, as opposed to affecting merely the scope of the organization's future activities.

**Communication with members.** For purposes of section 4911, expenditures for certain communications between an organization and its members are treated more leniently than are communications to nonmembers. Expenditures for a communication that refers to, and reflects a view on, specific legislation are not lobbying expenditures if the communication satisfies the following requirements.

1. The communication is directed only to members of the organization.

2. The specific legislation the communication refers to, and reflects a view on, is of direct interest to the organization and its members.

3. The communication does not directly encourage the member to engage in direct lobbying (whether individually or through the organization).

4. The communication does not directly encourage the member to engage in grassroots lobbying (whether individually or through the organization).

Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and that satisfies the requirements of items (1), (2), and (4), earlier (under **Grassroots lobbying communications**), but does not satisfy the requirements of item (3), are treated as expenditures for direct lobbying.



Expenditures for a communication directed only to members that refers to, and reflects a view on, specific legislation and satisfies the requirements of items (1) and (2) earlier, but does not satisfy the requirements of item (4), are treated as grassroots expenditures, whether or not the communication satisfies the requirements of item (3). See Regulations section 56.4911-5 for details.

There are special rules regarding certain paid mass media advertisements about highly publicized legislation; allocation of mixed purpose expenditures; certain transfers treated as lobbying expenditures; and special rules regarding lobbying on referenda, ballot initiatives, and similar procedures. See Regulations sections 56.4911-2 and 56.4911-3.

**Affiliated groups.** Members of an affiliated group are treated as a single organization to measure lobbying expenditures. Two organizations are affiliated if one is bound by the other organization's decisions on legislative issues (control) or if enough representatives of one belong to the other organization's governing board to cause or prevent action on legislative issues (interlocking directorate). If the organization is not sure whether its group is affiliated, it may ask the IRS for a ruling letter. There is a fee for this ruling. For information on requesting rulings, see Rev. Proc. 2016-5, 2016-1 IRB 188 at [www.irs.gov/pub/irs-irbs/irb16-01.pdf](http://www.irs.gov/pub/irs-irbs/irb16-01.pdf) (or latest annual update). Also, see Rev. Proc. 2016-8, 2016-1 IRB 243 at [www.irs.gov/pub/irs-irbs/irb16-01.pdf](http://www.irs.gov/pub/irs-irbs/irb16-01.pdf) (or latest annual update).

Members of an affiliated group measure both lobbying expenditures and permitted lobbying expenditures on the basis of the affiliated group's tax year. If all members of the affiliated group have the same tax year, that year is the tax year of the affiliated group. However, if the affiliated group's members have different tax years, the tax year of the affiliated group is the calendar year, unless all the members of the group elect otherwise. See Regulations section 56.4911-7(e)(3).

**Limited control.** Two organizations that are affiliated because their governing instruments provide that the decisions of one will control the other only on national legislation are subject to the following provisions.

- The controlling organization is charged with its own lobbying expenditures and the national legislation expenditures of the affiliated organizations,
- The controlling organization is not charged with other lobbying expenditures (or other exempt-purpose expenditures) of the affiliated organizations, and
- Each local organization is treated as though it were not a member of an

affiliated group. For example, the local organization should account for its own expenditures only and not for any of the national legislation expenditures deemed as incurred by the controlling organization.

### Definitions (Part III)

Definitions in this section are applicable only to *Part III*.

**Lobbying and political expenditures.** For purposes of this section only, lobbying and political expenditures do not include direct lobbying expenditures made to influence local legislation. Nor does it include any political campaign expenditures for which the tax under section 527(f) was paid (see *Part I-C*). They do include any expenditures for communications with a covered executive branch official in an attempt to influence the official actions or positions of that official.

**Covered executive branch official.** Covered executive branch officials include the President, Vice-President, officers and employees of the Executive Office of the President, the two senior level officers of each of the other agencies in the Executive Office, individuals in level I positions of the Executive Schedule and their immediate deputies, and individuals designated as having Cabinet level status and their immediate deputies.

**Direct contact lobbying.** This means a:

1. Meeting,
2. Telephone conversation,
3. Letter, or
4. Similar means of communication that is with a:
  - a. Legislator (other than a local legislator), or
  - b. Covered executive branch official and that is an attempt to influence the official actions or positions of that official.

**In-house expenditures include:**

1. Salaries, and
2. Other expenses of the organization's officials and staff (including amounts paid or incurred for the planning of legislative activities).

**In-house expenditures do not include:** Any payments to other taxpayers engaged in lobbying or political activities as a trade or business or any dues paid to another organization that are allocable to lobbying or political activities.

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## Specific Instructions

### Part I-A. Political Activity of Exempt Organizations

**Note.** Section 501(c) organizations other than those exempt under section 501(c)(3) may establish section 527(f)(3) separate segregated funds to engage in political activity. Separate segregated funds are subject to their own filing requirements. A section 501(c) organization that engages a separate segregated fund to conduct political activity should report transfers to the fund in Parts I-A and I-C. The separate segregated fund should report specific activities on its own Form 990 if the fund is required to file.

**Line 1.** Section 501(c) organizations should provide a detailed description of their direct and indirect **political campaign activities** in *Part IV*. If the section 501(c) organization collects political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfers them to that fund as prescribed in Regulations section 1.527-6(e), do not report them here. Such amounts should be reported in Part I-C, line 5e.

Section 527 organizations should provide a detailed description of their exempt function activities in *Part IV*.

**Line 2.** Enter the total amount that the filing organization has spent conducting the activities described on line 1.

**Line 3.** If the organization used volunteer labor for its **political campaign activities** or section 527 exempt function activities, provide the total number of hours. Any reasonable method may be used to estimate this amount.

### Part I-B. Section 501(c)(3) Organizations— Disclosure of Excise Taxes Imposed Under Section 4955

Section 501(c)(3) organizations must disclose any excise tax incurred during the year under section 4955 (political expenditures), unless abated. See sections 4962 and 6033(b).

**Line 1.** Enter the amount of taxes incurred by the organization itself under section 4955, unless abated. If no tax was incurred, enter -0-.

**Line 2.** Enter the amount of taxes incurred by the organization managers under section 4955, unless abated. If no tax was incurred, enter -0-.

**Line 3.** If the filing organization reported a section 4955 tax on a Form 4720, Return

of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code, for the tax year, answer "Yes."

**Line 4.** Describe in *Part IV* the steps taken by the organization to correct the activity that subjected it to the section 4955 tax. Correction of a political expenditure means recovering the expenditure to the extent possible and establishing safeguards to prevent future political expenditures. Recovery of the expenditure means recovering part or all of the expenditure to the extent possible, and, where full recovery cannot be accomplished, by any additional corrective action that is necessary. (The organization that made the political expenditure is not under any obligation to attempt to recover the expenditure by legal action if the action would in all probability not result in the satisfaction of execution on a judgment.)

## Part I-C. Section 527 Exempt Function Activity of Section 501(c) Organizations Other Than Section 501(c)(3)

**Note.** Section 501(c) organizations that collect political contributions or member dues earmarked for a separate segregated fund, and promptly and directly transfer them to that fund as prescribed in Regulations section 1.527-6(e), do not report them on lines 1 or 2. Such amounts are reported on line 5e.

**Line 1.** Enter the amount of the organization's funds that it expended for section 527 exempt function activities. See Regulations section 1.527-6(b).

**Line 2.** Enter the amount of the organization's funds that it transferred to other organizations, including a separate segregated section 527(f)(3) fund created by the organization, for section 527 exempt function activity.

**Line 3.** Total exempt function expenditures. Add lines 1 and 2 and enter on line 3 and on Form 1120-POL, line 17b.

**Line 4.** If the filing organization reported taxable political expenditures on Form 1120-POL for this year, answer "Yes."

**Line 5.** In columns (a), (b), and (c), enter the name, address and employer identification number (EIN) of each section 527 political organization to which payments were made. In column (d), enter the amount paid from the filing organization's funds. In column (e), enter the amount of political contributions received and promptly and directly delivered to a separate political organization, such as a separate

segregated fund or a political action committee (PAC). If additional space is needed, enter information in *Part IV*.

## Part II-A. Lobbying Activity

Only section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)) complete this section.

*Part II-A* provides a reporting format for any section 501(c)(3) organization for which the 501(h) lobbying expenditure election was valid and in effect during the 2016 **tax year**, whether or not the organization engaged in **lobbying activities** during that tax year. A **public charity** that makes a valid section 501(h) election may spend up to a certain percentage of its exempt purpose expenditures to influence **legislation** without incurring tax or losing its tax exempt status.

**Affiliated groups.** If the filing organization belongs to an affiliated group, check Part II-A, box A and complete lines 1a through 1i.

- Complete column (a) for the electing member of the group.
- Complete column (b) for the affiliated group as a whole.

If the filing organization checked box A and the limited control provisions apply to the organizations in the affiliated group, each member of the affiliated group should check box B and complete column (a) only.

If the filing organization does not check box A, do not check box B.

**Affiliated group list.** Provide in *Part IV* a list showing each affiliated group member's name, address, EIN, and expenses. Show which members made the election under section 501(h) and which did not.

Include each electing member's share of the excess lobbying expenditures on the list.

Nonelecting members do not owe tax, but remain subject to the general rule, which provides that no substantial part of their activities may consist of carrying on propaganda or otherwise trying to influence **legislation**.

**Lines 1a through 1i.** Complete lines 1a through 1i in column (a) for any organization required to complete *Part II-A*, but complete column (b) only for affiliated groups.

Lines 1a through 1i are used to determine whether any of the organization's current year lobbying expenditures are subject to tax under section 4911. File Form 4720 if the organization needs to report and pay the excise tax.

**Line 1a.** Enter the amount the organization expended for grassroots lobbying communications. See **Regulations section 56.4911-6(b)**.

**Line 1b.** Enter the amount the organization expended for direct lobbying communications. See **Regulations section 56.4911-6(b)**.

**Line 1c.** Add lines 1a and 1b.

**Line 1d.** Enter all other amounts (excluding lobbying) the organization expended to accomplish its exempt purpose.

**Line 1e.** Add lines 1c and 1d. This is the organization's total exempt purpose expenditures.

**Lines 1h and 1i.** If there are no excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member of the affiliated group as having no excess lobbying expenditures. However, if there are excess lobbying expenditures on either line 1h or 1i of column (b), treat each electing member as having excess lobbying expenditures. In such case, each electing member must file Form 4720, and must pay the tax on its proportionate share of the affiliated group's excess lobbying expenditures. Enter the proportionate share in column (a) on line 1h or line 1i, or on both lines. In *Part IV*, provide the *affiliated group list* described earlier. Show what amounts apply to each group member. To find a member's proportionate share, see Regulations section 56.4911-8(d).

**Line 1j.** If the filing organization reported section 4911 tax on Form 4720 for this year, answer "Yes."

**Line 2.** Line 2 is used to determine if the organization exceeded lobbying expenditure limits during the 4-year averaging period.

Any organization for which a lobbying expenditure election under section 501(h) was in effect for its **tax year** beginning in 2016 must complete columns (a) through (e) of lines 2a through 2f except in the following situations.

1. An organization first treated as a section 501(c)(3) organization in its tax year beginning in 2016 does not have to complete any part of lines 2a through 2f.
2. An organization does not have to complete lines 2a through 2f for any period before it is first treated as a section 501(c)(3) organization.
3. If 2016 is the first year for which an organization's section 501(h) election is effective, that organization must complete line 2a, columns (d) and (e). The organization must then complete all of column (e) to determine whether the amount on line 2c, column (e), is equal to

or less than the lobbying ceiling amount calculated on line 2b and whether the amount on line 2f is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed the applicable ceiling amounts. When this occurs, all five columns must be completed and a re-computation made unless exception 1 or 2 earlier applies.

4. If 2016 is the second or third tax year for which the organization's first section 501(h) election is in effect, that organization is required to complete only the columns for the years in which the election has been in effect, entering the totals for those years in column (e). The organization must determine, for those 2 or 3 years, whether the amount entered in column (e), line 2c, is equal to or less than the lobbying ceiling amount reported on line 2b, and whether the amount entered in column (e), line 2f, is equal to or less than the grassroots ceiling amount calculated on line 2e. The organization does not satisfy both tests if either its total lobbying expenditures or grassroots lobbying expenditures exceed applicable ceiling amounts. When that occurs, all five columns must be completed and a re-computation made, unless exception 1 or 2 earlier applies. If the organization is not required to complete all five columns, provide a statement explaining why in *Part IV*. In the statement, show the ending date of the tax year in which the organization made its first section 501(h) election and state whether or not that first election was revoked before the start of the organization's tax year that began in 2016.

