Federal Restrictions on Lobbying by Section 501(c)(3) Tax-Exempt Public Charities

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This outline discusses general restrictions on lobbying by charitable organizations organized and operating under section 501(c)(3) of the Internal Revenue Code ("IRC").

**Summary and Conclusions**

Section 501(c)(3) prohibits charitable organizations from engaging in political campaign activity. The penalty for violation of this prohibition is revocation of a charitable organization’s 501(c)(3) tax-exempt status. This prohibition is not entirely absolute. But because political campaign activity is so heavily restricted and because the penalty for violation of this provision is so severe, charitable organizations should seek legal advice prior to the undertaking of any political campaign activity.

In contrast, section 501(c)(3) allows charitable organizations to engage in lobbying, so long as the lobbying activity is not substantial relative to the organization’s other activities. Uncertainty exists as to what types of activities will be considered lobbying and how much of a charitable organization’s expenditures and activities the Internal Revenue Service ("IRS") will consider “substantial.”

Because of this uncertainty, the tax code was revised in 1976 to allow charitable organizations to make an “election” under section 501(h). Based solely on a charitable organization’s expenditures, the section 501(h) election provides a simple formula to determine whether the organization’s legislative activities are “substantial.” (The penalty for violation of restrictions on lobbying for nonelecting charitable organizations is revocation of tax-exempt status, while the penalty for violation of this restriction on organizations making a 501(h) election is generally payment of an excise tax on the excess lobbying expenditures with revocation of tax-exempt status reserved for exceptionally egregious violations.) Because of this comparative clarity and because of the severe consequences for contravening IRS restrictions on lobbying, we recommend that any charitable organization that is contemplating engaging in lobbying consider making a section 501(h) election.

**I. Background On Federal Tax Standards**

A charitable organization may be granted an exemption from federal income tax and donations to that organization are deductible by the donor if, in addition to certain other prerequisites (1), it is “operated exclusively” for one or more of the purposes specified in the tax statutes (e.g., religious, charitable or educational) (the “operational test”), and (2) it does not engage in political activity and limits its lobbying activities to an insubstantial amount. The actual language of the tax code for this latter requirement reads:

The requirement concerning legislation is known as the “substantial activities” test or standard. Charitable organizations have struggled greatly in their efforts to determine how much and what kind of activities are “substantial,” and decisions published by the courts and the IRS have added to this confusion and uncertainty.

Primarily because of this uncertainty, Congress revised the tax code in 1976 to allow charitable organizations to make an “election” under section 501(h). Based solely on a charitable organization’s expenditures, section 501(h) provides a simple formula to determine whether the organization’s legislative activities are “substantial.” This election offers an alternative, a “safe harbor,” to the amorphous substantial activities test. If this safe harbor standard is affirmatively elected by an organization, it supersedes the “substantial activities” standard for purposes of verifying allowable lobbying by that organization.

**A. The Operational Test.**

An organization must be “operated exclusively” for one or more exempt purposes to qualify as a tax-exempt organization. In the context of an organization’s legislative activities, an organization is deemed not to be “operated exclusively” for exempt purposes if “a substantial part of its activities is attempting to influence legislation, propaganda or otherwise.” This election offers an alternative, a “safe harbor,” to the amorphous substantial activities test. If this safe harbor standard is affirmatively elected by an organization, it supersedes the “substantial activities” standard for purposes of verifying allowable lobbying by that organization.

**B. The Substantial Activities Test.**

If a “substantial part” of an organization’s activities is attempting to influence legislation, the organization is deemed to be an “action” organization and may lose its status as a tax-exempt entity. The term “legislation” includes any action by Congress, state legislatures, local councils or a similar governing body, or by public referendum, initiative, constitutional amendment, or “similar procedure.”

Until 1976, when the safe harbor standard was adopted, the tax code described no numerical guideline or formula for determining “substantial” or “insubstantial” legislative activity. Prior to the availability of a safe harbor guideline (discussed below) three analyses were used by courts to determine if an organization had complied with the substantial activities standard: (a) a percentage test that focused on the “time and effort” devoted to legislative advocacy activities; (b) a percentage test based on the expenditures devoted to legislative advocacy activities; and (c) a broad balancing of the...
organization’s legislative advocacy activities in relation to its objectives and circumstances. These analyses are still applicable to charitable organizations which do not make the section 501(h) election.

C. The 501(h) Election or Safe Harbor Standard.

Largely in response to the vagueness of the “substantial activities” test, Congress adopted the safe harbor guidelines of section 501(h) in 1976. Absent an election of the safe harbor guidelines by an organization, however, the traditional and ill-defined “substantial activities” test continues to apply.

For the safe harbor test to apply, an organization must be eligible and must affirmatively make the election. (The election is made by filing IRS Form 5768.) The safe harbor expenditures test is effective for all taxable years that end after the election is made. Once the election is made, it cannot be revoked for a taxable year after that year has begun. Finally, nothing in the safe harbor guidelines is to be construed to affect the interpretation of the operative phrase of the “substantial activities” standard. As a result, absent election of the safe harbor guidelines, there is no assurance that the IRS will extend those rules to apply to the activities of nonelecting exempt organizations.

D. Deciding Whether to Make a 501(h) Election.

1. Advantages of Making a 501(h) Election.
   - Volunteer’s time and influence are not counted; only actual expenditures count.
   - The revocation of exemption calculation is based on a four-year average, not on an ongoing annual test.
   - Mathematical limits are specific.
   - The degree of certainty provided by specific tests applied to electing organizations is preferable to the subjective and untested standards for nonelecting ones. Section 501(h) allows examining agents to use the definitive rules only for electing organizations, not for nonelecting ones.
   - Many practitioners expect the IRS to scrutinize nonelecting organizations.
   - The membership communications exclusion does not classify as lobbying the “objective reporting on the contents and status of legislation” to members.
   - Recordkeeping requirements may be less because volunteer time need not be recorded.

