

Lobbying and Advocacy for Tax-Exempt Organizations



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Mission of Pro Bono Partnership of Atlanta

To provide free legal assistance to community-based nonprofits that serve low-income or disadvantaged individuals.

We match eligible organizations with volunteer lawyers from the leading corporations and law firms in Atlanta who can assist nonprofits with their business law matters.

Client Criteria

In order to be a client of Pro Bono Partnership of Atlanta, an organization must:

- Be a 501(c)(3) nonprofit.
- Be located in or serve the greater Atlanta area.
- Serve low-income or disadvantaged individuals.
- Be unable to afford legal services.

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Legal Information

This webinar presents general guidelines for Georgia nonprofit organizations and should not be construed as legal advice. Always consult an attorney to address your particular situation.

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Agenda

- Political Campaign Activity
- Lobbying
- Advocacy

Applicable Exempt Organizations

- § 501(c)(3): charities, schools, churches, foundations
- § 501(c)(4): social welfare organizations
- § 527: political committees

- Many organizations groups have a (c)(3), a (c)(4) and a 527 to serve different functions, i.e., education, lobbying and political campaign activity.

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Applicable Exempt Organizations

- §501(c)(3) Charities/Foundations: an organization must be organized and operated exclusively for an exempt purpose: charitable, religious, educational, scientific, etc.
- § 501(c)(4) Social Welfare Organizations: an organization must be operated exclusively for the promotion of social welfare--promoting the common good and general welfare of the people in the community.
- § 527 Political Organization: an organization that is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for the function of attempting to influence the selection, nomination, election or appointment of any individual to federal, state, or local public office.

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Categories of Activity

- IRS typically closely scrutinizes these activities:
 - (1) Political Campaign Activity
 - (2) Lobbying
 - (3) General / Issue Advocacy
- The tax rules vary depending on
 - (a) the tax exempt status of the entity, and
 - (b) the type of activity.

**TODAY'S PRESENTATION IS FOCUSED ON
§ 501(c)(3) ORGANIZATIONS ONLY**

Rules Applicable to §501(c)(3)s

- Political Campaign Activity: Strictly Prohibited – Loss of Exemption
- Webcast: [Political Campaign Activity & Electioneering](#)
- Lobbying: Cannot be a “substantial part” of the organization’s activities or can threaten exemption
- General Advocacy: Permitted

Lobbying Activities

- Such activities typically include:
 - Directly contacting members of legislative body;
 - Encouraging the public to contact members of a legislative body; OR
 - Advocating a position on a public referendum.

Definition of Lobbying

- Attempting to influence “legislation”
 - Action by Congress, any state legislature, local council, etc. with respect to acts, bills, resolutions, etc., OR
 - By the public in a referendum, ballot initiative, etc.
- Limited to specific legislation – does not include general advocacy on public issues
 - **Usually** does not include actions by executive, judicial, or administrative bodies, but there are exceptions

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Two Types of Lobbying

Grassroots vs. Direct

- Grassroots: attempt to influence legislation by attempting to affect the opinions of the general public or segment thereof
 - Involves a call to action
- Direct: attempt to influence legislation through communication with any member or employee of a legislative body or participant in the formulation of legislation

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Exclusions to Lobbying

The following activities are excluded from the definition of lobbying under Section 501(h):

- Nonpartisan analysis, study, or research
- Technical advice to a governmental unit or committee in response to a written request
- “Self-defense activities” – appearances relating to possible decisions affecting existence, powers, tax-exempt status, etc.

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IRS Has Two Tests for Lobbying

- The Substantial Part Test
- The § 501(h) Election

“No Substantial Part” Test

Code Provisions

An organization is eligible for tax-exemption so long as “no substantial part of [its] activities... is carrying on propaganda or otherwise attempting to influence legislation...”

- Facts and circumstances analysis, rather than a particular percentage or hard measurement
- Factors include: time devoted to activity (by both compensated and volunteer workers) and total expenditures involved
- Although the IRS has declined to adopt an “insubstantial” percentage, generally advise that 5 to 10% of activities will be okay

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“No Substantial Part” Test

Penalties

- Jeopardizes tax-exempt status – all income then subject to taxation, plus lose eligibility to receive deductible charitable contributions
- Excise tax equal to five percent of lobbying expenditures for year (except private foundations and churches)
- Organization managers may be subject to five percent excise tax if knowing violation

501(h) Election (Expenditure Test)

Eligibility

- Organizations other than churches and private foundations can elect the expenditure test as an alternative method for measuring lobbying activity
- Must file a Form 5768 at any time during the tax year; will remain in effect for succeeding years unless revoked by the entity

§ 501(h) Election (Expenditure Test)

Expenditure Limitations

Under the expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status, *provided* that its expenditures do not normally exceed a specified amount (based on the size of the organization)

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§ 501(h) Election (Expenditure Test)

- Two Part Test:
 1. The total direct and grassroots lobbying expenditures combined limit and
 2. Grassroots lobbying expenditure limit.
- Each test has its own dollar limitations compared to the organization's exempt purpose expenditures. If either limit is exceeded, excise taxes may be owed.
- The first limit determined is the lobbying nontaxable amount.
- Then the grassroots nontaxable amount is determined = 25% of the lobbying nontaxable amount.