**Note.** If the organization belongs to an affiliated group, enter the appropriate affiliated group totals from column (b), lines 1a through 1i, when completing lines 2a, 2c, 2d, and 2f.

**Line 2a.** For 2013, 2014, 2015, and 2016, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1f, filed for each year.

**Line 2c.** For 2013, 2014, 2015, and 2016, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1c, for each year.

**Line 2d.** For 2013, 2014, 2015, and 2016, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1g, for each year.

**Line 2f.** For 2013, 2014, 2015, and 2016, enter the amount from Schedule C (Form 990 or 990-EZ), Part II-A, line 1a, for each year.

Enter the total for each line in column (e).

## Part II-B. Lobbying Activity

Only section 501(c)(3) organizations that have not filed Form 5768 (election under section 501(h)) or have revoked a previous election can complete this section.

*Part II-B* provides a reporting format for any section 501(c)(3) organization that engaged in **lobbying activities** during the 2016 **tax year** but did not make a section 501(h) lobbying expenditure election for that year by filing Form 5768. The distinction in *Part II-A* between direct and grassroots lobbying activities by organizations that made the section 501(h) election does not apply to organizations that complete *Part II-B*.

Nonelecting section 501(c)(3) organizations must complete *Part II-B*, columns (a) and (b), to show lobbying expenditures paid or incurred.

**Note.** A nonelecting organization will generally be regarded as engaging in lobbying activity if the organization either contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or the government's budget process; or advocates the adoption or rejection of **legislation**.

Organizations should answer "Yes" or "No" in column (a) to questions 1a through 1i and provide in *Part IV* a detailed description of any activities the organization engaged in (through its **employees or volunteers**) to influence legislation. The description should include all lobbying activities, whether expenses were incurred or not. Examples of such lobbying activities include:

- Sending letters or publications to government officials or legislators,
- Meeting with or calling government officials or legislators,
- Sending or distributing letters or publications (including newsletters, brochures, etc.) to members or to the general public, or
- Using direct mail, placing advertisements, issuing press releases, holding news conferences, or holding rallies or demonstrations.

For lines 1c through 1i, enter in column (b) the lobbying expenditures paid or incurred. Enter total expenditures on column (b), line 1j.

**Line 1f.** Grants to other organizations are amounts from the organization's funds given to another organization for the purpose of assisting the other organization conducting **lobbying activities**.

**Line 1g.** Direct contact is a personal telephone call or visit with legislators, their staffs, or government officials.

**Line 1h.** Rallies, demonstrations, seminars, conventions, speeches, and

lectures are examples of public forums conducted directly by the organization or paid for out of the organization's funds.

**Line 1i.** Answer "Yes" if the organization engaged in any other activities to influence legislation.

**Line 2a.** Answer "Yes" if a section 501(c)(3) organization ceased to be described as a section 501(c)(3) organization because the amount on line 1j was substantial.

**Line 2b.** Enter the amount of taxes, if any, imposed on the organization itself under section 4912, unless abated.

**Line 2c.** Enter the amount of taxes, if any, imposed on the organization managers under section 4912, unless abated.

**Line 2d.** If the filing organization reported a section 4912 tax on a Form 4720 for this year, answer "Yes."

## Part III. Section 6033(e) Notice and Reporting Requirements and Proxy Tax

Only certain organizations that are tax-exempt under:

- Section 501(c)(4) (social welfare organizations),
  - Section 501(c)(5) (agricultural and horticultural organizations), or
  - Section 501(c)(6) (business leagues),
- are subject to the section 6033(e) notice and reporting requirements, and to a potential proxy tax. These organizations must report their total lobbying expenses, political expenses, and membership dues, or similar amounts.

Section 6033(e) requires certain section 501(c)(4), (5), and (6) organizations to tell their members what portion of their membership dues were allocable to the political or **lobbying activities** of the organization. If an organization does not give its members this information, then the organization is subject to a proxy tax. This tax is reported on Form 990-T.

### Part III-A

**Line 1.** Answer "Yes" if any of the following exemptions from the reporting and notice requirements apply. By doing so, the organization is declaring that substantially all of its membership dues were nondeductible.

1. Local associations of employees' and veterans' organizations described in section 501(c)(4), but not section 501(c)(4) social welfare organizations.

2. Labor unions and other labor organizations described in section 501(c)(5), but not section 501(c)(5) agricultural and horticultural organizations.

3. Section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations that receive more than 90% (0.9) of their dues from:

- a. Organizations exempt from tax under section 501(a), other than section 501(c)(4), section 501(c)(5), and section 501(c)(6) organizations,
- b. State or local governments,
- c. Entities whose income is excluded from gross income under section 115, or
- d. Organizations described in 1 or 2, earlier.

4. Section 501(c)(4) and section 501(c)(5) organizations that receive more than 90% (0.9) of their annual dues from:

- a. Persons,
- b. Families, or
- c. Entities,

who each paid annual dues of \$161 or less in 2016 (adjusted annually for inflation). See Rev. Proc. 2015-53, 2015-44 IRB 615, section 3.28 at [www.irs.gov/irb/2015-44\\_IRB/ar10.html](http://www.irs.gov/irb/2015-44_IRB/ar10.html) (or latest annual update).

5. Any organization that receives a private letter ruling from the IRS stating that the organization satisfies the section 6033(e)(3) exception.

6. Any organization that keeps records to substantiate that 90% (0.9) or more of its members cannot deduct their dues (or similar amounts) as business expenses whether or not any part of their dues are used for lobbying purposes.

7. Any organization that is not a membership organization.



*Special rules treat affiliated social welfare organizations, agricultural and horticultural organizations, and business leagues as parts of a single organization for purposes of meeting the nondeductible dues exception. See Rev. Proc. 98-19, 1998-1 C.B. 547, section 5.03.*

**Line 2.** Answer “Yes” on line 2 if the organization satisfies the following criteria of the \$2,000 in-house lobbying exception.

- 1. The organization did not make any political expenditures or foreign lobbying expenditures during the 2016 reporting year.
- 2. The organization made lobbying expenditures during the 2016 reporting year consisting only of in-house direct lobbying expenditures totaling \$2,000 or less, but excluding:
  - a. Any allocable overhead expenses, and
  - b. All direct lobbying expenses of any local council regarding legislation of direct interest to the organization or its members.

If the organization's in-house direct lobbying expenditures during the 2016 reporting year were \$2,000 or less, but the organization also paid or incurred other lobbying or political expenditures during the 2016 reporting year, it should answer “No” to question 2. If the organization is required to complete *Part III-B*, the \$2,000 or less of in-house direct lobbying expenditures should not be included in the total of Part III-B, line 2a.

**Line 3.** Answer “Yes” on line 3 if the organization on its prior year report agreed to carryover an amount to be included in the current year's reasonable estimate of lobbying and political expenses.

Complete *Part III-B* only if the organization answered “No” on **both** line 1 and line 2 or if the organization answered “Yes” on line 3.

### Part III-B. Dues Notices, Reporting Requirements, and Proxy Tax

**Dues notices.** An organization that checked “No” for both Part III-A, lines 1 and 2, and is thus responsible for completing *Part III-B*, must send dues notices to its members at the time of assessment or payment of dues, unless the organization chooses to pay the proxy tax instead of informing its members of the nondeductible portion of its dues. These dues notices must reasonably estimate the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a. An organization that checked “Yes” for Part III-A, line 3, and thus is required to complete *Part III-B*, must send dues notices to its members at the time of assessment or payment of dues and include the amount it agreed to carryover in its reasonable estimate of the dues allocable to the nondeductible lobbying and political expenditures reported in Part III-B, line 2a.

### Dues, Lobbying, and Political Expenses

IF ...	THEN ...
The organization's lobbying and political expenses are more than its membership dues for the year,	The organization must: (a) Allocate all membership dues to its lobbying and political activities, and (b) Carry forward any excess lobbying and political expenses to the next tax year.
The organization: (a) Had only <i>de minimis</i> in-house expenses (\$2,000 or less) and no other nondeductible lobbying or political expenses (including any amount it agreed to carryover); or (b) Paid a proxy tax, instead of notifying its members on the allocation of dues to lobbying and political expenses; or (c) Established that substantially all of its membership dues, etc., are not deductible by members.	The organization need not disclose to its membership the allocation of dues, etc., to its lobbying and political activities.

Members of the organization cannot take a trade or business expense deduction on their tax returns for the portion of their dues, etc., allocable to the organization's lobbying and political activities.

## Proxy Tax

IF ...	THEN ...
The organization's actual lobbying and political expenses are more than it estimated in its dues notices,	The organization is liable for a proxy tax on the excess.
The organization: (a) Elects to pay the proxy tax, and (b) Chooses not to give its members a notice allocating dues to lobbying and political campaign activities,	All the members' dues remain eligible for a section 162 trade or business expense deduction.
The organization: (a) Makes a reasonable estimate of dues allocable to nondeductible lobbying and political activities, and (b) Agrees to adjust its estimate in the following year*.	The IRS may permit a waiver of the proxy tax.
*A facts and circumstances test determines whether or not a reasonable estimate was made in good faith.	

**Allocation of costs to lobbying activities and influencing legislation.** An organization that is subject to the lobbying disclosure rules of section 6033(e) must use a reasonable allocation method to determine total costs of its direct lobbying activities; that is, costs to influence:

- **Legislation, and**
  - The actions of a covered executive branch official through direct communication (for example, President, Vice-President, or cabinet-level officials, and their immediate deputies) (section 162(e)(1)(A) and section 162(e)(1)(D)).
- Reasonable methods of allocating costs to direct lobbying activities include, but are not limited to:
- The ratio method,
  - The gross-up and alternative gross-up methods, and
  - A method applying the principles of section 263A.

For more information, see Regulations sections 1.162-28 and 1.162-29. The special rules and definitions for these allocation methods are discussed under *Special Rules*, later.

An organization that is subject to the lobbying disclosure rules of section 6033(e) must also determine its total costs of:

- *De minimis* in-house lobbying,
- Grassroots lobbying, and
- **Political campaign activities.**

There are no special rules related to determining these costs.

**All methods.** For all the allocation methods, include labor hours and costs of personnel whose activities involve significant judgment about lobbying activities.

## Special Rules

**Ratio and gross-up methods.** These methods:

- May be used even if volunteers conduct activities, and
- May disregard labor hours and costs of clerical or support personnel (other than lobbying personnel) under the ratio method.

**Alternative gross-up method.** This method may disregard:

- Labor hours, and
- Costs of clerical or support personnel (other than lobbying personnel).

**Third-party costs.** These are:

- Payments to outside parties for conducting lobbying activities,
- Dues paid to another membership organization that were declared to be nondeductible lobbying expenses, and
- Travel and entertainment costs for lobbying activity.

**Direct contact lobbying.** Treat all hours spent by a person in connection with direct contact lobbying as labor hours allocable to lobbying activities.

Do not treat as direct contact lobbying the hours spent by a person who engages in research and other background activities related to direct contact lobbying, but who makes no direct contact with a legislator, or covered executive branch official.

**De minimis rule.** If less than 5% (0.05) of a person's time is spent on lobbying activities, and there is no direct contact lobbying, an organization may treat that person's time spent on lobbying activities as zero.

**Purpose for engaging in an activity.**

The purpose for engaging in an activity is based on all the facts and circumstances. If an organization's lobbying communication was for both a lobbying and a non-lobbying purpose, the organization must make a reasonable allocation of cost to influence **legislation.**

**Correction of prior year lobbying costs.**

If in a prior year, an organization treated costs incurred for a future lobbying communication as a lobbying cost to influence legislation, but after the organization filed a timely return, it appears the lobbying communication will not be made under any foreseeable circumstance, the organization may apply these costs to reduce its current year's lobbying costs, but not below zero. The organization may carry forward any

amount of the costs not used to reduce its current year's lobbying costs to subsequent years.

**Example 1. Ratio method.**

X Organization incurred:

1. 6,000 labor hours for all activities,
2. 3,000 labor hours for lobbying activities (3 employees),
3. \$300,000 for operational costs, and
4. No third-party lobbying costs.

X Organization allocated its lobbying costs as follows:

Lobbying labor hrs.	Total costs of operations	Allocable third-party costs	Costs allocable to lobbying activities
$\frac{3,000}{6,000}$	× \$300,000	+ \$-0-	= \$150,000
Total labor hrs.			

