

NOVEMBER 19, 2024

Opposing HR 9495: “Self-defense” communications are not “lobbying” for federal tax purposes

On Thursday, November 21, 2024, the US House of Representatives will, for the second time in a week, attempt to pass [HR 9495](#). Because HR 9495 would, if passed, “affect the existence of the [electing public charity/private foundation], its powers and duties, its tax-exempt status, or the deductibility of contributions to” the organization, communications with Congress opposing the bill, or with the general public encouraging them to communicate with Congress to oppose the bill, fit within the “self-defense exception” to the federal tax law definition of “lobbying”. (See Treas. Regs. §56.4911-2(c)(4) and §53.4945-2(d)(3)). (The exception technically applies to private foundations and to public charities that have elected to use the 501(h) expenditure test to measure their lobbying activity. While the IRS might consider a similar communication by a non-electing charity to be lobbying, voicing opposition to a single piece of legislation would not, on its own, constitute a “substantial part” of the charity’s overall activities. And even non-electing charities can rely on the 501(h) definition, including its exceptions, to determine whether they can use lobbying-restricted private foundation funds to support specific activities.)

Accordingly, charities and private foundations concerned about the dangerous implications of Section 4 of HR 9495, can contact Congress to oppose the bill, and/or can urge the public to do so, and in most cases, the costs associated with those communications will not constitute expenditures for “lobbying” as defined under federal tax law. (Such communications may affect reporting obligations under the Federal Lobbying Disclosure Act, and an organization may not be able to use public funds to pay for them.)

Section 4 of HR 9495 is facing forceful opposition from (among many others, including CalNonprofits) The Council on Foundations, Independent Sector, National Council of Nonprofits, and United Philanthropy Forum. For more details about this portion of the bill and the serious concerns it raises, see this [Joint Statement](#) released by Independent Sector.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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