   - Grass roots lobbying limit is not separately limited to five percent of exempt purpose expenditures.
   - Directors and officers can be personally liable for penalties for excess lobbying.
   - Affiliated organization’s lobbying activities must be consolidated or combined to measure limitations under the election, but are otherwise measured on a per entity basis.
   - The maximum amount of expenditures allowed is $1 million for any one organization. For an organization with a $50,000,000 annual budget, for example, the maximum of $1 million equals two percent of the budget, a de minimis amount in relation to the five percent considered permissible by some experts.
   - It may be preferable to avoid the uncertainty caused by the multiple proposed regulations and the controversy surrounding the allocation of indirect expenses.

II. Limits On Political Campaign Activity

Section 501(c)(3) organizations are completely prohibited from engaging in “political activity,” as this term has been defined. The key statutory language involved requires that the organization “does not participate in, or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office.” This prohibition has been in force since 1954. Unlike the rules limiting lobbying by charities, this language seems absolute in its terms. Nevertheless, according to one study, “the IRS and the courts have tended to allow some political activity, so long as the amount of electioneering is incidental in comparison to the organization’s exempt activities.” Under current law, the only sanction for engaging in political campaign activity available to the IRS is revocation of section 501(c)(3) status. Because political campaign activity is so heavily restricted and because the penalty for violation of this provision is so severe, we recommend that legal advice be sought prior to the undertaking of any political campaign activity by a 501(c)(3) organization.

III. Limits on Lobbying

Section 501(c)(3) places limits on the amount of “lobbying” a charitable organization may undertake, in contrast to the complete prohibition on political activity. Lobbying is defined fairly broadly to include all direct and grass roots efforts to influence legislation.

A charitable organization found to have engaged in lobbying activities to a prohibited extent is deemed an “action” organization and thus is not entitled to continuing tax exemption. An organization will be deemed an action organization by virtue of its lobbying activities if (1) its primary objective(s) can be accomplished only through legislation, and it advocates or campaigns for such objectives; or (2) a substantial part of its activities consists of attempting to influence legislation.
An organization having a primary objective obtainable only by legislation (or defeat of proposed legislation) will be an action organization if it advocates or campaigns for the attainment of such objective. An organization engaging solely in “nonpartisan analysis, study or research and making the results thereof available to the public,” however, is not an action organization.¹⁸

An organization will be regarded as attempting to influence legislation if the organization advocates the adoption or rejection of legislation, or contacts, or urges the public to contact, members of a legislative body with respect to legislation.¹⁹ The term “legislation” means “action with respect to Acts, bills, resolutions, or similar items by the Congress, by any state legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.”²⁰ An organization does not engage in attempts to influence legislation if, at the express request of a committee of the United States Congress, a representative of the organization provides expert testimony on pending legislation.²¹

Organizations may choose to have compliance with the restrictions on influencing legislation (so-called “lobbying restrictions”) evaluated under one of two tests. The organization may elect to be evaluated under section 501(h), a special section added to the tax code in 1976 to provide a “safe harbor” for section 501(c)(3) organizations concerned about lobbying limits.²² Alternately, if the organization does not make the section 501(h) election, it will be evaluated under the so-called “substantiality test.” This test denies section 501(c)(3) status to a group unless “no substantial part of its activities...is carrying on propaganda, or otherwise attempting, to influence legislation...”²³ The section 501(h) lobbying expenditure rules are discussed below.

A. Lobbying under the Substantial Activities Standard

Lobbying has not been strictly defined under section 501(c)(3), although some guidelines have been established under section 4911.²⁴ The general rule is that lobbying consists of all “direct” efforts to propose, support or oppose legislation through uninvited contacts with legislators, their staffs, or government officials who may participate in formulation of the legislation, and all “grass roots” efforts to encourage others to contact legislators, their staffs, or any other government official who may participate in formulation of the legislation.²⁵

The term “lobbying” does not necessarily include all activities that involve a communication with a member or employee of a legislature. In fact, the Internal Revenue Code explicitly excludes a number of activities from the definition of “influencing legislation,” i.e., lobbying.²⁶

• dissemination of the results of nonpartisan analysis, study or research;
• provision of technical advice or assistance in response to a written request by a governmental body;
• appearances before, or communications to, any legislative body with respect to a possible decision by that body that might affect the existence of the organization, its powers and duties, its tax-exempt status, or the deduction of contributions to it (self-defense);
• communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to them, unless the communications directly encourage the members to influence legislation or urge members to contact nonmembers to influence legislation; and
• routine communications with government officials or employees, including the executive branch and agencies.²⁷

B. Lobbying under the Section 501(h) Election.

Congress adopted section 501(h) in 1976 to provide optional “bright line” rules for organizations that were insecure about their status under the traditional substantiality test. An organization may make the election under section 501(h) by filing Form 5768 (attached to this memorandum) with the IRS. Certain exempt organizations, including churches and private foundations, are not eligible to make the election.²⁸

The main provisions of section 501(h) include the following:

• Establishment of a “lobbying nontaxable amount.” The new law establishes definite limits on the percent of an organization’s expenditures that may be devoted to lobbying. The limits are on a sliding scale allowing smaller organizations to expend a relatively greater amount toward lobbying. Under sections 501(h) and 4911, organizations may spend 20% of their first $500,000 of “exempt purposes expenditures” on lobbying, 15% of the second $500,000, 10% of the third $500,000, and 5% of any additional expenditures, so long as total lobbying expenses do not exceed $1,000,000.²⁹
• Grass roots limits. The law penalizes organizations that spend more than one fourth of the total lobbying nontaxable amount ongrass roots lobbying. Thus, for example, an organization with exempt purposes expenditures of $500,000 or less may spend up to 5% of these expenditures on grass roots lobbying, but this amount will count toward the overall 20% lobbying limit.³⁰
• Graduated penalties for exceeding limits. The law applies a 25% excise tax to grass roots and non-grass roots lobbying expenditures in excess of the limits.³¹ However, if an
organization normally spends more than 1.50% of its limits on lobbying, the IRS may revoke the organization’s section 501(c)(3) status.32

- *Aggregation rule.* Where two or more “charitable” organizations are members of an affiliated group and at least one of the members has elected coverage under these guidelines, the calculations of lobbying and exempt purpose expenditures must be made by taking into account the expenditures of the group. If these expenditures exceed the permitted limits, each of the electing member organizations must pay a proportionate share of the penalty excise tax, with the nonelecting members treated under preexisting law.33

On August 31, 1990, the Internal Revenue Service promulgated a new set of regulations for 501(c)(3) organizations that make the 501(h) election.34 The purpose of the regulations is to provide organizations the guidance needed to comply with sections 501(h) and 4911 requirements by clarifying what is meant by direct and grass roots lobbying. The effective date of the regulations is for tax years beginning after August 31, 1990. The following discussion outlines the lobbying expenditure rules.