**Example 2. Gross-up method and alternative gross-up method.**

A and B are employees of Y Organization.

1. A's activities involve significant judgment about lobbying activities.
2. A's basic lobbying labor costs (excluding employee benefits) are \$50,000.
3. B performs clerical and support activities for A.
4. B's labor costs (excluding employee benefits) in support of A's activities are \$15,000.
5. Allocable third-party costs are \$100,000.

If Y Organization uses the gross-up method to allocate its lobbying costs, it multiplies 175% (1.75) times its basic labor costs (excluding employee benefits) for all of the lobbying of its personnel and adds its allocable third-party lobbying costs as follows:

Basic lobbying labor costs of A + B	Allocable third-party costs	Costs allocable to lobbying activities
$(175\% \times \$65,000)$	+ \$100,000	= \$213,750

If Y Organization uses the alternative gross-up method to allocate its lobbying costs, it multiplies 225% (2.25) times its basic labor costs (excluding employee benefits) for all of the lobbying hours of its lobbying personnel and adds its third-party lobbying costs as follows:

Basic lobbying labor costs of A	Allocable third-party costs	Costs allocable to lobbying activities
(225% × \$50,000)	+ \$100,000	= \$212,500

**Section 263A cost allocation method.**

The examples that demonstrate this method are found in Regulations section 1.162-28(f).

**Part III-B, Line 1.** Enter the total dues, assessments, and similar amounts allocable to the 2016 reporting year. Dues are the amounts the organization requires a member to pay in order to be recognized as a member.

Payments that are similar to dues include:

1. Members' voluntary payments,
2. Assessments to cover basic operating costs, and
3. Special assessments to conduct lobbying and political activities.

**Line 2.** Include on line 2a the total amount of expenses paid or incurred during the 2016 reporting year in connection with:

1. Influencing **legislation**;
2. Participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for any public office;
3. Attempting to influence any segment of the general public with respect to elections, legislative matters, or referendums; and
4. Communicating directly with a covered executive branch official in an attempt to influence the official actions or positions of such official.

Do not include:

1. Any direct lobbying of any local council or similar governing body with respect to legislation of direct interest to the organization or its members;
2. In-house direct lobbying expenditures, if the total of such expenditures is \$2,000 or less (excluding allocable overhead); or
3. Political expenditures for which the section 527(f) tax has been paid (on Form 1120-POL).

Reduce the current year's lobbying expenditures, but not below zero, by costs previously allocated in a prior year to **lobbying activities** that were cancelled after a return reporting those costs was filed.

Carryforward any amounts not used as a reduction to subsequent years.

Include the following on line 2b.

1. Lobbying and political expenditures carried over from the preceding tax year.

2. An amount equal to the taxable lobbying and political expenditures reported on Part III-B, line 5 for the preceding tax year, if the organization received a waiver of the proxy tax imposed on that amount.

**Line 3.** Enter the total amount of dues, assessments, and similar amounts received, for which members were timely notified of the nondeductibility under section 162(e) that were allocable to the 2016 reporting year.

**Example.**

- Membership dues: \$100,000 for the 2016 reporting year,
- Organization's timely notices to members: 25% (0.25) of membership dues nondeductible, and
- Line 3 entry: \$25,000.

**Line 4.** If the amount on line 2c exceeds the amount on line 3 and the organization sent dues notices to its members at the time of assessment or payment of dues, include the amount on line 4 that the organization agrees to carryover to the reasonable estimate of nondeductible lobbying and political expenditure next year and include the amount on the 2016 Schedule C (Form 990 or 990-EZ), in Part III-B, line 2b (carryover lobbying and political expenses), or its equivalent.

If the organization did not send notices to its members, enter "-0-" on line 4.

**Line 5.** The taxable amount reportable on line 5 is the amount of dues, assessments, and similar amounts received:

1. Allocable to the 2016 reporting year, and
2. Attributable to lobbying and political expenditures that the organization did not timely notify its members were nondeductible.

Report the tax on Form 990-T.

If the amount on line 1 (dues, assessments, and similar amounts) is *greater* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from the total lobbying and political expenditures (line 2c) to determine the taxable amount of lobbying and political expenditures (line 5).

If the amount on line 1 (dues, assessments, and similar amounts) is *less* than the amount on line 2c (total lobbying and political expenditures), then subtract the nondeductible dues shown in notices (line 3) and the carryover amount (line 4) from dues, assessments, and similar amounts (line 1) to determine the taxable lobbying and political expenditures (line 5).

Subtract dues, assessments, and similar amounts (line 1) from lobbying and political expenditures (line 2c) to determine the excess amount to be carried over to the following tax year and reported on Part III-B, line 2b (carryover lobbying and political expenditures), or its equivalent, on the next year Schedule C (Form 990 or 990-EZ) along with the amounts the organization agreed to carryover on line 4.

**Underreporting of lobbying expenses.**

An organization is subject to the proxy tax for the 2016 reporting year for underreported lobbying and political expenses only to the extent that these expenses (if actually reported) would have resulted in a proxy tax liability for that year. A waiver of proxy tax for the tax year only applies to reported expenditures.

An organization that underreports its lobbying and political expenses is also subject to the section 6652(c) daily penalty for filing an incomplete or inaccurate return. See Instructions for Form 990 *General Instructions H. Failure-to-File Penalties*, and Instructions for Form 990-EZ *General Instructions G. Failure-to-File Penalties*.

**Examples.** Organizations A, B, and C:

1. Reported on the calendar year basis,
2. Incurred only grassroots lobbying expenses (did not qualify for the under \$2,000 in-house lobbying exception (*de minimis* rule)), and
3. Allocated dues to the tax year in which they were received.

**Organization A.** Dues, assessments, and similar amounts received in 2016 were greater than its lobbying expenses for 2016.

**Workpapers (for 2016 Form 990) — Organization A**

1. Total dues, assessments, etc., received	\$800	
2. Lobbying expenses paid or incurred		\$600
3. Less: Total nondeductible amount of dues notices	100	100
4. Subtract line 3 from both lines 1 and 2	\$700	\$500
5. Taxable amount of lobbying expenses (smaller of the two amounts on line 4)		<u>\$500</u>

**TIP** *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2016 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were greater than lobbying expenses, there is no carryovers of excess lobbying expenses

to the 2017 Schedule C (Form 990 or 990-EZ), Part III-B, line 2b.

See the instructions for Part III-B, line 5, for the treatment of the \$500.

**Organization B.** Dues, assessments, and similar amounts received in 2016 were less than lobbying expenses for 2016.

**Workpapers (for 2016 Form 990) — Organization B**

1. Total dues, assessments, etc., received	\$400	
2. Lobbying expenses paid or incurred		\$600
3. Less: Total nondeductible amount of dues notices	100	100
4. Subtract line 3 from both lines 1 and 2	\$300	\$500
5. Taxable amount of lobbying expenses (smaller of the two amounts on line 4)	<u>\$300</u>	

**TIP** *The amounts on lines 1, 2, 3, and 5 of the workpapers were entered on the 2016 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, and 5.*

Because dues, assessments, and similar amounts received were less than

lobbying expenses, excess lobbying expenses of \$200 must be carried forward to the 2017 Schedule C (Form 990 or 990-EZ) Part III-B, line 2b (excess of \$600 of lobbying expenses over \$400 dues, etc., received). The \$200 will be included along with the other lobbying and political expenses paid or incurred in the 2017 reporting year.

See the instructions for Part III-B, line 5, for the treatment of the \$300.

**Organization C.** Dues, assessments, and similar amounts received in 2016 were greater than lobbying expenses for 2016 and the organization agreed to carryover a portion of its excess lobbying and political expenses to the next year.

**Workpapers (for 2016 Form 990) — Organization C**

1. Total dues, assessments, etc., received	\$800	
2. Lobbying expenses paid or incurred		\$600
3. Less: Total nondeductible amount of dues notices	100	100
4. Less: Amount agreed to carryover	100	100
5. Subtract line 3 and 4 from both lines 1 and 2	\$600	\$400
6. Taxable amount of lobbying expenses (smaller of the two amounts on line 5)		<u>\$400</u>

**TIP** *The amounts on lines 1, 2, 3, 4, and 6 of the workpapers were entered on the 2016 Schedule C (Form 990 or 990-EZ), Part III-B, lines 1, 2c, 3, 4, and 5.*

See the instructions for Part III-B, line 5, for the treatment of the \$400.

**Part IV. Supplemental Information**

Use *Part IV* to enter narrative information required in Part I-A, line 1, Part I-B, line 4, Part I-C, line 5, Part II-A, line 1 (affiliated group list), Part II-A, lines 1 and 2, and Part II-B, line 1. Also use *Part IV* to enter other narrative explanations and descriptions. Identify the specific part and line number that the response supports, in the order in which they appear on Schedule C (Form 990 or 990-EZ). *Part IV* can be duplicated if more space is needed.

## LOBBYING BY PUBLIC CHARITIES:

### An Introduction

Rosemary E. Fei

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#### I. The “No Substantial Part” Test.

##### A. Historical Background.

1. **Pre-1930:** No statutory restriction on legislative or lobbying activities by charities; a few scattered judicial interpretations.
2. **1930:** *Slee v. Commissioner of Internal Revenue*.<sup>1</sup> Denial of charitable tax-exempt status to the American Birth Control League because it disseminated materials to legislators and to the public, advocating repeal of laws preventing birth control, thus precluding it from being exclusively charitable, educational or scientific.
3. **1934:** Congress enacts change in definition of an organization qualifying under Section 501(c)(3), requiring that “no substantial part of [its] activities [ ] is carrying on propaganda, or otherwise attempting, to influence legislation.”
4. **Legislative lobbying vs. candidate electioneering:** The legislative activities restriction should not be confused with the absolute statutory prohibition on participation or intervention in candidate campaigns for public office, enacted by Congress in 1954.

##### B. Activities clearly *not* restricted under the “no substantial part” test.

1. Attempts to influence an administrative agency regarding its regulations and rulings.
2. Petitioning the President, or a governor or mayor, on executive decisions.
3. Attempting to influence legislators on nonlegislative matters, such as conducting investigative hearings or intervening with a government agency.

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<sup>1</sup> 42 F.2d 184 (2nd Cir. 1930).



4. Engaging in litigation to obtain favorable rulings from the judicial branch of government.
- C. Definitional problems: How much is “substantial”?
1. In an early court case, spending less than five percent of the organization’s volunteers’ time and effort (but no money) on lobbying was considered to be insubstantial.<sup>2</sup>
  2. Later decisions<sup>3</sup> cast doubt on the usefulness of a percentage test, stating that all the facts and circumstances of an organization’s legislative and other activities would have to be examined.
  3. One court found that, even though lobbying contacts were “insignificant,” the time spent formulating positions and deciding whether to lobby was substantial and must be considered.<sup>4</sup>
- D. Penalty for engaging in “substantial” lobbying activities: revocation of 501(c)(3) tax exemption, retroactive to the date lobbying activities became substantial. Difficult for the IRS to justify imposing this sanction where the charity has substantial nonlobbying charitable activities, but nevertheless threatens charity’s continued existence.
- E. The result of this uncertainty was a severe chilling effect on advocacy activities by charities.
- F. The “no substantial part” test is still the law for a charity that does not (or cannot) elect to be governed by Section 501(h) with respect to its lobbying activities. See Section II.B. below.
- II. The Section 501(h) Expenditure Test.
- A. Enacted as part of the Tax Reform Act of 1976 to clarify the “no substantial part” test, constituting Congressional acknowledgement that some limited lobbying is a charitable activity beneficial to society for which use of deductible gifts is appropriate. Regulations finalized in 1990.

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<sup>2</sup> *Seasongood v. Commissioner of Internal Revenue*, 227 F.2d 907 (6th Cir. 1955).

<sup>3</sup> *E.g., Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972), cert. den. 414 U.S. 864 (1973).

<sup>4</sup> *Kuper v. Commissioner*, 332 F.2d 562 (3d Cir. 1964), cert. den. 379 U.S. 920 (1964).