§ 501(h) Election (Expenditure Test)

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If the amount of exempt purpose expenditures is:	Part 1 lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000

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§ 501(h) Election (Expenditure Test)

- Up to 20% of the first \$500,000 of budget on lobbying
- Reduced percentages of budget amounts above \$500,000
- Overall cap of \$1 million
- No more than 25% of permissible amounts may be spent on grassroots lobbying

Lobbying Expenditures – What's included?

- For both types of lobbying activity (grassroots & direct), expenditures include:
 - The costs of research, planning, drafting, reviewing, publishing, and mailing (including amounts paid as compensation for an employee's work on such activities)
 - The allocable portion of administrative, overhead, and other general expenses
- The more detailed calculation for determining grassroots v total lobbying expenditures can be found in Instructions to Schedule C of Form 990.

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§ 501(h) Election (Expenditure Test)

Penalties

- Excessive lobbying activity over a four-year period
 - May lose tax-exempt status
- All income for that period then subject to tax
- Exceed dollar limit for a particular year, pay excise tax equal to 25% of the excess

Legislative Scorecards

- 501(c)(3) may distribute politicians' voting records (a/k/a legislative scorecards). Rev. Rul. 78-248; Rev. Rul. 80-282.
- Activities *not* prohibited:
 - Annual distribution of voting records
 - Voting records on major legislative issues
 - Publication has no editorial opinion
 - Content and structure not imply approval or disapproval of legislators or their voting records

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Legislative Scorecards (cont.)

- Other activities *not* prohibited:
 - Send questionnaire to candidates on wide variety of issues
 - Public responses in voter guide
 - Select issues based on importance to electorate

Legislative Scorecards (cont.)

- Prohibited political activities:
 - Questionnaire containing questions that evidence bias on issues
 - Voter guide focuses on issues important to organization
 - Guide emphasizes one area indicating its purpose is not non-partisan voter education

Georgia State Lobbying

- Fundamental philosophical change on lobbying expenditures - from disclosure to prohibition
- Current Rule:
 - A registered lobbyist may not make anything defined as an “expenditure”
 - No public officer may accept an expenditure from a registered lobbyist.
 - Definition of “public officer” includes elected county officials.
 - However, a public officer MAY accept a “lobbying expenditure”

Georgia State Lobbying

- Prohibited “Expenditures”
 - Any payment made for the purpose of influencing the public officer.
 - Any payment which can be reasonably construed as designed to encourage or influence a public officer.
 - Payment of expenses above \$75 “from any individual lobbyist” for “transportation, travel, lodging, registration, food and beverages.”

Georgia State Lobbying

- Prohibited “Expenditures” (continued)
 - Any gratuitous transfer, payment, tickets for admission to athletic, sporting, recreational, musical concert, or entertainment events
 - Reimbursement or payment of expenses for recreational or leisure activities.
 - Does NOT include “Lobbying Expenditure.” In other words, a lobbying expenditure is permissible.

Georgia State Lobbying

- Permitted “Lobbying Expenditures.” The definition of “Expenditure” excludes “Lobbying Expenditure.”
- These include:
 - Promotional items generally distributed to the general public or public officers
 - “Food and beverages produced in Georgia.”
 - Award or plaque in recognition of service
 - Discounts offered to the public
 - Compensation for private employment
 - Campaign contributions

Georgia State Lobbying

- Permitted “Lobbying Expenditures” (cont.)
 - Food, beverages, and registration at group events to which all members of “agency” are invited - the group or agency exception.
 - “Agency” includes House, Senate, standing committees of such bodies (but not for more than one group event per committee per calendar year [presumably per lobbyist]), caucuses, and county commissions or municipal councils (“governing body of each political subdivision of this state”).

Georgia State Lobbying

- Permitted “Lobbying Expenditures” (cont.) - includes reimbursement of expenses for public officer and “necessary” staff for transportation, lodging, travel, and registration for attending:
 - Educational, information, charitable, or civic meetings or conferences;
 - in the United States; and
 - that “directly relate” to official duties.
 - Includes food and beverages for public official, staff, and spouse.

Georgia State Lobbying

- Permitted “Lobbying Expenditures” (cont.)
 - Anything else which does not fall in one of these categories and which involves reimbursement or payment under \$75 for a public official’s transportation, travel, lodging, registration, food and beverages.
 - Definitely applies to payments made for the benefit of a public official. May also apply to a spouse or staff

Bribery / Gifts

- Georgia has no gift rule, but it is all too easy to cross the line into a violation of the bribery statutes
- Always avoid a quid pro quo on official action

General Issue Advocacy

- Attempting to influence public opinion on issues;
- Attempting to influence non-legislative government bodies, i.e., executive branch, regulatory;
- Encouraging voter participation through non-partisan activities such as voter registration; get-out-the-vote drives; voter guides; and candidate debates

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General Notes

- IRS Rev. Rule 2007-41
 - Important ruling – good practical advice
 - Outlines 21 fact patterns and consequences
- Beware of, and Monitor, In-Kind Contributions
 - Not a cash contribution
 - Involves use of resources, facilities , paid staff time
 - Standard is generally fair market value
- Do Not Offer Rewards for Voting
 - Even minimal things - like a free sandwich to those who can prove they have voted - is likely illegal
 - Both federal and state law make a criminal offense
 - [How Your Nonprofit Can Participate in “Get Out the Vote” Initiatives](#)
- Exercise caution in voter education and registration

Questions?

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