1. **How Is the Amount of an Organization’s “Exempt Purpose Expenditures” Calculated?** In general terms, an expenditure is an “exempt purpose expenditure” if it is paid or incurred by a charitable organization to accomplish its exempt purposes. The calculation of the dollar limit on lobbying expenditures begins with the calculation of an organization’s “exempt purpose expenditures.” This is defined as the total amount expended by an organization during its taxable year to accomplish its exempt purposes, plus administrative expenses paid or incurred for such purposes, and all expenditures made to influence legislation, whether or not such expenditures advanced the organization’s exempt purposes.35

Thus, exempt purpose expenditures do not include amounts paid or incurred that are neither expenditures to accomplish an exempt purpose nor lobbying expenditures.36 Exempt purpose expenditures also do not include amounts chargeable to a capital account, such as property acquisition, but do include a reasonable allowance for exhaustion, wear and tear, obsolescence, or amortization of the capital asset.37 In addition, exempt purpose expenditures do not include fundraising expenditures paid to or incurred for a separate fundraising unit of the organization or a nonemployee or nonaffiliated organization, but do include other fundraising expenditures.38 Finally, exempt purpose expenditures do not include expenditures paid or incurred for the production of income.39

Special rules govern “transfers” between different organizations.40 A transfer from a section 501(c)(3) organization to another section 501(c)(3) organization, such as payment of dues by a local organization to a national organization, is treated as an exempt purpose expenditure if it is made in furtherance of the transferor’s exempt purposes and is not “earmarked” for any purpose other than the transferor’s exempt purposes.41 Similarly, a “controlled grant” transfer from a section 501(c)(3) organization to a non-section 501(c)(3) organization is treated as an exempt purpose expenditure, but only to the extent of the amounts that are paid or incurred by the transferee that would be exempt purpose expenditures if paid or incurred by the transferor.42 If a substantial purpose of the transfer is to artificially inflate the amount of the transferor’s or transferee’s exempt purpose expenditures, the transfer will not be considered an exempt purpose expenditure of the transfer, but will be an exempt purpose expenditure of the transferee to the extent that the transferee expends the transfer in the active conduct of its charitable activities or attempts to influence legislation.43

On the other hand, a transfer made to a member of any affiliated group of which the transferor is a member is not treated as an exempt purpose expenditure.44 Likewise, a noncontrolled grant transfer made to a non-501(c)(3) organization that does not attempt to influence legislation is not treated as an exempt purpose expenditure.45 Charitable organizations need to be careful in any transfers between themselves and any lobbying organization if the organization wishes to avoid the transfer being considered a lobbying expenditure. Charitable organizations will not have to consider as a lobbying expenditure a transfer of funds to a section 501(c)(4) lobbying organization (i) if the transfer is in furtherance of a charitable organization’s exempt purposes and the charitable organization maintains records to establish that the grant is indeed used in furtherance of its exempt purposes or (ii) if the charitable organization receives adequate consideration in exchange for its transfer (such as in the form of a report it can use in its activities).

2. **How Is an Organization’s “Lobbying Nontaxable Limit” Calculated?** A charitable organization must determine its exempt purpose expenditures before it can calculate its “lobbying nontaxable amount” for any given year. Under section 501(h), an organization with “exempt purpose expenditures” of $500,000 or less may spend up to 20% of such expenditures on lobbying, but no more than 5% of such expenditures may be spent on indirect or grass roots lobbying. Lobbying expenditures that do not require expenditures, such as certain unreimbursed lobbying activities conducted by bona fide volunteers, are not included in the lobbying expenditures for the organization.46 A charitable organization’s ability to make direct and grass roots lobbying expenditures will increase as its yearly expenditures increase.

*Example.* An organization made the expenditure test election under section 501(h) effective for taxable years beginning with 1977 and has not revoked the election. The organization has $500,000 of exempt purpose expenditures during each of years 1981 through 1984. In addition, during each of those years, the organization has spent $75,000 for direct lobbying and $25,000 for grass roots lobbying. Since the amount...
expended for the organization’s lobbying (both total lobbying and grass roots lobbying) is within the respective nontaxable expenditure limitations, the organization is not liable for the 25 percent excise tax imposed under section 4911(a) upon excess lobbying expenditures, nor is the organization denied tax-exempt status by reason of section 501(h).47

This result does not change even if numerous unpaid volunteers conduct substantial lobbying activities with no reimbursement on behalf of the organization. Since the substantial lobbying activities of the unpaid volunteers are not counted towards the expenditure limitations and the amount expended for the organization’s lobbying is within the respective nontaxable expenditure limitations, the organization is not liable for the 25 percent excise tax under section 4911, nor is it denied tax-exempt status by reason of section 501(h).48

3. What Types of Expenditures Does a Direct or Grass Roots Lobbying Communication Include? Expenditures for a direct or grass roots lobbying communication include amounts paid or incurred as current or deferred compensation for an employee’s services attributable to the direct or grass roots lobbying communication, and the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying communication.49

An organization that elects the section 501(h) expenditure test must keep a record of its direct and grass roots lobbying expenditures for the taxable year.50 The organization reports its lobbying expenditures in its annual tax return (IRS Form 990). The lobbying expenditure record must include the following:

- Amounts directly paid or incurred for lobbying, including payments to another organization earmarked for lobbying, fees and expenses paid to individuals or organizations for lobbying, and printing, mailing, and other direct costs of reproducing and distributing materials used in lobbying;
- The portion of amounts paid or incurred as current or deferred compensation for an employee’s services in connection with lobbying;
- Amounts paid for out-of-pocket expenditures incurred on behalf of the organization and in connection with lobbying, whether or not incurred by an employee;
- The allocable portion of administrative, overhead, and other general expenditures attributable to direct lobbying;
- Expenditures for publications or for communications with members to the extent the expenditures are treated as expenditures for lobbying; and
- Expenditures for lobbying of a controlled organization to the extent included by a controlling organization in its lobbying expenditures.51

These somewhat burdensome recordkeeping requirements under the lobbying expenditure rules will necessitate that charitable organizations implement some type of accounting system that will keep track of organizational expenditures and activities that are lobbying related in sufficient detail to segregate them by type of expenditure and by type of lobbying (direct or grass roots).

