CLIENT ALERTS & INSIGHTS

Lobbying by Tax Exempt Organizations - Part 1

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What is a tax-exempt organization?

Tax exempt organizations come in many "flavors". The most familiar are charities that are exempt from Federal income tax under section 501(c)(3) of the Internal Revenue Code. Contributions to such organizations can be tax deductible but there are many other constraints attached to this type of exemption. Other familiar categories are social welfare and civic organizations [501(c)(4)], agricultural and labor organizations [501(c)(5)], trade associations [501(c)(6)], and social clubs [501(c)(7)]. Each type is subject to different rules.

Are tax exempt organizations permitted to engage in legislative advocacy (lobbying)?

As with so many questions related to tax, the answer is not always simple. Generally, tax exempt organizations are permitted to lobby with certain very specific restrictions. These basic principles will be addressed below.

What is lobbying?

Lobbying is defined for tax purposes as attempting to influence the outcome of **legislation** as offered in Congress, any state legislature, or any local governing body with the power to adopt legislation, such as a city council. Lobbying falls under two primary categories: direct lobbying and grass roots lobbying. Lobbying can be direct when a person directly attempts to convince a legislator to take a position on legislation. Indirect or "grass roots" lobbying occurs when a person or group of people urges the public to contact members of a legislative body for the purpose of proposing, supporting or opposing legislation. This distinction is important for certain exempt entities.

Issues that are put to a public vote, such as local levies or constitutional amendments can also lead to lobbying on the part of affected individuals. However, in this situation, efforts to convince voters to accept or reject a ballot issue are considered direct lobbying because the "legislators" are the voters.

Communication with a legislator must refer to specific legislation and must reflect a view or position on such legislation to fall under the Internal Revenue Service definition.

Are charities exempt under section 501(c)(3) of the Internal Revenue Code permitted to lobby?

Tax exempt charities are permitted to lobby to a limited extent. The law requires that "no substantial part" of the activities of such an organization can be for the purpose of influencing legislation. Three

things to note here: 1) The test is not a bright line, unless the organization has made a choice to be under a specific lobbying ceiling (more on this in a subsequent bulletin); 2) Activities directed toward influencing the outcome of executive agency decisions, such as rules and regulations, are not lobbying for tax purposes, although in some states such activities are considered lobbying for state purposes; 3) Private foundations are absolutely prohibited from lobbying.

Are there different rules for other types of tax-exempt organizations?

Yes. The three most common examples are 501(c)(4) social welfare organizations, 501(c)(5) agricultural and labor organizations, and 501(c)(6) trade associations. Organizations exempt under these sections of the Internal Revenue Code are permitted to lobby with no limitation on the amount of such activity when considering legislation germane to their activities. They must, however, notify members about the percentage of dues used for lobbying activities. Failure to give such a notice can result in a significant tax penalty to the organization.

In future bulletins, we will address the specific limitations for these different types of organizations, so stay tuned!

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