1. Section 501(h) states that an organization with lobbying activities does not fail to qualify as tax-exempt under Section 501(c)(3) because of those activities, so long as they are kept below certain dollar expenditure limits. Section 501(h) also imposes a tax on lobbying expenditures above another lower set of limits.
  2. Section 4911 provides details on how the lobbying limits are calculated, defines terms (like direct and grass roots lobbying), describes exceptions to definitions, and addresses what expenses count as lobbying expenses.
- B. Charities must elect to be governed by Section 501(h). Otherwise, the “no substantial part” test is still the law.
1. Certain charities are not eligible to make the election, based on their foundation status classification: they must remain under the “no substantial part” test.
    - a. Churches and related entities.
    - b. Governmental units.
    - c. Testing for public safety.
    - d. Private foundations.<sup>5</sup>
  2. So-called “public charities” may generally make the election.
    - a. Educational institutions.
    - b. Hospitals.
    - c. Organizations supporting government schools.
    - d. Organizations publicly supported by grants and donations.
    - e. Organizations publicly supported by grants, donations, and exempt function income.
    - f. Supporting organizations to public charities.
- C. Procedural matters in making the election.
1. One-time filing of IRS Form 5768 at any time during the first tax year in which election will be effective (but lobbying expenditure tracking systems should be in place from the beginning of the year).

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<sup>5</sup> Although private foundations are governed by the “no substantial part” test with respect to continued eligibility for exemption, private foundations and their foundation managers are subject to taxes under IRC Section 4945 on “taxable expenditures,” which include amounts paid or incurred “to carry on propaganda, or otherwise attempt, to influence legislation” as defined in that section. Effectively, private foundations are banned from legislative lobbying entirely.

2. Election continues in effect until revoked, also by filing IRS Form 5768. The revocation will not be effective until the tax year after the year in which it is filed.
  3. Keep a copy of the Form 5768 as filed, because the IRS ordinarily will not acknowledge receipt.
  4. For each tax year in which the election is effective, the charity must complete Part II-A, Schedule C, of IRS Form 990, to report its lobbying expenditures.
  5. A charity can switch the Section 501(h) election on and off as often as it pleases.
  6. Making the 501(h) election has no impact on an organization's Section 501(c)(3) status or foundation classification.
- D. Section 501(h) focuses on lobbying expenditures, rather than lobbying activities, capping lobbying expenditures as a percentage of exempt purpose expenditures.
1. Calculating the base: "exempt purpose" expenditures.
    - a. Everything spent by the charity to accomplish its exempt purposes is included.
      - Program service expenses.
      - Administrative and overhead expenses.
      - Lobbying expenses.
      - Straight-line depreciation.
    - b. The following are not included.
      - Capital expenditures.
      - Expenses related to managing investments.
      - Unrelated business income expenses.
      - Fundraising expenses, but only if paid to an outside vendor primarily for fundraising, or incurred by a separate fundraising unit within the charity.
  2. The percentage limits on lobbying expenditures.
    - a. The total lobbying limit.
      - 20% of the first \$500,000 of exempt purpose expenditures.
      - 15% of the second \$500,000 of exempt purpose expenditures.
      - 10% of the third \$500,000 of exempt purpose expenditures.
      - 5% of exempt purpose expenditures over \$1,500,000, up to a total cap of \$1,000,000, regardless of the level of exempt purpose expenditures.

- b. The grass roots lobbying limit: one-quarter of the total lobbying limit.
- c. To prevent abuse, the Regulations provide that certain closely affiliated charities will be treated as one unit in calculating the lobbying limits.<sup>6</sup>

E. Basic definitions.

1. **Legislation: Action** with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. Legislative bodies in foreign countries are included.
2. **Action:** With respect to legislation, includes introduction, amendment, enactment, defeat, or repeal.
3. **Specific legislation:** Includes both legislation that has already been introduced in a legislative body, and a specific legislative proposal (though it may not have been introduced) that the organization either supports or opposes. Votes to confirm or reject executive branch nominees (*e.g.*, judges) are considered legislation.<sup>7</sup> Legislation includes a proposed treaty required to be submitted to the Senate for advice and consent, from the time the President's representative begins to negotiate with the prospective parties to the treaty.
4. **Direct lobbying:** A (i) communication with (ii) any member or employee of a legislative body, or (if the principal purpose of the communication is lobbying) with any government official or employee who may participate in the formulation of the legislation, that (iii) refers to **specific legislation**, and (iv) reflects a view on that legislation.
5. **Grass roots lobbying:** A (i) communication with (ii) the general public or any segment thereof, that (iii) refers to **specific legislation**, (iv) reflects a view on that legislation, and (v) encourages the recipient to take action with respect to the legislation (a "**call to action**").
6. **Call to action:** Any of the following. The first three are considered **direct** calls to action; the last is considered **nondirect**.
  - a. A statement that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee who may participate in the formulation of legislation.

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<sup>6</sup> IRC Section 4911(f).

<sup>7</sup> Charities lobbying on these confirmation votes may be subject to the tax on political organizations under IRC Section 527.

- b. A statement of the address, telephone number, or similar information of a legislator or an employee of a legislative body.
- c. Inclusion of a petition, tear-off postcard or similar material for the recipient to communicate with a legislator or an employee of a legislative body (or other government official involved in the legislation).
- d. Specifically identifying one or more legislators who will vote on the legislation as: opposing the charity's view on the legislation, being undecided, being the recipient's representative in the legislature, or being on the committee or subcommittee that will consider the legislation.

F. Selected special rules.

1. **Ballot measures:** Where a communication refers to and reflects a view on a measure that is the subject of a referendum, ballot initiative or similar procedure, the general public in the state or locality where the vote will take place constitutes the legislative body. Accordingly, if such a communication is made to one or more members of the general public in that state or locality, it is direct lobbying. In the case of a measure that is placed on the ballot by voter petitions, an item becomes “**specific legislation**” when the petition is first circulated among voters for signature.
2. **Communications with members:** A person is a member of a charity if the person pays dues, or makes a contribution of more than a nominal amount of time or money, or is one of a limited number of honorary or life members; members need not have voting rights in the organization. Communications to members on legislation, directly encouraging them to contact legislators, are treated as **direct lobbying**. If members are asked to go outside the organization and urge *non*members to lobby their legislators, it is **grass roots lobbying**.
3. **Mass media advertisements:** A paid mass media ad is grass roots lobbying if it: (i) is made within two weeks before a vote by a legislative body or committee, on (ii) highly publicized legislation, (iii) reflects a view on the general subject of that legislation, and (iv) *either* refers to the legislation or encourages the public to contact legislators on the general subject of the legislation, *even though* it does not include any call to action. The presumption may be overcome by showing that the timing of the ad was unrelated to the upcoming vote.

G. Exceptions to the basic definitions, from the statute and the Regulations.

1. **Nonpartisan analysis, study, or research:** An independent and objective exposition of a particular subject matter that includes a sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion, is not lobbying, even if a particular position or viewpoint is advocated. The mere presentation of unsupported opinion will not qualify. Further, distribution of the communication may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue. A communication which includes any direct call to action (see Section II.E.6.) cannot qualify under this exception.
2. **Requests for technical advice:** Providing technical advice to a governmental body or committee in response to a written request by such body is not lobbying. The request must be made in the name of the committee or agency, rather than an individual member of the body.
3. **Self-defense lobbying:** Appearances before, or communications to, any legislative body with respect to a possible decision by that body which might affect the existence of the charity, its powers and duties, tax-exempt status, or deductibility of contributions to it, are not reportable lobbying activities. This exception does not cover legislation, such as an appropriations bill, which (in the eyes of the IRS) merely affects the scope of the charity's future activities.
4. **Certain member communications:** Communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, are not lobbying, so long as members are not directly encouraged to lobby.
5. **Other government communications:** Communications with government officials or employees where the charity is not mainly attempting to influence legislation, are not lobbying.
6. **Examinations and discussions of broad social, economic, and similar problems:** This exception covers public discussions, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as no direct call to action is made.

H. Recordkeeping, allocations, and reporting highlights.

1. No guidance in the statute; only general guidance (with some exceptions) in the Regulations: rely on common sense and a good accountant. Use reasonable approaches, applied in good faith and consistently.

2. Out-of-pocket expenses of lobbying (payments to lobbyists, travel to meet with legislators, costs of producing and sending materials, telephone calls, etc.) must be included.
3. Mixed purpose communications (lobbying mixed with fundraising, educational, or other messages) must be reasonably allocated.
  - a. If communications sent only or primarily (at least 50% of distribution) to members contain both lobbying and nonlobbying messages, the charity may make a reasonable allocation of costs between the messages.
  - b. If a grass roots lobbying message is combined with nonlobbying material in a communication sent to *the public*, such as a newsletter or a direct mail fundraising solicitation, then, in addition to the cost of the lobbying message itself, any parts of the communication on the *same specific subject* must be treated as lobbying expenditures as well.
4. Internal overhead expenses (staff salaries, benefits, rent, etc.) must be allocated between lobbying and nonlobbying. A common approach is for paid professional staff to keep time records, showing the hours devoted to direct lobbying, grass roots lobbying, and other activities. This information can be used to allocate payroll and benefits for individual staff; the aggregate percentage of total staff time devoted to the two forms of lobbying can be used to allocate other overhead costs, including costs of non-timekeeping support staff.
5. Expenses to research and prepare lobbying materials are lobbying expenditures. However, expenses to research and prepare nonlobbying materials are also presumed to be grass roots lobbying expenses if the nonlobbying materials are used in a grass roots lobbying communication within six months after they were paid for, and if the primary purpose of the charity in preparing them was for eventual use in lobbying. The presumption is rebutted if, prior to or contemporaneously with the lobbying distribution, the charity makes a substantial *nonlobbying* distribution of the materials.

I. Penalties for exceeding the limits.

1. If in any year the charity exceeds the total lobbying limit or the grass roots lobbying limit, it must pay a tax equal to 25% of the excess. If the charity exceeds both limits, the 25% tax is imposed only on whichever excess is larger. This tax is automatically due to the IRS with the filing of the Form 990 reporting the excess lobbying expenditures made that year. Use IRS Form 4720 to report and pay the tax.

2. If, over any four year period, the charity's lobbying expenditures exceed either limit by more than 50%, the charity will automatically lose its Section 501(c)(3) tax-exempt status. Furthermore, the charity is prohibited from converting to a Section 501(c)(4) organization.

### III. Deciding whether to make the Section 501(h) election.

Generally, for charities that are eligible and have total exempt purpose expenditures of less than \$35 to \$40 million, the benefits of electing Section 501(h) substantially outweigh any disadvantages. Some of the facts and factors to consider in deciding whether your organization should make the 501(h) election are:

- A. Detailed Regulations under Section 501(h) provide clarity and certainty on a number of common questions. Such clarity and certainty are not available where, as under the "no substantial part" test, the primary source of guidance is a few very dated court cases.
- B. The definitions available to an electing charity, which exclude many activities commonly thought of as lobbying, are not available to nonelecting charities. In other words, fewer activities will constitute lobbying under the 501(h) election than under the "no substantial part" test. Some of the more important examples:
  1. Using volunteers to lobby.
  2. Endorsing legislation without spending money to promote the endorsement.
  3. Public commentary on legislation without a call to action.
  4. Possibly self-defense lobbying.
- C. The level of lobbying permitted to smaller organizations (up to 20% of program expenditures) would clearly be considered a substantial activity, in excess of the level permitted under the "no substantial part" test. However, for a charity with a very large budget, lobbying expenditures exceeding \$1 million annually (the 501(h) cap) could still represent an insubstantial part of its activities overall. Since the limits are not indexed for inflation, their real dollar value has eroded substantially. Also, because the grass roots ceiling is so low, it is possible that a large charity that only engages in grass roots lobbying could spend more than the annual limit of \$250,000 that Section 501(h) permits, and still be able to claim its lobbying was insubstantial relative to the rest of its activities. On the other hand, a small to medium-sized charity (under \$20 million/year) that engages in more direct lobbying activity, such as ballot measure campaigns, will find that the 501(h) limit is more generous.