4. When Is a Communication a Direct Lobbying Communication? The regulations adopt a relatively simple, two-part definition for direct lobbying. To be direct lobbying, a communication with a legislator, an employee of a legislative body, or other government official or employee involved in the legislative process must both: (1) refer to specific legislation, and (2) reflect a view on that legislation.52 “Specific legislation” includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the organization either supports or opposes.53 Thus, specific legislation does not include the promulgation of regulations by the administrative agency responsible for implementing an existing statute.54

Example. An organization assigns its employee to approach members of the legislature to gain their support for a pending bill. The employee drafts and the organization prints a position letter on the bill. The employee distributes the letter to members of the legislature. Additionally, the employee personally contacts several members of the legislature or their staffs to seek support for the organization’s position on the bill. The letter and the personal contacts are direct lobbying communications. Therefore, the costs of the employee’s time in preparing the letter and making the personal contacts, together with any associated overhead expenses, must be included in the organization’s lobbying expenditures.55

Once the bill is enacted though, the organization may contact the agency in charge of preparing the regulations to implement the bill without any of its communications being considered lobbying communications. This is because the promulgation of regulations is not considered legislation for purposes of the lobbying expenditure rules. Thus, in the example provided above, the organization may send a letter to the agency responsible for implementing the bill providing detailed proposed regulations that the organization suggests to the agency as the appropriate standards to follow in implementing the bill.56

5. When Is a Communication a Grass Roots Lobbying Communication? To be considered grass roots lobbying, the communication must meet, in addition to the two-part test outlined above, a third test: does the communication encourage the recipients of the communication to take action with respect to the legislation.57 A communication encourages its recipients to take action only if the communication: (i) states that the recipient should contact a legislator, an employee of a legislative body, or other governmental
official or employee involved in the legislative process; (ii) states the
address, telephone number, or similar information of a legislator or
an employee of a legislative body; (iii) provides a petition, tear-off
postcard, or similar material for the recipient to communicate his or
her views to a legislator, an employee of a legislative body, or other
governmental official or employee involved in the legislative process;
or (iv) specifically identifies one or more legislators who will vote on
the legislation as opposing the communicator’s view with respect
to the legislation, being undecided with respect to it, being the
recipient’s representative in the legislature, or being a member of the
legislative committee that will consider the legislation.58

Communications that are described in categories (i) through (iii) above
are deemed not only to encourage action with respect to legislation,
but also to “directly encourage” action with respect to legislation.59
This distinction is important because only communications in category
(iv), that encourage the recipient to take action with respect to
legislation without “directly encouraging” such action, may be within
the exceptions for communications with members or nonpartisan
analysis, study, or research and, as a result, not be grass roots
lobbying communications. See subsections 7 and 11 below.

A charitable organization will have to include in its grass roots
lobbying expenditures any expenditures made in encouraging its
members and nonmembers to take action with respect to specific
legislation. These expenditures will include employee time in
preparing the lobbying communication, printing and mailing costs
in distributing the lobbying communication to the public, and any
associated overhead expenses.

Example. An organization sends a letter to all persons on
its mailing list. The letter includes an update on numerous
environmental issues with a discussion of general concerns
regarding pollution, proposed federal regulations affecting
the area, and several pending legislative proposals. The letter
endorses two pending bills and opposes another pending
bill, but does not name any legislator involved (other than the
sponsor of one bill, for purposes of identifying the bill), nor
does it otherwise encourage the reader to take action with
respect to the legislation. This communication is not a grass
roots lobbying communication.50 It also is not a direct lobbying
communication, unless the letter is sent to a legislator who may
vote on the bill.

Communications made through the mass media are generally subject
to the usual three-part test for grass roots lobbying. However, there is
a special rule for certain mass media communications. The regulations
contain a rebuttable presumption that, if within two weeks before a vote
by a legislative body, or committee (but not a subcommittee thereof,
on a “highly publicized piece of legislation,” an organization’s paid
advertisement appears in the mass media, the paid advertisement will
be presumed to be a grass roots lobbying communication, but only if

6. When Are Research and Report Preparation and Distribution
Costs Included in Grass Roots Lobbying Expenditures? The costs of
preparing and distributing advocacy communications or research
materials will be treated as grass roots lobbying expenditures only in
cases of abuse. Thus, the fact that such communications or research
materials are used in a lobbying campaign will not necessarily cause
the preparation and distribution costs to be treated as lobbying
expenditures. Special rules governing nonpartisan analysis, study, and
research are discussed in subsection 7 below.

The costs of preparing and distributing advocacy communications
or research materials will be treated as grass roots lobbying
expenditures because of subsequent use of the communication
or research materials in a grass roots lobbying effort unless
the “primary purpose” of the organization in preparing the
communication or research materials was not for use in lobbying.64
The “primary purpose” of an organization in preparing an
advocacy communication or research materials is not lobbying if,
prior to or contemporaneously with the use of the communication or research materials in grass roots lobbying, the organization makes a “substantial” nonlobbying distribution of the communication or research materials (without the direct encouragement to action). The characterization of expenditures as grass roots lobbying expenditures shall apply only to expenditures paid less than six months before the first use of the advocacy communications or research materials with a direct encouragement to action.

