The Section 501(h) Election Allows Many Charities to Become Aggressive Lobbyists

GREGORY L. COLVIN

Final Regulations on lobbying by Section 501(c)(3) organizations, issued 8/31/90, brought to an end 60 years of uncertainty about how a Section 501(c)(3) organization can safely engage in lobbying. This is an area where the old law is, however, very much alive, and some charities will find that they are still governed by prior decisions of the courts.

SUBSTANTIAL PART TEST

In 1930, *Slee*[1] denied charitable tax-exempt status to the American Birth Control League because it disseminated materials to legislators and the public advocating repeal of laws preventing birth control. In the Second Circuit's view, its lobbying purposes prevented it from being exclusively charitable, educational, or scientific.

In 1934, Congress placed a limitation on lobbying in the basic definition of a Section 501(c)(3) organization, requiring that "no substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting, to influence legislation."[2] This made clear that only legislative lobbying was restricted, not lobbying in general. A charity could, without any limitation, attempt to influence the actions of government officials, as long as it steered clear of legislative decisions and the policy issues were related to its exempt purposes. Thus, a charity could freely:

1. Try to influence an administrative agency regarding its regulations and rulings.
2. Petition the President, a governor, or mayor on executive decisions.
3. Attempt to influence legislators on nonlegislative matters, for example, by conducting investigative hearings or intervening with a government agency.
4. Engage in litigation to obtain favorable rulings from a court.

On the other hand, the definition of "substantial part" remained vague and unclear. In *Seasongood*,[3] spending less than 5% of an organization's time and effort on lobbying was held "insubstantial."[4] Later decisions cast doubt on the usefulness of a percentage test and stated that all the facts and circumstances of an organization's legislative and other activities would have to be examined.[5] One court suggested that a single official position statement could be substantial, depending on its impact on the legislative process.[6]

With Federal tax law in this condition, most charities and their legal advisers preferred to avoid legislative advocacy entirely. The IRS was generally reluctant to challenge a charity's lobbying, with a few notable exceptions (*e.g.*, the Sierra Club), because its only weapon was a severe one—revocation of the Section 501(c)(3) exemption.

THE 501(h) ELECTION

In the mid-1970s, Congress provided a more predictable alternative approach. The new law did not change the requirement that lobbying must be insubstantial. Instead, it allowed some eligible charities to avoid the vague "substantiality" test and, by filing Form 5768, to elect an "expenditure" test, limiting their lobbying to cer-

GREGORY L. COLVIN is a partner in the San Francisco law firm of Silk, Adler & Colvin.

tain percentages of their budgets. The limits were set at 20% for all lobbying expenditures, a quarter of which (5%) can be grass roots lobbying. The percentages were scaled down for large organizations. Some areas of advocacy were defined as not lobbying and thus were not limited. Section 501(h) set forth the eligibility rules and Section 4911 defined direct and grass roots lobbying, listed some exceptions, and established the percentage limits.

This reflected two policy shifts in Congress and in the courts. First, it was no longer considered "uncharitable" to lobby. Lobbying might sometimes be one of the best ways to accomplish a charitable purpose. Also, Congress did want the views of the charitable sector on legislation. Second, there was a shift away from restricting political expression and a focus instead on the use of money raised from tax-deductible charitable contributions.[7] Thus, while the government subsidy of tax-exempt status should mainly be used for charitable programs other than lobbying, lobbying was thought to be an appropriate use of tax-deductible dollars within the 20% and 5% limits. Further, charities were clearly free to use nonmonetary methods of lobbying.

To take advantage of the statute, a charity must both (1) be eligible to make the Section 501(h) election, and (2) take the affirmative step of filing Form 5768. Otherwise, the charity remains subject to the court-made law discussed above. The percentage limits of the Section 501(h) election cannot be used to meet the "no substantial part" test.

ELIGIBILITY FOR THE 501(h) ELECTION

Whether a charity can make the Section 501(h) election depends on its foundation status classification. Most charities will find this classification in the organization's determination letter from the IRS. A chart summarizing the eligible classifications is in Exhibit I on page 40.