- D. A nonelecting charity that fails the “no substantial part” test for even one tax year risks losing its Section 501(c)(3) status. In addition, for each year of excessive lobbying activities, the charity is subject to a 5% tax on the entire amount that it spent for lobbying that year. A 5% tax can also be imposed on organization managers who knowingly, willfully and without reasonable cause agreed to the expenditures.<sup>8</sup> For an electing charity, the only penalty for excessive lobbying in a single year is the 25% excise tax.
- E. A charity that currently does no lobbying may still make the Section 501(h) election, reporting zero lobbying expenditures on its Form 990, to take advantage of the clearer definitions, and to establish a base of nonlobbying expenditures for future years when it may decide to lobby.
- F. For charities that have a companion Section 501(c)(4) lobbying affiliate, electing Section 501(h) permits the charity annually to transfer (by grant or contract) the maximum amounts permitted for direct and grass roots lobbying on issues of concern to the charity.
- G. The IRS has assured the charitable sector that electing to be governed by Section 501(h) will not increase a charity’s chances of an IRS audit.
- H. Any charity that lobbies must put in place an appropriate accounting system to track lobbying expenditures, whether it elects Section 501(h) treatment or not. All lobbying charities must report their lobbying expenditures on either Part II-A or Part II-B of Form 990, Schedule C; nonelecting charities that lobby must also report on volunteer activities, and provide additional detailed narrative information to the IRS on their lobbying activities. While noncompliance with these reporting requirements for non-electing charities that lobby has been widespread in the past, is it likely that pressure from the press and the public to report lobbying accurately will increase as Form 990s become more easily available and searchable on-line.
- I. Under the Lobbying Disclosure Act of 1995, which concerns a range of activities directed towards influencing officials in the legislative and executive branches of the Federal government, electing charities may choose between the tax law’s definitions and the definitions under the Act – whichever is more favorable – in reporting their lobbying activities.

This memorandum summarizes information for educational purposes, and is not intended as legal or tax advice. Consult a qualified attorney concerning the application of the law in any specific factual situation.

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<sup>8</sup> IRC Section 4912. This penalty tax scheme does not apply to churches and church-related organizations.

## **The Section 6033 Proxy Tax: A Guide for Section 501(c)(4), 501(c)(5), and 501(c)(6) Organizations**

### **I. What is the proxy tax?**

Federal tax law does not allow taxpayers to claim business deductions for amounts spent on lobbying or electioneering.<sup>1</sup> (By “electioneering,” we mean expenditures made to support or oppose candidates for public office.) Many businesses and individuals claim business deductions for the dues they pay to Section 501(c)(6) business or professional organizations or to Section 501(c)(5) labor or agricultural organizations; some taxpayers also claim business deductions for dues paid to a Section 501(c)(4) social welfare organization, if the organization promotes an agenda that would directly benefit the taxpayer’s business interests.<sup>2</sup>

To prevent taxpayers from circumventing the rule that disallows business deductions for lobbying and electioneering activities, Section 6033 of the Internal Revenue Code imposes a special set of tax rules on organizations that are exempt from federal income tax under Sections 501(c)(4), 501(c)(5), and 501(c)(6), to prevent their members from obtaining tax-favored treatment for the portion of their dues spent by the 501(c) organization on lobbying or electioneering activities.

Broadly speaking, an organization that is exempt under Section 501(c)(4), 501(c)(5), or 501(c)(6) has two choices regarding its lobbying and electioneering expenditures. First, the organization can notify each person paying dues how much of the dues payment will be spent on lobbying or electioneering activities.<sup>3</sup> If the exempt organization provides such a notice to its dues-paying members, the members cannot claim business deductions for the portion of their dues payments which are allocable to lobbying and electioneering activities.<sup>4</sup> Second, if the organization fails to provide this notice to members, or chooses not to provide the notice, its members may claim an unlimited business deduction for the dues they pay (assuming the dues otherwise qualify as a business deduction), but the exempt organization itself must pay an income tax at the highest corporate rate on the amount it spends on lobbying or electioneering

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<sup>1</sup> Section 162(e)(1).

<sup>2</sup> Treas. Reg. Section 1.162-15(b), (c).

<sup>3</sup> Section 6033(e)(1)(A)(ii).

<sup>4</sup> Section 162(e)(3).

activities.<sup>5</sup> This tax on the 501(c) organization's lobbying and electioneering activities is sometimes referred to as the "proxy tax," since it recoups from the 501(c) organizations the tax revenue lost when dues payments allocable to lobbying and electioneering expenditures were deducted by the organizations' members.

## II. Which organizations are exempt from the proxy tax?

All Section 501(c)(3) charitable organizations are exempt from proxy tax; this tax only applies to Section 501(c)(4), 501(c)(5), and 501(c)(6) entities.<sup>6</sup> In addition, a number of exceptions enable some Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations to escape the proxy tax, even if they fail to provide notices to their members estimating the portion of member dues which will be spent on lobbying and electioneering. The exceptions to the proxy tax are:

1. The proxy tax requirement does not apply to an organization's in-house direct lobbying expenditures if such expenditures do not exceed \$2,000 in the tax year.<sup>7</sup> This exception does not apply to an organization's grassroots lobbying or electioneering expenditures, or to payments to a third party to conduct direct lobbying..
2. An organization is exempt if more than 90 percent of its annual dues are received from governmental entities, 501(c)(3) charities, or certain other tax-exempt organizations.<sup>8</sup>
3. A Section 501(c)(4) or 501(c)(5) organization is exempt if more than 90 percent of its annual dues are received from persons, families, or entities who each pay dues of less than a certain amount per year. The dues cap is \$111 in 2015 and \$112 in 2016; the figure is adjusted for inflation annually.<sup>9</sup> (This exception is not available to Section 501(c)(6) organizations.)
4. An organization is exempt if it (i) maintains records establishing that more than 90 percent of the annual dues it receives are not deductible by the dues paying members, without regard to the restriction on lobbying deductions in Section 162(e); *and* (ii) notifies the IRS that it is exempt from proxy tax on its Form 990 annual return.<sup>10</sup>

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<sup>5</sup> Section 6033(e)(2)(A).

<sup>6</sup> Section 6033(e)(1)(B)(i) (exempting Section 501(c)(3) organizations); Rev. Proc. 98-19, 1998-1 C.B. 547, Section 4.01 (limiting the tax to Section 501(c)(4), 501(c)(5), and 501(c)(6) organizations).

<sup>7</sup> Section 6033(e)(1)(B)(ii). "In-house" expenditures are defined by reference to Section 162(e)(5)(B)(ii). If an organization's "in-house direct lobbying expenditures" exceed \$2,000, then all such expenditures are subject to the proxy tax, unless another exception applies.

<sup>8</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Sections 4.02 and 4.03.

<sup>9</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Sections 4.02 and 5.05. The inflation adjusted amount for 2015 is provided in Rev. Proc. 2014-61, Section 3.38 and for 2016 in Rev. Proc. 2015-53, Section 3.38.

<sup>10</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Section 5.06.

5. Section 501(c)(5) labor organizations are exempt from proxy tax entirely. (Section 501(c)(5) agricultural or horticultural organizations are subject to proxy tax, unless another exception applies to them.)<sup>11</sup>
6. Section 501(c)(4) veterans organizations are exempt from proxy tax entirely. (Other Section 501(c)(4) organizations are subject to proxy tax, unless another exception applies to them.)<sup>12</sup>

### III. What are “dues”?

Annual dues are the amount that an organization requires a person, family, or entity to pay to be recognized as a member for the year. The proxy tax rules apply not only to formal dues, but also to “similar amounts” paid to an organization.<sup>13</sup> Payments received by an organization are treated like dues if they are similar to dues, even if the organization calls them “recommended contributions” or “special assessments.” Also, the proxy tax rules apply whether or not dues paying members have any right to participate in the governance of the organization. The IRS takes the position that the phrase “dues or similar amounts” includes members’ voluntary payments.<sup>14</sup>

If an organization does not charge dues (either formally or informally), but rather relies on contributions from donors who are not considered “members” and get no special rights or recognition from donating more than a certain minimum amount each year, it appears the organization will not have any proxy tax liability.<sup>15</sup>

### IV. What notices must an organization give to avoid paying proxy tax?

Unless a Section 501(c)(4), 501(c)(5), or 501(c)(6) organization qualifies for one of the exceptions to the proxy tax described above, it must either provide notices to dues-paying members disclosing the amount of their dues that will be spent on lobbying and electioneering activities, or pay the proxy tax on these expenditures.

To satisfy the notice requirement, an organization must provide a notice to each person paying dues at the time the dues are assessed or paid. The notice must contain a “reasonable estimate” of the amount of the dues that will be allocable to non-deductible lobbying and electioneering expenditures.

If the notices to members underestimate the portion of each dues payment that the organization ultimately spends on nondeductible lobbying and electioneering activities (because the organization spent more than planned, or because dues receipts were lower than expected),

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<sup>11</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Section 4.01.

<sup>12</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Section 4.01.

<sup>13</sup> Rev. Proc. 98-19, 1998-1 C.B. 547, Section 5.01.

<sup>14</sup> Rev. Proc. 98-19, Section 5.01; see also instructions to Schedule C of the revised Form 990 (Advanced proof copy, 2008 Form 990 instructions for Schedule C, Part III-B, line 3).

<sup>15</sup> See Form 990 instructions for Schedule C, Part III-A, line 1 (2015) (providing that proxy tax does not apply to an organization that is not a membership organization).

the organization must pay the proxy tax on the difference between the amount of each dues payment that it estimated it would spend on nondeductible political activities and the amount it actually spent on such activities. However, the IRS can waive the tax if the organization agrees to adjust its estimates of nondeductible lobbying and electioneering expenses for the subsequent year to correct the underestimate. This waiver is requested on Form 990.

It is not clear what happens if the notices overestimate the portion of each dues payment that will be spent on nondeductible lobbying and electioneering. The IRS has informally indicated that it would be reasonable to treat the overestimate similarly to an underestimate, and adjust the following year's estimate of nondeductible lobbying and electioneering expenditures to take it into account.<sup>16</sup>

## V. What lobbying and electioneering expenditures must be counted?

Since the proxy tax is designed to prevent taxpayers from circumventing Section 162(e)(1), which disallows business deductions for lobbying and electioneering expenses, the lobbying and electioneering expenses that count for proxy tax purposes are determined under the Section 162(e)(1) rules for business deductions.

In general, Section 162(e)(1) disallows a business deduction for an amount paid or incurred in connection with:

- Influencing legislation. “Influencing legislation” means a communication with a member or employee of a legislative body (or with any other government official who may participate the formulation of legislation) that refers to and reflects a view on a specific legislative proposal. There is an exception for lobbying members of local councils or governing bodies on legislation of direct interest to the organization and its members.
- Participating or intervening in any political campaign on behalf of or in opposition to a candidate for public office.
- Attempting to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums.
- Communicating with certain senior U.S. government officials in an attempt to influence the actions or positions of such officials. This can include contacts related to executive or regulatory decisions of the covered officials, as well as legislative matters.

All costs for research, preparation, planning, and coordination of these nondeductible activities must be counted. The nondeductible amount includes the cost of staff time spent on such

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<sup>16</sup> Kindell & Reilly, *Election Year Issues*, in IRS Continuing Professional Education Technical Instruction Program for FY 2002, at Page 445 n.41.

activities, and an allocable portion of other overhead expenses (using specific allocation rules found in the Section 162(e) regulations).<sup>17</sup>

For those familiar with definitions of lobbying that apply to 501(c)(3) charities, it is important to realize that the Section 162(e)(1) definitions used for proxy tax purposes are different. For example, the costs of communicating with the President to urge executive action are not deductible under these rules, even though such a communication would not be lobbying for a charity. On the other hand, the costs to communication with city council members about legislation of direct interest to the organization and its members do not have to be counted for proxy tax purposes, even though such communications would be lobbying for a charity. Therefore, an organization subject to the proxy tax must make sure to use the business deduction rules to determine the amount it spends on nondeductible lobbying and electioneering for proxy tax purposes.

## **VI. What form is used to pay proxy tax?**

If an exempt organization must pay proxy tax (either because it failed to issue proper notices to members or chose not to issue such notices), the tax is paid on Form 990-T, the Exempt Organization Business Income Tax Return.

Some electioneering expenditures by Section 501(c)(4), 501(c)(5), or 501(c)(6) organizations are also potentially subject to tax under Section 527(f). If an organization pays Section 527(f) taxes with respect to an electioneering expenditure on Form 1120-Pol, the organization is not required to also pay proxy tax on that same expenditure.

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<sup>17</sup> Allocation rules are provided Treas. Reg. Section 1.162-28.



DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, DC 20224

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

T:EO:E 14-2008

July 28, 2008

MEMORANDUM FOR ALL EO REVENUE AGENTS

FROM: Marsha A. Ramirez /s/ *Marsha A. Ramirez*  
Director, Exempt Organizations Examinations

SUBJECT: Political Campaign Activity on the Internet

This directive relates to the examination of cases involving allegations of political activity on the Internet as part of the [Political Activity Compliance Initiative \(PACI\)](#). As such, it is to be incorporated in the IRM within the prescribed timelines.