In the case of advocacy communications or research materials that are not nonpartisan analysis, study, or research, a nonlobbying distribution is not substantial unless it is at least as extensive as the subsequent lobbying distribution. Where the nonlobbying distribution of advocacy communication or research materials is not substantial, all of the facts and circumstances must be weighed to determine whether the organization’s primary purpose in preparing the communication or research materials was not for use in lobbying. While not the only factor, the extent of the organization’s nonlobbying distribution of advocacy communications or research materials is particularly relevant, especially when compared to the extent of their distribution with the direct encouragement to action. Another particularly relevant factor is whether the lobbying use of the advocacy communications or research materials is by the organization that prepared the document, a related organization, or an unrelated organization. Where the subsequent lobbying distribution is made by an unrelated organization, clear and convincing evidence (which must include evidence demonstrating cooperation or collusion between the two organizations) will be required to establish that the primary purpose for preparing the communication was for use in lobbying.

Example. An organization prepares a nonlobbying “report” (that is not nonpartisan analysis, study or research) and distributes this report to only 50 people. The organization then sends the report to 10,000 people along with a letter urging recipients to write their Senators about the legislation discussed in the report. Because the report’s nonlobbying distribution is not as extensive as its lobbying distribution, the report’s nonlobbying distribution is not substantial for purposes of the lobbying expenditure rules. Accordingly, the organization’s primary purpose in preparing the report must be determined by weighing all of the facts and circumstances. In light of the relatively minimal nonlobbying distribution and the fact that the lobbying distribution is by the preparing organization rather than by an unrelated organization, and in the absence of evidence to the contrary, both the report and the letter are grass roots lobbying communications. Assume that all costs of preparing the report were paid within the six months preceding the mailing of the letter. Accordingly, all of the organization’s expenditures for preparing and mailing the two documents are grass roots lobbying expenditures.

Implications. To avoid including the costs of preparation and nonlobbying distribution of a nonlobbying report in its direct or grass roots lobbying expenditures, charitable organizations will need to make sure that the nonlobbying distribution of a nonlobbying report is more extensive than any lobbying distribution of the report.

7. When Is Nonpartisan Analysis, Study or Research Included in Direct or Grass Roots Lobbying Expenditures?

Engaging in and making available “nonpartisan analysis, study, or research” does not constitute lobbying. To qualify as nonpartisan analysis, study, or research, the communication must be “an independent and objective exposition of a particular subject matter.” Thus, such a communication “may advocate a particular position or viewpoint so 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.”

A communication is not within the nonpartisan analysis exception if the communication directly encourages recipients of the communication to contact legislators or certain other governmental officials in favor of or in opposition to specific legislation.

Example. An organization researches, writes, prints and distributes a study on the use and effects of pesticide X. A bill is pending in the U.S. Senate to ban the use of pesticide X. The organization’s study leads to the conclusion that pesticide X is extremely harmful and that the bill pending in the U.S. Senate is an appropriate and much needed remedy to solve the problems caused by pesticide X. The study contains a sufficiently full and fair exposition of the pertinent facts, including known or potential advantages of the use of pesticide X, to enable the public or an individual to form an independent opinion or conclusion as to whether pesticides should be banned as provided in the pending bill. In its analysis of the pending bill, the study names certain undecided Senators on the Senate committee considering the bill. Although the study meets the three-part test for determining whether a communication is a grass roots lobbying communication, the study is within the exception for nonpartisan analysis, study or research, because it does not “directly” encourage recipients of the communication to urge a legislator to oppose the bill. If, on the other hand, the study concludes that the reader “should write to the undecided committee members to support this crucial bill,” the study is not within the exception for nonpartisan analysis, study or research because it “directly” encourages the recipients to urge a legislator to support a specific piece of legislation.

Analysis, study, or research that reflects a view on specific legislation is not nonpartisan if the analysis, study, or research is subsequently used as or with a lobbying communication that directly encourages recipients to take action with respect to specific legislation.

Example. An organization plans to conduct a lobbying
campaign with respect to illegal drug use in the United States. It incurs $5,000 in expenses to conduct research and prepare an extensive report for use in the lobbying campaign. Before using the report in a lobbying mailing to its 10,000 members, the organization sends the research and report (without an accompanying lobbying message) to universities and newspapers. At the same time, the organization also advertises the availability of the report in its newsletter. This distribution is similar in scope to the normal distribution patterns of similar nonpartisan reports. In light of all of the facts and circumstances, the organization’s distribution of the report is substantial. Because of its substantial distribution of the report, the organization’s primary purpose will be considered to be other than for use in lobbying and the report will not be considered a grass roots lobbying communication. Accordingly, only the expenditures for copying and mailing the report to the 10,000 individuals on the organization’s mailing list, as well as for preparing and mailing the letter, are expenditures for grass roots lobbying communications. 

**Implications.** A charitable organization will be able to claim the nonlobbying exception for “nonpartisan analysis, study, or research” if such communication contains a full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion and such communication does not “directly” encourage recipients to take action with respect to the legislation discussed in the communication. To avoid including the costs of preparation and nonlobbying distribution of “nonpartisan analysis, study, or research” in its grass roots lobbying expenditures, charitable organizations will need to make sure that the nonlobbying distribution of a nonlobbying report is substantial based on normal distribution patterns for such a report.

**8. When Are Discussions of Broad Social, Economic, and Similar Problems Included in Direct or Grass Roots Lobbying Expenditures?** Discussions of broad social, economic, and similar problems are not lobbying activities. This exception does not apply, however, where a communication directly encourages recipients of the communication to contact legislators or certain other government officials in favor of or in opposition to specific legislation. For example, an organization’s discussions of problems such as environmental pollution or population growth are not grass roots lobbying communications, unless the discussions directly address specific legislation being considered and encourage recipients of the communication to contact a legislator, an employee of the legislative body, or a government official or employee who may participate in the formulation of legislation.

**9. When Are Requests for Technical Advice Included in Direct or Grass Roots Lobbying Expenditures?** A communication is neither direct lobbying nor grass roots lobbying communication if the communication is for the purpose of providing technical advice or assistance to a governmental body, a governmental committee, or a subdivision of either in response to a written request by the body, committee, or subdivision.

**10. When Are Communications Pertaining to “Self-Defense” by the Organization Included in Direct or Grass Roots Lobbying Expenditures?** A communication is neither a direct lobbying nor grass roots lobbying communication if it is an appearance before, or communication with, a legislative body with respect to a possible decision of such body which might affect the existence of the organization or an affiliated organization, its powers and duties, its tax-exempt status, or the deduction of contributions to the organization or affiliated organization.