FILING FORM 5768

Form 5768 is a simple, one-page form. An eligible charity can file it anytime during the first fiscal year it wishes to have the Section 501(h) election apply. Thus, a charity can wait until the last day of its fiscal year and decide whether to file. This makes it a good idea, earlier in the year, to have a system in place for tracking lobbying expenditures.

Once the charity files a Form 5768, the election continues in effect until the charity revokes it, also using Form 5768. When a revocation is filed, the Section 501(h) election is removed beginning with the subsequent fiscal year. A charity can re-elect and elect out as often as it pleases.

A copy of the Form 5768 should be kept by the organization. The Service will not verify having received the form. The organization should also remind its accountant to complete Part VI, Schedule A, of the organization's Form 990, reporting lobbying expenditures each year that the election applies.[8]

DIRECT AND GRASS ROOTS LOBBYING

The distinction between direct and grass roots lobbying is critical, because the direct lobbying limit for a charity under Section 501(h) is four times as high (20%) as the grass roots limit (5%).

Section 4911 defines lobbying expenditures, legislation (legislative bodies in foreign countries are included), action (the introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items), direct lobbying (any attempt to influence any legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of the legislation), and grass roots lobbying (attempt to influence any legislation through an attempt to affect the public opinion).

Congress sketched out five exceptions, allowing charities to engage in certain kinds of communications beyond the percentage limitations. The final Regulations refine these exceptions and make some of them less significant. Activities that are not lobbying thus include:

1. Making available the results of nonpartisan analysis, study, or research.
2. Providing technical advice to a governmental body or

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[1] 42 F.2d 184, 8 AFTR 1078, 2 USTC ¶552 (CA-2, 1930).

[2] In contrast, activities to support or oppose political candidates are completely prohibited for Section 501(c)(3) organizations. Propaganda activities have not been of much importance since 1934.

[3] 227 F.2d 907, 48 AFTR 711, 56-1 USTC ¶9135 (CA-6, 1955).

[4] The organization had expended no money on lobbying, just the time and effort of volunteers.

[5] See Christian Echoes National Ministry, 470 F.2d 849, 31 AFTR2d 73-460, 73-1 USTC ¶9129 (CA-10, 1972), *cert. den.* 414 U.S. 864 (1973).

[6] Kuper, 332 F.2d 562, 13 AFTR2d 1652, 64-2 USTC ¶9541 (CA-3, 1964), *cert. den.* 379 U.S. 920 (1964).

[7] Section 501(c)(4) social welfare organizations, Section 501(c)(5) labor unions, and Section 501(c)(6) trade and professional associations, which cannot receive tax-deductible charitable donations, may lobby in furtherance of their exempt purposes without limitation. See Regan v. Taxation With Representation, 461 U.S. 540, 51 AFTR2d 83-1294, 83-1 USTC ¶9365 (1983).

[8] See Herrington, "Revised Form 990 Requires Greater Accountability," page 46 herein.

Exhibit I: Eligibility for the Section 501(h) Election

SECTION	ORGANIZATION	ELIGIBILITY
509(a)(1) group:		
170(b)(1)(A)(i)	Churches, etc.	No
170(b)(1)(A)(ii)	Educational institutions	Yes
170(b)(1)(A)(iii)	Hospitals, etc.	Yes
170(b)(1)(A)(iv)	Supporting government schools	Yes
170(b)(1)(A)(v)	Governmental units	No
170(b)(1)(A)(vi)	Publicly supported by grants and donations	Yes
509(a)(2)	Publicly supported by grants, donations, sales, etc.	Yes
509(a)(3)	Supporting organizations to public charities	Yes
509(a)(4)	Testing for public safety	No
Not classified	Private foundations	No

committee in response to a written request from the body or committee.

3. Appearances before, or communications to, any legislative body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deductibility of contributions to it (the "self-defense" exception).
4. Communications between the organization and its bona fide members on legislation or proposed legislation of direct interest to the organization and the members, so long as members are not directly encouraged to lobby.
5. Communications with government officials or employees where the charity is not attempting to influence legislation.