With the growth of the Internet, more cases have raised issues concerning whether a section 501(c)(3) organization has participated or intervened in a political campaign through its Internet activities, particularly through providing links to the Web sites of other organizations. Revenue Ruling 2007-41, 2007-25 I.R.B. 1421 (June 18, 2007), provides guidance regarding political campaign activities in 21 fact situations, including three, Situations 19, 20, and 21, applying the law to an organization's use of its Internet Web site.

Experience indicates that there are numerous cases involving potential political campaign intervention in the form of communications posted on Web sites operated by section 501(c)(3) organizations. Many of these communications include links to Web sites of other organizations. The analysis of cases involving links on a section 501(c)(3) organization Web site involves determining whether material on a linked Web site is attributable to the section 501(c)(3) organization.

There are several possible characterizations of such links. One suggests the link is akin to a referral from one source of information to another that the viewer can pursue or not pursue at his or her discretion. Another suggests the link is analogous to a distribution by the section 501(c)(3) organization of the information contained on the linked Web page. However, neither of these characterizations appropriately reflects the facts and circumstances in all cases, nor offers a single approach to resolving all such cases. As Revenue Ruling 2007-41 notes, the context for the link

on the organization's Web site matters, as does the directness of the links between the section 501(c)(3) organization's Web site and a Web page favoring or opposing a candidate. The principles articulated in the revenue ruling are reinforced by work on these cases which suggests that electronic proximity – including the number of “clicks” that separate the objectionable material from the section 501(c)(3) organization's Web site – is a significant consideration. To best employ resources in this area, EO will distinguish between cases involving unrelated organizations and those involving related organizations.

#### *Cases Involving Links Between Unrelated Organizations*

Where a case involves a link between a section 501(c)(3) organization's Web site and the site of an unrelated organization (whether or not exempt), EO will pursue the case if the facts and circumstances indicate that the section 501(c)(3) organization is promoting, encouraging, recommending or otherwise urging viewers to use the link to get information about specific candidates and their positions on specific issues. Again, analysis of the context around the link is a key factor. Further, where the facts and circumstances suggest that a section 501(c)(3) organization is using a link between Web sites (other than a link to a related section 501(c)(4) organization, which is discussed below) to indirectly communicate a message that could well be a violation of the law were it done directly, EO will pursue the case.

#### *Cases Involving Links Between Related Organizations*

Additional considerations exist, however, in the case of related organizations. Enforcement in this area requires EO to consider the implications of *Taxation with Representation of Washington*, particularly Justice Blackmun's concurring opinion. That opinion emphasizes the formal corporate separation between a section 501(c)(3) organization and its related section 501(c)(4) organization. Because this added consideration can complicate the analysis in this area, EO will focus on analyzing the context around a link in the unrelated organization cases, and not pursue, at this time, cases involving a link between the Web site of a section 501(c)(3) organization and the home page of a Web site operated by a related section 501(c)(4) organization.

In addition to the above scenarios, there are situations where a section 501(c)(3) organization itself (1) takes a position on an issue, and (2) provides information about candidate positions on the same issue, placing the organization at risk of having intervened in a political campaign. The risk arises, and the case should be pursued, even if the two elements are in separate parts of the organization's Web site, or if one element is on the Web site and the other is not. Factors to be considered in analyzing the connection between the elements include, but are not limited to, timing, proximity and references between the elements.

All other cases involving possible political campaign intervention through use of the Internet should be coordinated with the PACI Team. If you have any questions please contact Vincent Fusco, PACI Team Leader at 216-520-7027.



## LEXSEE REV PROC 98-19

## Revenue Procedure 98-19

*Rev. Proc. 98-19; 1998-1 C.B. 547; 1998 IRB LEXIS 444; 1998-7 I.R.B. 30*

February 17, 1998

[\*1]

**APPLICABLE SECTIONS:**

26 CFR 601.105: Examination of returns and claims for refund, credit, or abatement; determination of correct tax liability. (Also §§ 162, 501, and 6033)

**TEXT:**

## SECTION 1. PURPOSE

This Revenue Procedure provides guidance to organizations exempt from taxation under § 501 (a) of the Internal Revenue Code of 1986 on certain exceptions from the reporting and notice requirements of § 6033 (e) (1) and the tax imposed by § 6033 (e) (2). The revenue procedure updates and supersedes *Rev. Proc. 95-35, 1995-2 C.B. 391*, as modified by *Rev. Proc. 95-35A, 1995-2 C.B. 392*.

*Rev. Proc. 95-35* and *Rev. Proc. 95-35A* were issued pursuant to the Secretary's authority to relieve tax-exempt organizations from the burden of meeting the reporting and notice requirements of § 6033 (e) (1) or the tax imposed by § 6033 (e) (2) where the organization establishes to the satisfaction of the Secretary that substantially all of the dues or other similar amounts paid by persons to such organization are not deductible without regard to § 162 (e). *Rev. Proc. 95-35* and *Rev. Proc. 95-35A* identify certain tax-exempt organizations that are treated as satisfying the requirements of § 6033 (e) (3) and are thus not subject to the reporting and [\*2] notice requirements of § 6033 (e) (1) or the tax imposed by § 6033 (e) (2). Procedures for other exempt organizations to establish that they satisfy the requirements of § 6033 (e) (3) are also provided.

In light of comments submitted in response to *Rev. Proc. 95-35*, the Service has determined that the requirements should be modified to further relieve the burden of § 6033 (e) (1). This revenue procedure retains the requirements set out in *Rev. Proc. 95-35*, and *Rev. Proc. 95-35A*, with the modification that the amount of annual dues (or similar amounts) that may be received by organizations described in § 4.02 without becoming subject to the requirements of § 6033 (e) is increased to \$75 or less.

## SEC. 2. BACKGROUND

*Section 6033 (e)* imposes reporting and notice requirements on tax-exempt organizations (other than § 501 (c) (3) organizations) that incur lobbying and political expenditures to which § 162 (e) applies ("nondeductible lobbying expenditures"). *Section 162 (e)* denies a deduction, otherwise allowable under § 162 (a) as an ordinary and necessary trade or business expense, for certain lobbying and political expenditures. *Section 162 (e) (3)* denies a deduction for the dues (or other similar [\*3] amounts) paid to certain tax-exempt organizations to the extent that the organization, at the time the dues are assessed or paid, notifies the dues payer that the dues are allocable to nondeductible lobbying expenditures.

*Section 6033 (e) (1)* requires a tax-exempt organization that pays or incurs nondeductible lobbying expenditures to notify its members, at the time the dues (or other similar amounts) are assessed or paid, of its reasonable estimate of the

portion of the dues that is allowable to those expenditures. *Section 6033 (e) (1)* does not, however, apply to tax-exempt organizations described in § 501 (c) (3), or to organizations that establish to the satisfaction of the Secretary that substantially all the dues they receive are not deductible without regard to § 162 (e). In addition, organizations whose lobbying and political expenditures consist solely of certain in-house expenditures for nondeductible lobbying and whose total such expenditures do not exceed \$2,000 in a taxable year are not subject to the reporting and notice requirements of § 6033 (e) (1).

*Section 6033 (e) (2) (A)* provides that if a tax-exempt organization fails to provide the notices required by § 6033 (e) (1), [\*4] or if the notices underestimate the actual amount of dues allocable to nondeductible lobbying expenditures, the organization is subject to tax (at the highest rate imposed by § 11) on the aggregate amount of dues allocable to nondeductible lobbying expenditures paid during the taxable year that was not reported on the notices. However, § 6033 (e) (2) (B) provides that if a tax would be imposed on the organization because its estimate of the nondeductible portion of the dues was less than the actual amount allocable to nondeductible lobbying expenditures, the Secretary may waive the tax if the organization agrees to increase the amount reasonably estimated to be nondeductible for the following taxable year by the amount of the underestimate.

*Section 6033 (e) (3)* provides that § 6033 (e) (1) (A) shall not apply to an exempt organization that establishes to the satisfaction of the Secretary that substantially all the dues or similar amounts paid by persons to the organization are not deductible without regard to § 162 (e). The tax imposed by § 6033 (e) (2) (A) only applies to organizations subject to the notice requirements of § 6033 (e) (1) (A).

### SEC. 3. SCOPE

This revenue procedure (i) sets forth [\*5] specific circumstances in which certain tax-exempt organizations are treated as meeting the requirements of § 6033 (e) (3), and (ii) provides guidance to other exempt organizations regarding how they may establish that they satisfy the requirements of § 6033 (e) (3).

### SEC. 4. APPLICATION

.01 *Exempt Organizations Automatically Excepted Under Section 6033 (e) (3)*. Organizations recognized by the Service as exempt from taxation under § 501 (a), other than (i) social welfare organizations described in § 501 (c) (4) that are not veterans organizations, (ii) agricultural and horticultural organizations described in § 501 (c) (5), and (iii) organizations described in § 501 (c) (6), are treated as satisfying the requirements of § 6033 (e) (3).

.02 *Section 501 (c) (4) Social Welfare Organizations and Section 501 (c) (5) Agricultural and Horticultural Organizations*. Social welfare organizations recognized by the Service as exempt from taxation under § 501 (c) (4) and agricultural and horticultural organizations recognized by the Service as exempt from taxation under § 501 (c) (5) are treated as satisfying the requirements of § 6033 (e) (3) if either (i) more than 90 percent of all annual dues (or similar amounts) [\*6] are received from persons, families, or entities who each pay annual dues (or similar amounts) of \$75 or less, or (ii) more than 90 percent of all annual dues (or similar amounts) are received from organizations described in § 501 (c) (3), state governments, local governments, entities whose income is exempt from tax under § 115, or organizations excepted under section 4.01 of this revenue procedure.

.03 *Section 501 (c) (6) Organizations*. Organizations recognized by the Service as exempt from taxation under § 501 (c)-(6) shall be treated as meeting the requirements of § 6033 (e) (3) if more than 90 percent of all annual dues (or similar amounts) are received from organizations described in § 501 (c) (3), state governments, local governments, entities whose income is exempt from tax under § 115, or organizations excepted under section 4.01 of this revenue procedure.

### SEC. 5. DEFINITIONS AND PROCEDURES

.01 *Annual Dues (or Similar Amounts)*. For purposes of this revenue procedure, the term "annual dues" means the

amount an organization requires a person, family, or entity to pay to be recognized by the organization as a member for an annual period. For purposes of this revenue procedure, "similar [\*7] amounts" includes, but is not limited to, voluntary payments made by persons, families, or entities, assessments made by the organization to cover basic operating costs, and special assessments imposed by the organization to conduct lobbying activities.

.02 *Member*. For purposes of this revenue procedure, "member" is used in its broadest sense and is not limited to persons with voting rights in the organization.

.03 *Treatment of Affiliated Organizations*. For purposes of this revenue procedure, if more than one organization described in §§ 501 (c) (4), 501 (c) (5), or 501 (c) (6) share a name, charter, historic affiliation or similar characteristics and coordinate their activities, all such organizations shall be treated as parts of a single organization. Only dues (or similar amounts) paid by persons other than the organizations treated as being parts of the single organization shall be considered for purposes of applying this revenue procedure. All annual dues payments made by each person outside the organizational structure to any organization within the single organization are considered for purposes of applying this revenue procedure to be paid to the single organization for a single [\*8] membership. If, under this revenue procedure, the single organization is considered to meet the requirements of § 6033 (e) (3), then all the organizations that are treated as parts of the single organization are considered to meet the requirements of § 6033 (e) (3). For purposes of this revenue procedure, if organizations within the affiliated structure are on different taxable years, the organizations may base their calculations of annual dues on any single reasonable taxable year.

.04 *Example of An Affiliated Organization*. A group of social welfare organizations, each of which is recognized by the Service as being described in § 501 (c) (4), share a common name and work jointly to promote a single purpose. Each organization operates at either the national, state, or local level. Individuals and families that are interested in the purpose promoted by the organizations pay annual dues of \$75 to one of the local organizations. The total amount of dues collected from individuals and families is \$950x. Also, a number of corporations are members of the national organization and pay annual dues of \$500 directly to it. The total amount of dues received from corporation; is \$50x. The organizations [\*9] are linked by a structure that makes the local organizations members of the appropriate state organizations and of the national organization. Accordingly, each local organization transfers a portion of the dues it collects to the appropriate state organization and another portion to the national organization as dues. These transfer amounts are significantly greater than \$75. Because the organizations share a name and coordinate their activities, they are treated as parts of a single organization for purposes of determining whether they satisfy the requirements of § 6033 (e) (3). Therefore, only the dues (or similar amounts) paid by persons other than the organizations treated as being parts of the single organization are considered for purposes of applying this revenue procedure. The total amount of annual dues paid by individuals and families at the \$75 level is more than 90 percent of all annual dues paid to both the local affiliated organizations by individuals and families, and to the national organization by corporations. Therefore, the single organization satisfies the requirements of § 6033 (e) (3), which means that all the affiliated local and state organizations, and the national [\*10] organization, are each considered to have satisfied the requirements of § 6033 (e) (3).