**11. When Are Communications with Members Included in Direct or Grass Roots Lobbying Expenditures?** A communication pertaining to and reflecting a view on legislation or proposed legislation is not lobbying where the communication is directed only to members of the organization, the legislation is of direct interest to the organization and its members, and the communication does not directly encourage the members to engage in direct or grass roots lobbying. The communication is considered “direct lobbying” when it directly encourages the recipient member to engage in direct lobbying, but does not directly encourage the member to engage in grass roots lobbying. The communication is considered “grass roots lobbying” when it encourages the recipient member to engage in grass roots lobbying.

This exemption applies only if the communication is directed solely to members of the organization. Members of an organization may include people who are not members in the legal sense. Contributions of “more than a nominal amount” or “more than a nominal amount of time” will suffice for membership.

There are special rules applicable to communications directed primarily to members of an organization. A communication is directed primarily to members of an organization if more than half of the recipients of the communication are members of the organization. If the written communication directly encourages readers to engage individually or through the organization in direct lobbying but does not encourage them to engage in grass roots lobbying, the cost of the communication is allocated between expenditures for direct lobbying and grass roots lobbying as follows: (i) the amount allocable as a grass roots expenditure is the total cost of the communication multiplied by the sum of the nonmember subscribers percentage and the all other distribution percentage, and (ii) the amount allocable as a direct lobbying expenditure is the excess of the total cost over the grass roots expenditure. The cost to be allocated includes all costs of preparing all the material with respect to which readers are urged to engage in direct lobbying plus the mechanical and distribution costs attributable to the lineage devoted to this material.
If the communication directly encourages readers to engage individually or collectively (whether through the organization or otherwise) in grass roots lobbying (whether or not it also encourages readers to engage in direct lobbying), the grass roots expenditure includes all the costs of preparing the material with respect to which readers are urged to engage in grass roots lobbying plus the mechanical and distribution costs attributed to the lineage devoted to this material. If the communication does not directly encourage readers to engage in either direct lobbying or grass roots lobbying, expenditures for the communication are not lobbying expenditures.

Implications. A charitable organization may have more of its lobbying communications be considered “direct lobbying” rather than “grass roots lobbying” if it limits these communications to its members only.

12. When Are Transfers of Funds from One Organization to Another Direct or Grass Roots Lobbying Expenditures? A “transfer” that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that the amounts transferred were expended for direct lobbying purposes, in which case that part of the amount transferred is a direct lobbying expenditure by the transferor. A “transfer” to an organization other than a section 501(c)(3) organization is deemed to be a lobbying expenditure, first, as a grass roots expenditure, up to the amount of the transferee’s grass roots expenditures, and then, as a direct lobbying expenditure, up to the amount of the transferee’s direct lobbying expenditures. However, this does not apply to a grant for a specific exempt purpose project where the donee maintains records establishing the use of the funds for the grant purposes. “Transfers” which are considered lobbying expenditures exclude transfers which are excluded for purposes of calculating an organization’s exempt purpose expenditures.

Implications. A charitable organization will need to be careful in any transfers between it and any lobbying organization if it wishes to avoid the transfer being considered a grass roots lobbying expenditure.

13. How Does an Organization Allocate the Costs of Preparing and Distributing a Single Document That Has Both Lobbying and Nonlobbying Articles or That Has Both Direct and Grass Roots Lobbying Articles? The lobbying regulations adopt an approach to allocation based on the nature of the audience.

a. Communications Sent Only or Primarily to Members

As to communications which have a lobbying purpose or a bona fide nonlobbying purpose and are sent only or primarily to members (namely, communications sent to more members than nonmembers), an organization must make a reasonable allocation between the lobbying and nonlobbying amounts. An organization that includes as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to take action with respect to legislation has not made a reasonable allocation.

Example. An organization distributes only to members a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing and mailing the pamphlet is $11,000, $1,000 for preparation and $10,000 for printing and mailing. The cost of preparing one article, a nonlobbying communication, is $600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grass roots lobbying communication that states that the recipient members should contact their congressional representatives, is $400. This article is printed on one page of the four-page pamphlet. The organization allocates $400 of preparation costs and $2,500 of printing and mailing costs (25% of total cost) as expenditures for direct lobbying. The allocation is reasonable. The allocation would not be reasonable if the organization based its allocation upon the fact that out of the 200 lines in the second document, only two stated that the recipient member should contact legislators about the pending legislation.

An organization must also allocate lobbying expenditures between direct lobbying expenditures and grass roots lobbying expenditures in accordance with Treas. Reg. § 56.4911-5. See subsection 11 above.

Example. A membership organization prepares a three-page document that is mailed to 3,000 persons on the organization’s mailing list. 75% of the recipients of the three-page document are members of the organization, and 25% of the recipients are nonmembers and are not subscribers. The first two pages of the three-page document, titled “The Need for Child Care,” support the need for additional child care programs, and include statistics on the number of children living in homes where both parents work or in homes with a single parent. The two pages also make note of the inadequacy of the number of day care providers to meet the needs of these parents. The third page of the document, titled “H.R. 1,” indicates the organization’s support of H.R. 1, a bill pending in the U.S. House of Representatives. The document states that H.R. 1 will provide for $10,000,000 in additional subsidies to child care providers, primarily for those providers caring for lower income children. The third page also notes that H.R. 1 includes new federal standards regulating the quality of child care providers. The document ends with the organization’s request that readers should write to Congress in support of H.R. 1, but does not state that the readers should urge nonmembers to write to Congress. The organization treats the document as having a bona fide
membership purpose, the purpose of educating its members about the need for child care. Accordingly, the organization allocates one-half of the cost of preparing and distributing the document as a lobbying expenditure, of which 75% is a direct lobbying expenditure and 25% is a grass roots lobbying expenditure. The organization’s allocation is reasonable and correct.96

b. Lobbying Communications Not Sent Only or Primarily to Members

For lobbying communications that are not sent only or primarily to members, all costs attributable to those parts of the communication that are on the “same specific subject” as the lobbying message must be included as lobbying expenditures for allocation purposes.97 The “same specific subject” is said to depend on the circumstances, but generally to include discussion of “an activity or specific issue that would be directly affected” by the legislation that is the subject of the lobbying part of the communication as well as “the background or consequences” of such an activity or issue or the legislation itself. Examples indicate that a description of the organization and an appeal for funds will not be treated as being on the “same specific subject” as the lobbying part of the communication. However, the examples also show that the costs of general discussions of the problem that would be addressed by legislation advocated in the same communication count as lobbying costs.98