A charity that urges its members to contact government officials on legislation is engaged in direct lobbying. Asking members to go outside the organization and urge nonmembers to lobby is grass roots lobbying by the charity. In other words, members are encompassed within the organization, and communications with them are simply internal messages related to whatever external lobbying—direct or grass roots—the charity is conducting.

COMPUTING PERCENTAGE LIMITS

Permitted direct and grass roots lobbying expenditures are limited to a percentage of the charity's "exempt purpose expenditures." This base figure includes everything spent by the charity to accomplish its exempt purposes—program service expenses, administration, and lobbying expenses. For capital expenditures, such as purchasing computers, straight-line depreciation may be included in the base. Expenses related to managing investments or generating unrelated business income, though, may not be included. The costs of charitable fundraising, if paid to an outside vendor primarily for fundraising, and costs incurred by a separate fundraising unit within the organization, are excluded from the base.

The statutory treatment of fundraising expenses is important. If such costs were not excluded, the base figure for a group engaging in extensive direct mail, telemarketing, or door-to-door solicitation will be distorted by the gross expenditures related to solicitation. The result would be that the lobbying percentages could be as large as, or even larger than, the organization's entire program budget.

Each year that the Section 501(h) election applies, a charity must compute two expenditure limits—its total lobbying limit and its grass roots lobbying limit. For an organization with annual exempt purpose expenditures of $500,000 or less, the calculation is easy—20% for all lobbying and a quarter of that (5%) for grass roots lobbying. For larger organizations, the limits are lower. Each year, the total lobbying limit is 20% of the first $500,000, plus 15% of the next $500,000, plus 10% of the next $500,000, plus 5% of the remainder, with an absolute cap of $1 million for all lobbying. Whatever the total lobbying limit is, the grass roots limit is a fourth of that figure.[9]

To prevent large charities from circumventing the stepped-down limits by using multiple organizations, closely affiliated charities are treated as a single unit under Section 4911(f).

Why separate limits? Why 20% of a charity's expenditures can go to direct lobbying but only 5% to grass roots lobbying—especially since direct lobbying is aimed at a few legislators and is therefore less expensive than activating the public—is something of a mystery. The rational explanation is that Congress wanted to encourage direct input from charities.

[9] For example, a larger charity with a $2 million budget would have an effective overall lobbying limit of 12.5%, and its grass roots limit would be 3.125%.

Another explanation is that some rough parity with the tax treatment of businesses was desired. Thus, businesses can deduct direct lobbying expenses but not grass roots lobbying expenditures. A cynical explanation is that Congress found grass roots lobbying to be too bothersome—and too effective.

Records of lobbying expenditures. The Code does not specify how a charity should track its lobbying expenditures, and the new Regulations supply only broad guidance. All out-of-pocket expenses of lobbying, such as payments to lobbyists, travel to meet with legislators, costs of producing and sending materials, and telephone calls, are obviously to be reported. Payments for the preparation and dissemination of materials to the public that mix lobbying messages with fundraising, educational, and other messages need to be reasonably allocated—an issue the Regulations do address.

Internal expenses, such as staff salaries and benefits, rent, and other overhead items also need to be allocated partially to lobbying. All paid staff should keep time records showing the hours devoted each week to direct lobbying, grass roots lobbying, and other activities. This way, the charity can determine how much of its payroll and benefits can be attributed to lobbying. Also, the aggregate percentage of total staff time devoted to the two forms of lobbying can be used to allocate rent and other overhead costs.

EXCEEDING THE PERCENTAGE LIMITS

If in any year the charity electing Section 501(h) exceeds the total lobbying limit or the grass roots lobbying limit, it pays a 25% tax on the excess. If the charity exceeds both limits, the 25% tax is imposed on only the greater excess amount. This tax is automatically due with the filing of the Form 990 reporting the excess lobbying expenditures made that year. Form 4720 is used to report and pay the excess lobbying tax.

If, over any four-year period, the charity's lobbying expenditures exceed either limit by more than 50%, the charity automatically loses its Section 501(c)(3) status. For example, a small (under $500,000/year budget) organization will lose its exempt status if its total lobbying expenditures exceed 30%, or if its grass roots lobbying expenses exceed 7.5%, of its exempt purpose expenditures, when four successive years are added together. Furthermore, the charity is prohibited from converting to a Section 501(c)(4) organization.