.05 *Seventy-five Dollar Amount to be Indexed for Inflation*. The \$75 amount for annual dues in section 4.02 will be increased for taxable years beginning after December 31, 1998, by a cost-of-living adjustment under § 1 (f) (3) of the Code, rounded to the next highest dollar.

.06 *Establishing that an Organization is Described in § 6033 (e) (3)*. Any exempt organization that is not treated as satisfying the requirements of § 6033 (e) (3) under section 4 of this revenue procedure may still establish that it satisfies the requirements of § 6033 (e) (3) by: (i) maintaining records establishing that 90 percent or more of the annual dues (or similar amounts) paid to the organization are not deductible without regard to § 162 (e), and (ii) notifying the Service that it is described in § 6033 (e) (3) on any Form 990 (Return of Organization Exempt From Income Tax) that it is required to file. Unless an organization complies with both of the above requirements, it will not have established to the satisfaction of the Service that it meets the requirements of § 6033 (e) (3). Additionally, an organization may request a private [\*11] letter ruling that substantially all the annual dues (or similar amounts) paid to the organization are not

deductible, either directly or indirectly, without regard to § 162 (e). To receive a favorable private letter ruling, the organization must provide the Service with evidence establishing that 90 percent or more of all annual dues (or similar amounts) are not deductible, either directly or indirectly, without regard to § 162 (e). If an organization receives a favorable private letter ruling, the Service will not contest the organization's entitlement to exemption under § 6033 (e) (3) for a subsequent year so long as the character of the organization's membership is substantially similar to its membership at the time of the ruling. Ruling requests should be submitted to the Assistant Commissioner (Employee Plans and Exempt Organizations), Attention: CP:E:EO, Internal Revenue Service, P.O. Box 120, Ben Franklin Station, Washington, DC 20044, in accordance with *Rev. Proc. 98-4, 1998-1 I.R.B. 113 (January 5, 1998)* (or as revised).

## SEC. 6. EFFECT ON OTHER DOCUMENTS

*Rev. Proc. 95-35, 1995-2 C.B. 391, and Rev. Proc. 95-35A, 1995-2 C.B. 392, are superseded.*

## PAPERWORK REDUCTION ACT

The collection [\*12] of information contained in this revenue procedure has been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1589.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of information in this revenue procedure is in section 5.06. This revenue procedure provides guidance to organizations exempt from taxation under § 501 (a) of the *Internal Revenue Code of 1986* on certain exceptions from the reporting and notice requirements of § 6033 (e) (1) and the tax imposed by § 6033 (e) (2). It identifies certain tax-exempt organizations that are treated as satisfying the requirements of § 6033 (e) (3) and are thus not subject to the reporting and notice requirements of § 6033 (e) (1) or the tax imposed by § 6033 (e) (2), and provides procedures for other exempt organizations to establish that they satisfy the requirements of § 6033 (e) (3). The information maintained by exempt organizations will be used in determining whether they meet the exception provided under [\*13] § 6033 (e) (3). The record retention and annual reporting are required to assure compliance with the requirements of § 6033 (e). The likely respondents are social welfare organizations exempt under § 501 (c) (4), agricultural and horticultural organizations exempt under § 501 (c) (5), and business leagues exempt under § 501 (c) (6) that wish to establish that they receive substantially dues from members who do not claim a deduction for their dues payments under § 162, without regard to § 162 (e).

The estimated total annual recordkeeping burden is 150,000 hours.

The estimated annual burden per organization varies from 1 hour to 100 hours, depending on individual circumstances, with an estimated average of 10 hours. The estimated number of organizations required to maintain records is 15,000.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

## DRAFTING INFORMATION

The principal author of this revenue procedure is Thomas J. Miller of the Exempt Organizations Division. For further information [\*14] regarding this revenue procedure contact Mr. Miller on (202) 622-7867 (not a toll-free call).

## Part I

Section 501.—Exemption from tax on corporations, certain trusts, etc.

26 CFR 1.501(c)(3)-1: Organizations organized and operated for religious, charitable, scientific, testing for public safety, literary or educational purposes, or for the prevention of cruelty to children or animals.

Rev. Rul. 2007-41, 2007-25 I.R.B. (June 18, 2007)

Organizations that are exempt from income tax under section 501(a) of the Internal Revenue Code as organizations described in section 501(c)(3) may 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.

### ISSUE

In each of the 21 situations described below, has the organization participated or intervened in a political campaign on behalf of (or in opposition to) any candidate for public office within the meaning of section 501(c)(3)?

### LAW

Section 501(c)(3) provides for the exemption from federal income tax of organizations organized and operated exclusively for charitable or educational purposes, no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation (except as otherwise provided in section 501(h)), and which does 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.

Section 1.501(c)(3)-1(c)(3)(i) of the Income Tax Regulations states that an organization is not operated exclusively for one or more exempt purposes if it is an “action” organization.

Section 1.501(c)(3)-1(c)(3)(iii) of the regulations defines an “action” organization as an organization that participates or intervenes, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office. The term “candidate for public office” is defined as an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local. The regulations further provide that activities that constitute participation or intervention in a political campaign on behalf of or in opposition to a candidate include, but are not limited to, the publication or distribution of written statements or the making of oral statements on behalf of or in opposition to such a candidate.

Whether an organization is participating or intervening, directly or indirectly, in any political campaign on behalf of or in opposition to any candidate for public office depends upon all of the facts and circumstances of each case. For example, certain "voter education" activities, including preparation and distribution of certain voter guides, conducted in a non-partisan manner may not constitute prohibited political activities under section 501(c)(3) of the Code. Other so-called "voter education" activities may be proscribed by the statute. Rev. Rul. 78-248, 1978-1 C.B. 154, contrasts several situations illustrating when an organization that publishes a compilation of candidate positions or voting records has or has not engaged in prohibited political activities based on whether the questionnaire used to solicit candidate positions or the voters guide itself shows a bias or preference in content or structure with respect to the views of a particular candidate. See also Rev. Rul. 80-282, 1980-2 C.B. 178, amplifying Rev. Rul. 78-248 regarding the timing and distribution of voter education materials.

The presentation of public forums or debates is a recognized method of educating the public. See Rev. Rul. 66-256, 1966-2 C.B. 210 (nonprofit organization formed to conduct public forums at which lectures and debates on social, political, and international matters are presented qualifies for exemption from federal income tax under section 501(c)(3)). Providing a forum for candidates is not, in and of itself, prohibited political activity. See Rev. Rul. 74-574, 1974-2 C.B. 160 (organization operating a broadcast station is not participating in political campaigns on behalf of public candidates by providing reasonable amounts of air time equally available to all legally qualified candidates for election to public office in compliance with the reasonable access provisions of the Communications Act of 1934). However, a forum for candidates could be operated in a manner that would show a bias or preference for or against a particular candidate. This could be done, for example, through biased questioning procedures. On the other hand, a forum held for the purpose of educating and informing the voters, which provides fair and impartial treatment of candidates, and which does not promote or advance one candidate over another, would not constitute participation or intervention in any political campaign on behalf of or in opposition to any candidate for public office. See Rev. Rul. 86-95, 1986-2 C.B. 73 (organization that proposes to educate voters by conducting a

series of public forums in congressional districts during congressional election campaigns is not participating in a political campaign on behalf of any candidate due to the neutral form and content of its proposed forums).

## ANALYSIS OF FACTUAL SITUATIONS

The 21 factual situations appear below under specific subheadings relating to types of activities. In each of the factual situations, all the facts and circumstances are considered in determining whether an organization's activities result in political campaign intervention. Note that each of these situations involves only one type of activity. In the case of an organization that combines one or more types of activity, the interaction among the activities may affect the determination of whether or not the organization is engaged in political campaign intervention.

### Voter Education, Voter Registration and Get Out the Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Situation 1. B, a section 501(c)(3) organization that promotes community involvement, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the organization, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by the volunteers staffing the booth or in the materials available at the booth, other than the official voter registration forms which allow registrants to select a party affiliation. B is not engaged in political campaign intervention when it operates this voter registration booth.

Situation 2. C is a section 501(c)(3) organization that educates the public on environmental issues. Candidate G is running for the state legislature and an important element of her platform is challenging the environmental policies of the incumbent. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the importance of environmental issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the

upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

#### Individual Activity by Organization Leaders

The political campaign intervention prohibition is not intended to restrict free expression on political matters by leaders of organizations speaking for themselves, as individuals. Nor are leaders prohibited from speaking about important issues of public policy. However, for their organizations to remain tax exempt under section 501(c)(3), leaders cannot make partisan comments in official organization publications or at official functions of the organization.

Situation 3. President A is the Chief Executive Officer of Hospital J, a section 501(c)(3) organization, and is well known in the community. With the permission of five prominent healthcare industry leaders, including President A, who have personally endorsed Candidate I, Candidate I publishes a full page ad in the local newspaper listing the names of the five leaders. President A is identified in the ad as the CEO of Hospital J. The ad states, “Titles and affiliations of each individual are provided for identification purposes only.” The ad is paid for by Candidate I’s campaign committee. Because the ad was not paid for by Hospital J, the ad is not otherwise in an official publication of Hospital J, and the endorsement is made by President A in a personal capacity, the ad does not constitute campaign intervention by Hospital J.

Situation 4. President B is the president of University K, a section 501(c)(3) organization. University K publishes a monthly alumni newsletter that is distributed to all alumni of the university. In each issue, President B has a column titled “My Views.” The month before the election, President B states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, President B pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the university. Because the endorsement appeared in an official publication of University K, it constitutes campaign intervention by University K.

Situation 5. Minister C is the minister of Church L, a section 501(c)(3) organization and Minister C is well known in the community. Three weeks before the election, he attends a press conference at Candidate V’s campaign headquarters and states that Candidate V should be reelected. Minister C does not say he is speaking on behalf of Church L. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church L. Because Minister C did not make the endorsement at an official church function, in an official church publication or otherwise use the church’s assets, and did not state that he was speaking as a representative of Church L, his actions do not constitute campaign intervention by Church L.



Situation 6. Chairman D is the chairman of the Board of Directors of M, a section 501(c)(3) organization that educates the public on conservation issues. During a regular meeting of M shortly before the election, Chairman D spoke on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, “It is important that you all do your duty in the election and vote for Candidate W.” Because Chairman D’s remarks indicating support for Candidate W were made during an official organization meeting, they constitute political campaign intervention by M.

### Candidate Appearances

Depending on the facts and circumstances, an organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or in their individual capacity (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

When a candidate is invited to speak at an organization event in his or her capacity as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- Whether the organization provides an equal opportunity to participate to political candidates seeking the same office;
- Whether the organization indicates any support for or opposition to the candidate (including candidate introductions and communications concerning the candidate’s attendance); and
- Whether any political fundraising occurs.

In determining whether candidates are given an equal opportunity to participate, the nature of the event to which each candidate is invited will be considered, in addition to the manner of presentation. For example, an organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

When an organization invites several candidates for the same office to speak at a public forum, factors in determining whether the forum results in political campaign intervention include the following:

- Whether questions for the candidates are prepared and presented by an independent nonpartisan panel,
- Whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,

- Whether each candidate is given an equal opportunity to present his or her view on each of the issues discussed,
- Whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- Whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

Situation 7. President E is the president of Society N, a historical society that is a section 501(c)(3) organization. In the month prior to the election, President E invites the three Congressional candidates for the district in which Society N is located to address the members, one each at a regular meeting held on three successive weeks. Each candidate is given an equal opportunity to address and field questions on a wide variety of topics from the members. Society N's publicity announcing the dates for each of the candidate's speeches and President E's introduction of each candidate include no comments on their qualifications or any indication of a preference for any candidate. Society N's actions do not constitute political campaign intervention.

Situation 8. The facts are the same as in Situation 7 except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Society N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the Society's invitation to speak. President E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Society N's actions do not constitute political campaign intervention.

Situation 9. Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invites Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X states, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invites no other candidate to address her congregation during the Senatorial campaign. Because these activities take place during official church services, they are attributed to Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.