Example. A particular monthly issue of an organization’s newsletter, which is distributed mainly to nonmembers of the organization, has three articles of equal length. The first article is a grass roots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world’s whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grass roots lobbying communication, all of the costs allocable to that article (e.g., one-third of the newsletter’s printing and mailing costs) are grass roots lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grass roots lobbying expenditure.99

c. Mixed Grass Roots and Direct Lobbying Communications

A mixed grass roots and direct lobbying expenditure would be treated as a grass roots expenditure. However, to the extent the organization can demonstrate that the expenditure was incurred primarily (not solely) for direct lobbying purposes, a reasonable allocation may be made as between the expenditures associated with the two types of lobbying.100 These rules do not apply to communications only or primarily to members which are subject to Treas. Reg. § 56.4911-5. See subsection 11 above.

Example. A member organization sends a one-page letter to all persons on its mailing list (90% of whom are members). The only subject of the letter is the organization’s opposition to a pending bill allowing private uses of certain national parks. The letter requests recipients to send letters opposing the bill to their congressional representatives, but does not state that readers should urge nonmembers to write to legislators. A second one-page letter is sent in the same envelope. The second letter discusses the broad educational activities and publications of the organization in all areas of environmental protection and ends by requesting the recipient to make a financial contribution to the organization. The organization allocates one-half of the mailing costs as a lobbying expenditure, of which 90 percent is a direct lobbying expenditure and 10 percent is a grass roots lobbying expenditure. The organization’s allocation is reasonable.101

Implications. A charitable organization will have to evaluate any communication it sends out (whether in the form of a letter, a report, or a newsletter) to see if any parts of the communication are either direct or grass roots lobbying. This determination will depend upon whether the communication is being sent only to members, primarily to members, or primarily to nonmembers, whether the different parts of the communication are on separate or the same subject matter, and what type of legislative action is encouraged. Charitable organizations then will have to allocate the costs involved in preparing, printing, and mailing the communication between nonlobbying, direct lobbying, and grass roots lobbying expenditures. The allocation of printing and mailing costs is made on a proportional basis depending upon the amount of space occupied by the nonlobbying, direct lobbying, and grass roots lobbying parts of the communication (e.g., one page out of four = 25% of the costs). However, for communications only or primarily to members where there are lobbying articles and related articles, an allocation may reflect the fact that the related articles are partially educational, and therefore nonlobbying, and partially lobbying by virtue of being related to the lobbying article.
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Outline of Federal Restrictions on Lobbying by Section 501(c)(3) Tax-Exempt Public Charities

Endnotes:

1. This outline is for general information only and should not be relied upon for legal advice. Organizations are urged to seek qualified legal counsel on matters related to the issues discussed in this outline. Unless otherwise stated, all section references are to the Internal Revenue Code of 1986, as amended.

2. IRC § 501(c)(3).


7. In seasongood v. Commissioner of Internal Revenue, 227 F.2d 907, 912 (6th Cir. 1955), the court held that where less than five percent of the "time and effort" of the organization in question was devoted to "political" activities those activities were not substantial in relation to the organization's other activities. Seasongood provides only limited guidance, however, since the court did not determine whether the activities were substantial in relation to the organization's "primary" objectives. See Exempt Organizations Handbook: Internal Revenue Manual, § 394 (1977). Accordingly, most courts have avoided applying a strict percentage test to determine whether political or legislative activities of an organization are substantial. See Haswell v. U.S., 500 F.2d 849 (10th Cir. 1972), cert. denied, 414 U.S. 864 (1973).

8. This test was adopted by the Court of Claims in Haswell v. U.S. as part of the substantial activities test:

Although a percentage test is not determinative of the substantiality, one measure of the relative significance of [the organization's] various activities in relation to its objectives is the amount of money devoted to each category of operations.

Haswell at 1145. Under this implicit percentage approach, the amount of expenditures allocated to legislative advocacy activities is considered in relation to an organization's total expenditures, to assess the substantiality of the organization's legislative activities. The Haswell court computed a sum of expenditures attributable to lobbying activities by adding travel and entertainment expenses (which the organization acknowledged were related to lobbying) to certain administrative expenses which the court found were necessarily incidental to the organization's lobbying activities. Using these figures, the court found that the organization had spent between 19 and 20 percent of its total expenditures on political activities. Although the court noted that the "[d]istribution of expenditures is only one measure of the substantiality of [the organization's] political activities" it found that the percentage of expenditures, in and of itself, is not substantial in that organization's "political activity." Haswell at 1146-47 (emphasis added).

9. In Christian Echoes, the court rejected any percentage test to determine whether the political activities were substantial because it "obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances." Christian Echoes at 855. The court instead proposed that the "political activities of an organization must be balanced in the context of the objectives and circumstances of the organization to determine whether a substantial part of its activities was to influence or attempt to influence the legislation." Id. (court's emphasis).

Christian Echoes was a religious organization that published numerous articles attempting to influence legislation through appeals to the public to react to certain issues. Specific legislation was not always mentioned but the publications specifically requested readers to write their congressional representatives to influence political decisions: to support the Becker Amendment relating to the restoration of prayer in the public schools, to maintain certain immigration laws, to support the retention of the House Committee on Un-American Activities, to eliminate foreign aid spending, to discourage support for the world court, to cut off diplomatic relations with communist countries, etc. Id. at 855. The court alluded to no percentage figures either with respect to percentage of expenditures or percentage of expenditures related to legislative activities. The court did find, however, that the activities of the organization influenced or attempted to influence legislation and were "substantial and continuous" and not "incidental."