The logic of the penalty provisions is that the 25% tax is an intermediate remedy. If a charity goes over the limit in one year, it pays the tax but has time to adjust its expenditures in future years to avoid the tax and to avoid loss of exempt status.

THE REGULATIONS

Only a small percentage of eligible charities have made the Section 501(h) election. So many concepts were left undefined by the statute that charities often could not tell whether they would be better or worse off making it. In 1986, the IRS released Proposed Regulations that met with a huge protest from the charitable sector because the restrictive interpretations in them would have discouraged most charities from lobbying. The IRS went back to the drawing board and produced a more favorable version in 1988, which was made final in 1990.

The goal of the drafters was to strike a balance "between implementing a statutory scheme that expressly limits charities' lobbying expenditures and the desire of charities to participate in the public policymaking process to the greatest extent possible." [10]

Direct lobbying. Under Reg. 56.4911-2, a communication with a legislator or government official is direct lobbying if, but only if, the communication (1) refers to specific legislation and (2) reflects a view on this legislation.

Specific legislation includes both legislation that has already been introduced in a legislative body and legislative proposals that have not yet been introduced and that the organization either supports or opposes. Votes to confirm or reject executive branch nominees (*e.g.*, judges) are considered legislation.[11] Legislation also includes a proposed treaty that must be submitted to the Senate for advice and consent, and treaties that are under negotiation from the time the President's representative first begins to negotiate with the prospective parties.

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 is the legislative body. Thus, if such a communication is made

[10] See "The Final Lobbying Regulations: A Challenge for Both the IRS and Charities," Tax Notes, 9/3/90, at 1305-06. In that article, the drafters of the Regulations admitted that using bright-line, objective tests "will inevitably permit expenditures to be treated as nonlobbying even though the public would probably consider [them] to be clear examples of lobbying."

[11] Charities lobbying on these confirmation votes may be subject to the tax on political organizations under Section 527.

to one or more members of the general public in that area, it is direct lobbying. For a measure placed on the ballot by voter petitions, an item becomes "specific legislation" when the petition is first circulated among voters for signature.[12]

Communications with members. Reg. 56.4911-5(f)(1) defines a "member" as someone who pays dues or contributes more than a nominal amount of money or property, contributes more than a nominal amount of time, or is one of a limited number of honorary or life members. Bona fide members need not have voting rights in the organization. Communications to members on legislation are direct lobbying if the communications directly encourage them to contact legislators. If communications sent only or primarily (more than 50%) to members contain both lobbying and nonlobbying messages, the charity may make a reasonable allocation of costs between the messages.

Grass roots lobbying. A communication (with the general public or a segment of the public) is grass roots lobbying if, and only if, the communication refers to specific legislation, reflects a view on that legislation, and encourages the recipient to take action regarding that legislation (a "call to action"). Encouragement can take one of four forms:

1. Stating 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 formulating legislation.
2. Giving the address, telephone number, or similar information of a legislator or an employee of a legislative body.
3. Providing 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 legislation).
4. Specifically identifying legislators who will vote on the legislation and who oppose the charity's view on the legislation, are undecided, are the recipient's representatives in the legislature, or are on a committee that will consider the legislation.

The first three of these actions are all direct encouragement to take action. The last is considered nondirect encouragement.

Exhibit II on page 43 is a flow chart indicating how to determine whether expenses are lobbying, and whether lobbying is direct or grass roots.