#### Candidate Appearances Where Speaking or Participating as a Non-Candidate

Candidates may also appear or speak at organization events in a non-candidate capacity. For instance, a political candidate may be a public figure who is invited to speak because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A

candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at an organization-sponsored event does not, by itself, cause the organization to be engaged in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- Whether the individual is chosen to speak solely for reasons other than candidacy for public office;
- Whether the individual speaks only in a non-candidate capacity;
- Whether either the individual or any representative of the organization makes any mention of his or her candidacy or the election;
- Whether any campaign activity occurs in connection with the candidate's attendance;
- Whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present; and
- Whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Situation 10. Historical society P is a section 501(c)(3) organization. Society P is located in the state capital. President G is the president of Society P and customarily acknowledges the presence of any public officials present during meetings. During the state gubernatorial race, Lieutenant Governor Y, a candidate, attends a meeting of the historical society. President G acknowledges the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have joining us this evening Lieutenant Governor Y." President G makes no reference in his welcome to the Lieutenant Governor's candidacy or the election. Society P has not engaged in political campaign intervention as a result of President G's actions.

Situation 11. Chairman H is the chairman of the Board of Hospital Q, a section 501(c)(3) organization. Hospital Q is building a new wing. Chairman H invites Congressman Z, the representative for the district containing Hospital Q, to attend the groundbreaking ceremony for the new wing. Congressman Z is running for reelection at the time. Chairman H makes no reference in her introduction to Congressman Z's candidacy or the election. Congressman Z also makes no reference to his candidacy or the election and does not do any political campaign fundraising while at Hospital Q. Hospital Q has not intervened in a political campaign.

Situation 12. University X is a section 501(c)(3) organization. X publishes an alumni newsletter on a regular basis. Individual alumni are invited to send in updates about themselves which are printed in each edition of the newsletter.

After receiving an update letter from Alumnus Q, X prints the following: “Alumnus Q, class of ‘XX is running for mayor of Metropolis.” The newsletter does not contain any reference to this election or to Alumnus Q’s candidacy other than this statement of fact. University X has not intervened in a political campaign.

Situation 13. Mayor G attends a concert performed by Symphony S, a section 501(c)(3) organization, in City Park. The concert is free and open to the public. Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election. During the concert, the chairman of S’s board addresses the crowd and says, “I am pleased to see Mayor G here tonight. Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor G in November as he has supported us.” As a result of these remarks, Symphony S has engaged in political campaign intervention.

### Issue Advocacy vs. Political Campaign Intervention

Section 501(c)(3) organizations may take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate’s name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate’s platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- Whether the statement identifies one or more candidates for a given public office;
- Whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
- Whether the statement is delivered close in time to the election;
- Whether the statement makes reference to voting or an election;
- Whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- Whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and

- Whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Situation 14. University Q, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C represents State V in the United States Senate. The advertisement states that S. 24, a pending bill in the United States Senate, would provide additional opportunities for State V residents to attend college, but Senator C has opposed similar measures in the past. The advertisement ends with the statement “Call or write Senator C to tell him to vote for S. 24.” Educational issues have not been raised as an issue distinguishing Senator C from any opponent. S. 24 is scheduled for a vote in the United States Senate before the election, soon after the date that the advertisement is published in the newspapers. Even though the advertisement appears shortly before the election and identifies Senator C’s position on the issue as contrary to Q’s position, University Q has not violated the political campaign intervention prohibition because the advertisement does not mention the election or the candidacy of Senator C, education issues have not been raised as distinguishing Senator C from any opponent, and the timing of the advertisement and the identification of Senator C are directly related to the specifically identified legislation University Q is supporting and appears immediately before the United States Senate is scheduled to vote on that particular legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

Situation 15. Organization R, a section 501(c)(3) organization that educates the public about the need for improved public education, prepares and finances a radio advertisement urging an increase in state funding for public education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue. The advertisement cites numerous statistics indicating that public education in State X is under funded. While the advertisement does not say anything about Governor E’s position on funding for public education, it ends with “Tell Governor E what you think about our under-funded schools.” In public appearances and campaign literature, Governor E’s opponent has made funding of public education an issue in the campaign by focusing on Governor E’s veto of

an income tax increase the previous year to increase funding of public education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of public education. Organization R has violated the political campaign prohibition because the advertisement identifies Governor E, appears shortly before an election in which Governor E is a candidate, is not part of an ongoing series of substantially similar advocacy communications by Organization R on the same issue, is not timed to coincide with a non election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

Situation 16. Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for a new mass transit project in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports funding the new mass transit project. Candidate B opposes the project and supports State X funding for highway improvements instead. P is the executive director of C, a section 501(c)(3) organization that promotes community development in District W. At C's annual fundraising dinner in District W, which takes place in the month before the election in State X, P gives a lengthy speech about community development issues including the transportation issues. P does not mention the name of any candidate or any political party. However, at the conclusion of the speech, P makes the following statement, "For those of you who care about quality of life in District W and the growing traffic congestion, there is a very important choice coming up next month. We need new mass transit. More highway funding will not make a difference. You have the power to relieve the congestion and improve your quality of life in District W. Use that power when you go to the polls and cast your vote in the election for your state senator." C has violated the political campaign intervention as a result of P's remarks at C's official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

### Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the organization, such as selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. In this context, some of the factors to be considered in determining whether the organization has engaged in political campaign intervention include the following:

- Whether the good, service or facility is available to candidates in the same election on an equal basis,

- Whether the good, service, or facility is available only to candidates and not to the general public,
- Whether the fees charged to candidates are at the organization's customary and usual rates, and
- Whether the activity is an ongoing activity of the organization or whether it is conducted only for a particular candidate.

Situation 17. Museum K is a section 501(c)(3) organization. It owns an historic building that has a large hall suitable for hosting dinners and receptions. For several years, Museum K has made the hall available for rent to members of the public. Standard fees are set for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall. Museum K rents the hall on a first come, first served basis. Candidate P rents Museum K's social hall for a fundraising dinner. Candidate P's campaign pays the standard fee for the dinner. Museum K is not involved in political campaign intervention as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner.

Situation 18. Theater L is a section 501(c)(3) organization. It maintains a mailing list of all of its subscribers and contributors. Theater L has never rented its mailing list to a third party. Theater L is approached by the campaign committee of Candidate Q, who supports increased funding for the arts. Candidate Q's campaign committee offers to rent Theater L's mailing list for a fee that is comparable to fees charged by other similar organizations. Theater L rents its mailing list to Candidate Q's campaign committee. Theater L declines similar requests from campaign committees of other candidates. Theater L has intervened in a political campaign.

## Web Sites

The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public.

A web site is a form of communication. If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site. When an organization establishes a link to another web site, the

organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site. Because the linked content may change over time, an organization may reduce the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly.

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office.

Situation 19. M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared consistent with the principles discussed in Rev. Rul. 78-248. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Situation 20. Hospital N, a section 501(c)(3) organization, maintains a web site that includes such information as medical staff listings, directions to Hospital N, and descriptions of its specialty health programs, major research projects, and other community outreach programs. On one page of the web site, Hospital N describes its treatment program for a particular disease. At the end of the page, it includes a section of links to other web sites titled "More Information." These links include links to other hospitals that have treatment programs for this disease, research organizations seeking cures for that disease, and articles about treatment programs. This section includes a link to an article on the web site of O, a major national newspaper, praising Hospital N's treatment program for the disease. The page containing the article on O's web site contains no reference to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published. Several of the editorials endorse candidates in an election that has not yet occurred. Hospital N has not intervened in a political campaign by maintaining the link to the article on O's web site because the link is provided for the exempt purpose of educating the public about Hospital N's programs and neither the context for the link, nor the relationship between Hospital N and O nor the arrangement of the links going from Hospital N's web site to the endorsement on O's web site indicate that Hospital N was favoring or opposing any candidate.



Situation 21. Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation. B, a member of the congregation of Church P, is running for a seat on the town council. Shortly before the election, Church P posts the following message on its web site, "Lend your support to B, your fellow parishioner, in Tuesday's election for town council." Church P has intervened in a political campaign on behalf of B.

## HOLDINGS

In situations 2, 4, 6, 9, 13, 15, 16, 18 and 21, the organization intervened in a political campaign within the meaning of section 501(c)(3). In situations 1, 3, 5, 7, 8, 10, 11, 12, 14, 17, 19 and 20, the organization did not intervene in a political campaign within the meaning of section 501(c)(3)

## DRAFTING INFORMATION

The principal author of this revenue ruling is Judith Kindell of Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue ruling contact Ms. Kindell on (202) 283-8964 (not a toll-free call).

## *Tax Strategy*

### **Paying Proxy Tax Instead of Reporting Lobbying Expenditures**

If a Section 501(c)(4), 501(c)(5), or 501(c)(6) organization engages in lobbying activities, it must either (1) tell its members how much of the dues and other payments made by the members are allocable to lobbying activities (and therefore nondeductible) or (2) compute a “proxy” tax on Form 990-T.

The proxy tax equals the highest corporate tax rate under IRC Sec. 11 multiplied by an organization’s lobbying expenses that are not properly reported to its members. The proxy tax is included on Form 990-T. A schedule showing the calculation of the tax should be attached to the return.

By paying the proxy tax instead of notifying its members, an organization allows members to deduct 100% of their dues (if they are otherwise allowable as a business deduction). Thus, in some cases, it may be better for an organization to pay the proxy tax rather than cause a portion of its members’ dues to be nondeductible [IRC Secs. 162(e)(3) and 6033(e)(2)(A)(i)].

Examples of such instances include the following:

- Where most members can deduct the dues for state (in addition to federal) income tax purposes, and the organization itself is not subject to a state level proxy tax.
- Where the proxy tax liability is relatively small and the organization wants to avoid the administrative costs or the public relations detriments of notifying its members of the nondeductible costs.
- Where members are likely to have a marginal tax rate that approaches or exceeds the 35% proxy tax rate. (A taxpayer’s marginal tax rate is the rate the last dollar of income is taxed and the last dollar of deduction is claimed.)

#### **Who Can Elect**

Any organization [other than a Section 501(c)(3)], that allocates a portion of its dues to lobbying expenditures.

#### **When to Elect**

By the due date of filing Form 990-T which is generally the 15th day of the fifth month after the tax year end.

#### **How to Elect**

By answering “yes” to question 5 on Form 990, Part IV, or question 35c (related to the proxy tax) on Form 990-EZ, completing Form 990, Schedule C, Part III, and paying the tax with Form 990-T.

#### **Authorities and References**

IRC Secs. 6033(e) and 4911.

#### **Sample Election**

No formal election statement is required. However, a schedule showing the calculation of tax should be attached to Form 990-T.

From Thomson Reuters, 990 Deskbook

## Tax Considerations for Making the 501(h) Lobbying Election

### Advantages of Election

1. Does the organization engage in more than a *de minimis* amount of lobbying each year?**a**
2. Do volunteers participate in the organization's lobbying activities?**b**
3. Do the organization's lobbying expenditures fluctuate significantly from year to year?**c**
4. Does the organization file Form 990 or 990-EZ?**d**

### Disadvantages of Election

1. Do the organization's lobbying activities focus on grassroots lobbying?**e**
2. Is the organization part of an affiliated group?**f**
3. Are lobbying expenditures likely to exceed \$1 million?**g**

### Notes:

**a** The lobbying election provides a specific mechanical test for determining allowable lobbying, which avoids reliance upon the subjective "substantial part" test. In addition, it provides definitive rules for determining which activities are considered lobbying and which costs are allocable to these activities.

**b** Volunteers' time spent in lobbying activities is not taken into consideration if the lobbying election is made.

**c** The four-year averaging test under the lobbying election enables organizations to monitor their lobbying activities and minimize the risk of losing their tax exemption.

**d** A non-electing organization must complete Schedule C (Form 990 or 990-EZ), Part II-B.

**e** Grassroots lobbying expenditures are limited to 25% of the lobbying nontaxable expenditures (i.e., a maximum of \$250,000). Therefore, the election could limit allowable grassroots lobbying expenditures.

**f** The lobbying election rules applicable to affiliated organizations may decrease allowable lobbying expenditures for a member of an affiliated group. See Key Issue 9D. Prior to joining an affiliated group, an organization that has a lobbying election should ascertain whether the affiliation will have an adverse impact on its lobbying expenditures. See Ltr. Rul. 201239012.

**g** The lobbying election rules cap total lobbying nontaxable expenditures at \$1 million annually regardless of the size of the electing organization. Lobbying expenditures in excess of \$1 million are subject to a 25% excise tax.