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This article presents general guidelines for Ohio 501(c)(3) organizations as of the date written and should not be construed as legal advice. Always consult an attorney to address your situation.

Lobbying Restrictions and Reporting Requirements for 501(c)(3) Organizations

501(c)(3) public charities can and should be advocates for change. Public charities can express support or opposition to laws and ballot issues, they can contact lawmakers, and they can mobilize others to do the same. While 501(c)(3) public charities are often in the best position to advocate on behalf of those they serve, it is important to understand what "lobbying" is and the related limitations and rules. Below is a brief overview of lobbying restrictions and reporting requirements. If your organization is planning any lobbying activities, you should discuss the details of your plans with an attorney to make a determination based on your particular circumstances.

According to the Internal Revenue Service, an organization is engaged in lobbying when it is attempting to *influence legislation*[1]. This means that if an organization contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation, it is influencing legislation. For IRS purposes, lobbying does not include efforts to support or oppose *administrative* actions (e.g., enacting agency regulations), as opposed to *legislative* actions.

While a 501(c)(3) organization can engage in lobbying, the amount is limited by the IRS.[2] There are two standards that can be used to measure the amount of lobbying activities:

(1) The default "Insubstantial Part Test", which allows an organization to lobby as long as it does not expend a *substantial* amount of its resources on such activities; and

(2) The "Expenditure Test" under the Section 501(h) election, which measures and limits the amount of lobbying based on expenditures.

Without making the Section 501(h) election, the default standard is applied, in which the IRS looks to all of the facts and circumstances, including time devoted to lobbying by both paid and volunteer workers, and expenditures by the organization. "Substantial" is not defined by the IRS, making the use of the default standard less predictable.

In contrast, more guidance exists for the Section 501(h) election (IRS Form 5768), by which the organization submits itself to a predictable test for substantiality—the Expenditure Test—to determine whether it exceeded the "substantial" level threshold. For *direct lobbying,* the Expenditure Test provides that as long as the exempt organization spends no more than 20% of its first $500,000 of annual exempt expenditures on lobbying ($100,000), it is under the threshold. If it exceeds the 20%, it will owe an excise tax on the difference, and if it

[1] Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.
[2] Note that nonprofits that receive federal funds may not use those federal funds for lobbying activities.

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exceeds 30%, and does that for a few years in a row, it could lose its exempt status. Also, the percentage of budget it can spend (the 20%) goes down for each additional $500,000 in expenditures. There is a more stringent threshold for *grassroots lobbying* (encouraging individuals to contact their legislators); that threshold is 25% of the 20%. For most organizations it is unlikely that this threshold will be exceeded.

Advantages to making the Section 501(h) election include:

- The ability to plan ahead and budget accordingly under an objective standard.
- Higher lobbying limits for most organizations.
- Volunteer time is exempt—the calculation does not take into consideration activities for which there were no expenditures.
- Lower risk of losing tax-exempt status—expenditures are measured by a moving average over a four-year period, and an organization must exceed limits by 50% to lose tax-exempt status.
- No personal penalty taxes.
- Simple to file.

However, if your organization has a very large lobbying budget, or engages in a high level of grassroots lobbying, it may be disadvantageous to make the election.

Whether an organization uses the "Insubstantial" or "Expenditure" method of measuring the amount of their lobbying, there are recordkeeping and reporting requirements associated with both. If the Section 501(h) election is made, records of lobbying expenditures must include:

- Expenditures for grassroots lobbying;
- Amounts paid for direct lobbying;
- Portion of amounts paid or incurred as compensation for an employee's services for direct lobbying;
- Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and for direct lobbying;
- The allocable portion of administration, overhead, and other general expenses attributable to direct lobbying;
- Expenditures for publications or communications with members to the extent the expenditures are treated as expenditures for direct lobbying;
- Expenditures for direct lobbying of a controlled organization to the extent included by a controlling organization in its lobbying expenditures; and
- Identical records listed above as they apply to grassroots expenditures.

These expenditures are reported in Part II-A of Schedule C in IRS Form 990.

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If an organization chooses to remain under the default "Insubstantial" test, recordkeeping requirements are less clear. This is because this test examines an organization's *activities* as opposed to its *expenditures*, which are typically more straightforward. Part II-B of Schedule C asks organizations under the default "Insubstantial" test to report on the following:

- Whether or not the charity lobbied (by using volunteers, paid staff, advertisements, mailings to members, legislators, or the public, published statements, grants to others for lobbying, direct contact with legislators, public events, or other means) and any associated expenditures; and
- A detailed description of all lobbying activities, regardless of whether expenses were incurred.

In addition to IRS limitations on lobbying discussed here, both state and federal laws require registration and disclosure.

Ohio

If the organization compensates an individual to advocate its interests before Ohio's legislative branch, executive branch, or retirement systems, the organization must register each engagement with the Office of the Legislative Inspector General (OLIG). The organization must also report details about the lobbying activity and expenditures three times per year. For more information, please see the Ohio Lobbying Handbook.

Federal

Nonprofits may also be required to register with Congress and report activities and expenses in accordance with the Lobbying Disclosure Act (LDA) if they meet certain thresholds. An organization must register if both: (1) The organization has an employee who is a "lobbyist," and (2) The organization's total ***federal*** lobbying expenses are expected to exceed $12,500 during a quarter (there is a different rule if the organization has made the 501(h) election). The LDA defines lobbyist as a paid employee that makes at least two lobbying contacts with federal legislative or executive branch officials, and spends at least 20% of his or her time during any three-month period on federal lobbying activities.

Need Legal Advice?

If you are a PBPO client and have questions regarding the content of this article or need legal assistance, please contact us at info@pbpohio.org (513) 977-0304.

Not a Client? Apply to become a client by submitting a Request for Legal Assistance online, or contact us at info@pbpohio.org.

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