NONLOBBYING ADVOCACY

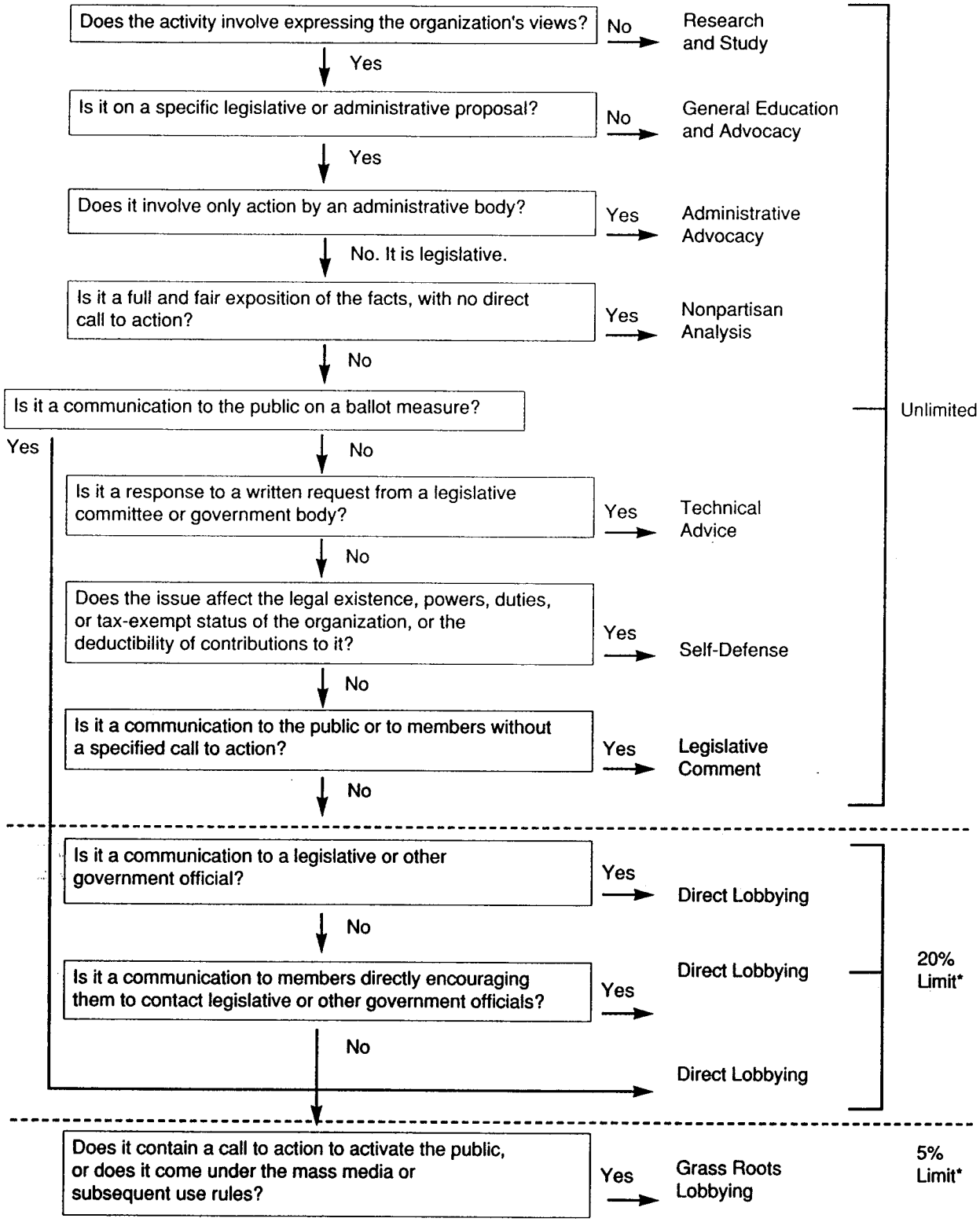
Any form of advocacy that falls outside of the two-part direct lobbying definition or the three-part grass roots lobbying definition is generally not lobbying at all and is not limited. In addition, Reg. 56.4911-2(c) provides that the following materials, even if they fall within the direct or grass roots definitions, are not lobbying:

1. Nonpartisan analysis, study, or research—an independent and objective exposition of a particular subject. A particular position or viewpoint may be advocated 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. The mere presentation of unsupported opinion, however, does not qualify. Distribution of such communications may not be limited to, or directed toward, persons who are interested solely in one side of a particular issue. If a communication falls within the three-part test for grass roots lobbying, it cannot qualify as "nonpartisan," unless it contains only the nondirect call to action described above.
2. Examinations and discussions of broad social, economic, and similar problems. Public discussions and communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation, are not lobbying communications as long as such discussion does not address itself to the merits of a specific legislative proposal and no direct call to action is made.
3. Requests for technical advice—providing technical advice to a governmental body or committee in response to a written request by that body. The request must be made in the name of the committee or agency, rather than an individual member of the body.
4. Self-defense lobbying. Appearances before or communications to any legislative body on a possible decision of the body that might affect the existence of the organiza-

[12] Until the final Regulations, the IRS position had been that ballot measure activity should be treated as grass roots lobbying, subject to the 5% limit. The IRS was persuaded to give charities the benefit of the higher 20% direct lobbying limit, however, since ballot measures could fit under either definition in the 1976 law.

EXHIBIT II: Flow Chart on Public Policy Activities

This is a general guide to the logic of the IRS rules on lobbying by public charities that elect the expenditures test under Section 501(h).



*For organizations with annual budgets of up to $500,000. Limits are stepped down for larger organizations. The 5% limit is *within* the overall 20% limit.

tion, its powers and duties, tax-exempt status, or the deduction of contributions to the organization are not lobbying communications. This exception does not cover legislation, such as an appropriations bill, which the IRS believes affects merely the scope of the organization's future activities.

ANTI-ABUSE RULES

Much of the detail in the Regulations consists of various presumptions, allocation principles, and other special rules to prevent the understatement of lobbying costs, especially where grass roots lobbying messages are mixed with nonlobbying material. The three most important anti-abuse rules are as follows:

Mass media advertisements. The IRS believes that some mass media ads, even if they do not contain all three elements of the three-part test, are still grass roots lobbying. Regulation 56.4911-2(b)(5) therefore presumes that a paid mass media ad is grass roots lobbying if it (1) is made within two weeks before a vote by a legislative body or committee on highly publicized legislation, (2) reflects a view on the general subject of that legislation, and (3) either refers to the legislation or encourages the public to contact legislators on the general subject of the legislation.

The benefits of a 501(h) election will generally outweigh the disadvantages.

The presumption may be overcome by showing that the timing of the ad was unrelated to the upcoming vote.

Subsequent use. The costs devoted to researching and preparing lobbying materials are generally lobbying expenditures. A charity could try to avoid this rule by producing literature for or against certain legislation, without a call to action, and then sending it out with a separate letter that encourages people to contact their legislators.

To prevent this abuse, the IRS considers that such legislative commentaries constitute grass roots lobbying if they are used to lobby within six months after they were paid for, and if the primary purpose of the organization in preparing them was for use in lobbying. If the charity, prior to or contemporaneously with the lobbying distribution, makes a substantial nonlobbying distribution of the materials, the costs of producing the commentary are not lobbying costs, however.

Same specific subject allocation. Regulation 56.4911-3(a)(2)(i) applies where 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. In addition to the cost of the lobbying message, all parts of the communication on the same specific subject are lobbying expenditures.

Whether the lobbying message and other lobbying portions of the communication are on the same specific subject depends on the surrounding facts and circumstances. A discussion of the background and consequences of the legislation, or on the background and consequences of activities and issues affected by the legislation, is on the same specific subject as the lobbying message about that legislation.

In many instances, focusing the communication on a narrow issue makes the entire cost of the communication a lobbying expense, except for the space devoted to the fundraising message, general information about the organization, or other subjects. As noted above, where the communication is only or primarily to bona fide members of the organization, the charity can make a more reasonable allocation of the costs.

PLANNING CONSIDERATIONS

For almost every organization, the benefits of making the Section 501(h) election outweigh the disadvantages. Many safe harbors have been created—using volunteers to lobby, endorsing legislation without spending money to promote the endorsement, criticizing or praising legislation without a call to action, and self-defense lobbying.

The expenditure of 20% of a charity's budget on direct lobbying (including ballot measures, which the Section 501(h) election allows) probably could not pass the "no substantial part" test.

Even an organization that does not lobby should generally make the Section 501(h) election and report zero lobbying expenditures on its Form 990. By doing so it can take advantage of the safe harbors and establish a base of nonlobbying expenditures for future years when it may decide to lobby.

For charities that have a companion Section 501(c)(4) lobbying organization, the election provides the opportunity, each year, to transfer (by grant or contract) the maximum amounts permitted for direct and grass roots lobbying on issues of concern to the charity.

Two concerns are frequently raised about the election. First, will electing increase the chances of an IRS audit? The IRS has assured the charitable sector that this will

not occur. Second, will electing require a more elaborate accounting system? An organization doing any lobbying must report lobbying expenditures anyway, even if it remains under the "no substantial part" test. Furthermore, organizations that do not elect under Section 501(h) must attach a statement to Schedule A giving a detailed description of their legislative activities and a classified schedule of the expenses involved. Thus, the reporting burden is a wash for electors and nonelectors.

There are basically only two situations in which a charity might benefit by not making the election. The first occurs where a charity inadvertently spends in excess of the grass roots lobbying limit. If it files Form 5768 and reports the amount as an excess expenditure on Form 990, it must pay the 25% tax.

The organization could avoid the tax by not filing Form 5768, but it would benefit from that only if it had a reasonable chance of passing the substantial part test by showing that the expenditure was isolated and atypical, or that by other measures of its activity—such as the time expended or the effort of volunteers—its lobbying was truly insubstantial.

The second situation arises where the charity is very large (*e.g.*, a budget of $10 million) and it spends over $250,000 on grass roots lobbying. Mass media ads costing $300,000 would expose the organization to the 25% tax, even though the expenditure was only 3% of its total budget. Again, if the charity wants to avoid the tax and claim that 3% is not substantial, it should not elect under Section 501(h) that year.

A charity that does not make the election will lose Section 501(c)(3) status if it fails the "no substantial part" test. In addition, for each year that it failed the test due to its lobbying expenditures, 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.[13]

CONCLUSION

The IRS is hoping that many more charities that lobby will make the Section 501(h) election, because compliance is easier to monitor. It would not be surprising if, one day soon, the IRS decided to challenge the exempt status of a nonelecting charity that lobbied "substantially," but would have been safe under the Section 501(h) election.

Making the Section 501(h) election, both to protect the organization and to take advantage of the opportunity now available to influence public policy more aggressively, is an important decision for every Section 501(c)(3) organization to consider. ■

[13] Section 4912. This penalty tax scheme does not apply to churches and church-related organizations.

Form **5768**

(Rev. December 2004)

Department of the Treasury
Internal Revenue Service

Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation

(Under Section 501(h) of the Internal Revenue Code)

For IRS Use Only ~

Name of organization	Employer identification number
Number and street (or P.O. box no., if mail is not delivered to street address)	Room/suite
City, town or post office, and state	ZIP + 4

1 **Election—**As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____ and all subsequent tax years until revoked.
(Month, day, and year)

Note: *This election must be signed and postmarked within the first taxable year to which it applies.*

2 **Revocation—**As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending _____
(Month, day, and year)

Note: *This revocation must be signed and postmarked before the first day of the tax year to which it applies.*

Under penalties of perjury, I declare that I am authorized to make this (check applicable box) ~ ☐ election ☐ revocation on behalf of the above named organization.

(Signature of officer or trustee)	(Type or print name and title)	(Date)

General Instructions

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item **1** or **2,** as applicable, and sign and date the form in the spaces provided.

Eligible Organizations.—A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4),(5), or (6) organizations).

Disqualified Organizations.—The following types of organizations are not permitted to make the election:

a. Section 170(b)(1)(A)(i) organizations (relating to churches),

b. An integrated auxiliary of a church or of a convention or association of churches, or

c. A member of an affiliated group of organizations if one or more members of such group is described in **a** or **b** of this paragraph.

Affiliated Organizations.—Organizations are members of an affiliated group of organizations only if **(1)** the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or **(2)** the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

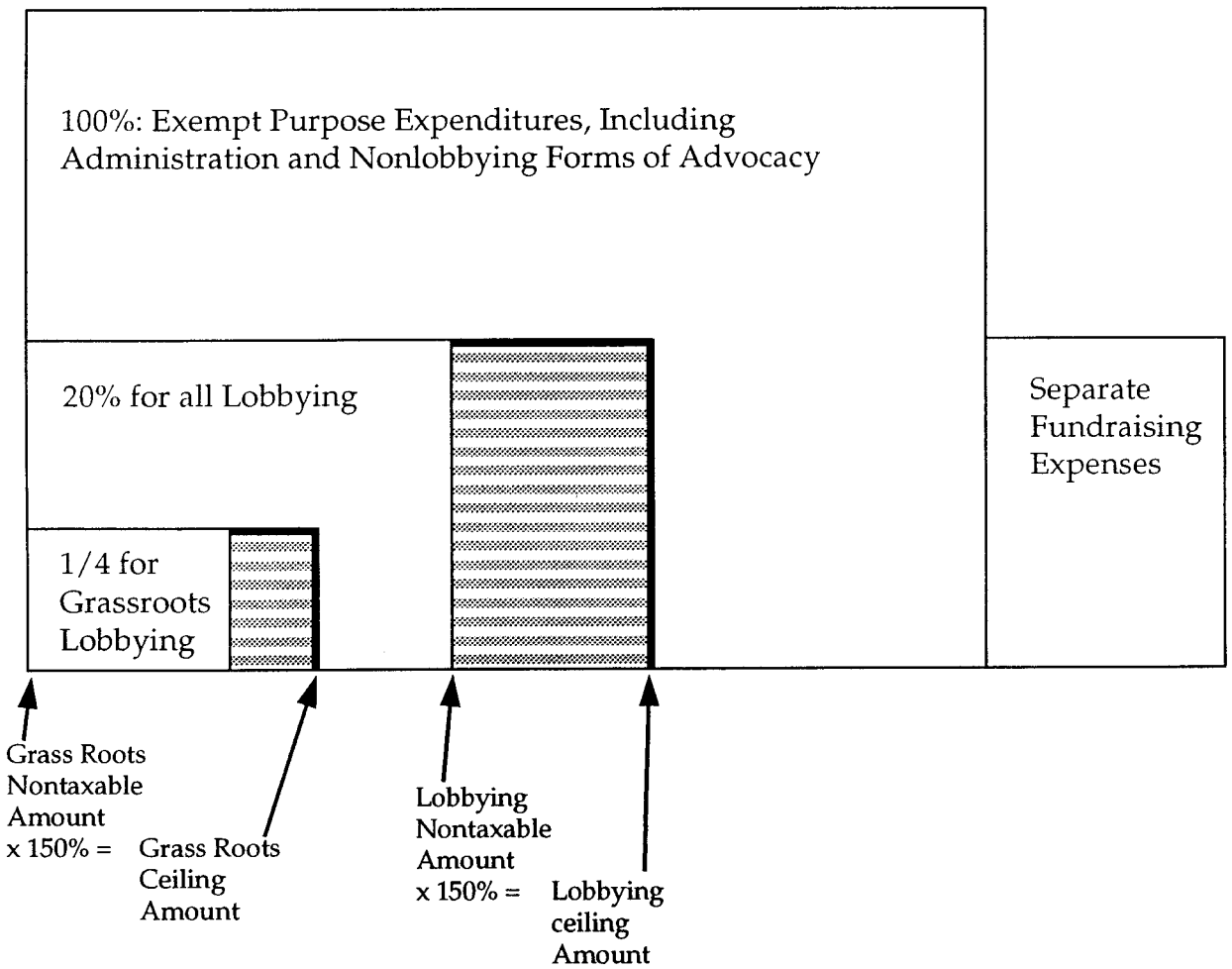
Note: *A private foundation (including a private operating foundation) is not an eligible organization.*

Where To File.—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.

Graphic Presentation of §501 (h) & § 4911

PUBLIC CHARITY

BUDGET NOT OVER $500,000



25% tax applies each year

Cross this line over 4 years and you automatically lose 501 (c) (3) status

Direct and Grass Roots Lobbying