10. IRC § 501(h)(6).

11. Id.

12. IRC § 501(h)(7).

13. This section is taken directly from J. Blazek, Tax Planning and Compliance for Tax-Exempt Organizations: Forms, Checklists, Procedures, pp. 497-499 (2nd Ed. 1993).

14. The limitation on political activities is incorporated into the definition of an "action" organization. An organization will be an action organization if, in part, it participates or intervenes in any political campaign. Treas. Reg. § 1.501(c)(3)(ii)(i). Such organizations are deemed not to be operated exclusively for exempt purposes, and thus are not entitled to continuing tax exemption. Treas. Reg. § 1.501(c)(3)(ii)(i).


19. Id.

20. Under IRC § 4911(a)(2), the term "action" is limited to the "introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items."


22. An organization that elects the expenditure test may not be considered an action organization if its primary objective(s) can be accomplished only through legislation, and it advocates or campaigns for such objectives. Treas. Reg. § 1.501(h)-1(a).

23. IRC § 501(c)(3).

24. IRC § 501(h)(7) expressly declares the lobbying rules found in IRC § 4911 to be inapplicable to organizations not eligible to elect, or that choose not to elect. Despite the statutory disclaimers, such provisions defining "attempts to influence legislation" seem likely to serve as guidelines for section 501(c)(3) organizations that choose to remain subject to the "substantiality" standard.

25. See IRC § 4911(d)(1).

26. IRC § 4911(d).


29. IRC § 4911(c)(2).

30. IRC § 4911(c)(4).
However, if a group of autonomous organizations controls an organization but no one organization in the controlling group alone can control that organization, the Treas. Reg. § 56.4911-4(d)(2). A transfer, including a grant or payment of dues, is the basis for the organization's exempt purpose expenditures. IRC § 4911(e)(1); Treas. Reg. § 56.4911-4(b). Generally, under these rules, two organizations are deemed “affiliated” where (1) one organization is bound by decisions of the other on legislative issues pursuant to its governing instrument or (2) the governing board of one organization includes enough representatives of the other (usually, an “interlocking directorate”) to cause or prevent action on legislative issues by the first organization. Where a number of organizations are affiliated, even in chain fashion, all of them are treated as one group of affiliated organizations.

For purposes of the preceding sentence, whether an organization controls a second organization shall be determined by whether the second organization is bound, under its governing instruments, by the first organization on national legislative issues. Treas. Reg. § 56.4911-10(c).

A member of a limited affiliated group is a controlling member organization if it controls one or more of the other members of the limited affiliated group, and a member of a limited affiliated group is a controlled member organization if it is controlled by one or more of the other members of the limited affiliated group.

For purposes of the preceding sentence, whether an organization controls a second organization shall be determined by whether the second organization is bound, under its governing instruments, by the first organization on national legislative issues. Treas. Reg. § 56.4911-10(c).

The final regulations provide that expenditures for attempts to influence referenda at ballot initiatives are considered direct lobbying expenditures. Treas. Reg. § 56.4911-2(b)(1)(ii). However, the final regulations do not modify the definition of direct lobbying (which requires that a communication with legislators refer to and reflect a view on specific legislation). Therefore, communications on referenda and ballot initiatives will be considered direct lobbying if they refer to and reflect a view on specific legislation without the requirement (found in the definition of grass roots lobbying) for an encouragement to action.

This regulation distinguished between contracts made with a legislative body (which may be direct lobbying) and contacts made with an executive body (which will not be direct lobbying). The relevant portion of the regulation reads:

Thus, for example, for purposes of section 4911, the term “any attempt to influence any legislation” does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive action in accordance with an act of Congress, or by a state, municipality or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental official or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such
an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority with a proposed budget to be submitted to a legislative body, unless such submission is one of the exceptions set forth in paragraph (c) of this section.


80 Treas. Reg. § 56.4911-2(b)(4)(i). A communication directly encourages a recipient to engage in direct lobbying if the communication: (i) states that the recipient should contact a legislator, legislative body employee, or government official or employee; (ii) states the address, telephone number or similar information of a legislator or a legislative body employee; or (iii) provides a petition or tear-off postcard, or similar material to be sent to a legislator, legislative body employee, or other government official or employee. Id.

81 Treas. Reg. § 56.4911-5(f)(6)(i). A communication directly encourages a recipient to engage in grass roots lobbying if the communication: (i) states that the recipient should encourage a nonmember to contact a legislator, legislative body employee, or government official or employee; (ii) states that the recipient should provide to a nonmember the address, telephone number or similar information of a legislator or legislative body employee; or (iii) provides (or requests the recipient to provide to nonmembers) a petition, tear-off postcard or similar material for the recipient or nonmember to use to ask nonmembers to communicate views to a legislator, legislative body employee or government official or employee. An example is an organization sending multiple signature blocks to its members. Id.

82 Treas. Reg. § 56.4911-5(b)(11).


84 See Treas. Reg. § 56.4911-5(e).

85 See Id.

86 Solely for purposes of the allocation described in the text, nonmember subscriptions percentage is treated as zero unless it is greater than 15% of total distribution. Treas. Reg. § 56.4911-5(e)(2)(i).

87 Treas. Reg. § 56.4911-5(e)(2). With respect to the communication described in the text, (i) “member percentage” means the percentage of total distribution that represents distribution of a single copy to a member; (ii) “nonmember subscribers percentage” means the percentage distribution that represents distribution to nonmember subscribers (including libraries), and (iii) “all other distribution percentage” means 100% reduced by the sum of the member percentage and the nonmember subscribers percentage. Treas. Reg. § 56.4911-5(e)(7). A person is a “subscriber” to a written communication if (i) the person is a member of the publishing organization and the membership dues expressly include the right to receive the written communication, or (ii) the person has affirmatively expressed a desire to receive the written communication and has paid more than a nominal amount for the communication. Treas. Reg. § 56.4911-5(e)(5).


89 Treas. Reg. § 56.4911-5(e)(3).


91 Treas. Reg. § 56.4911-3(c)(2). A transfer, including a grant or payment of dues, is “ earmarked” for a specific purpose (i) to the extent that the transferee directs the transferee to add the amount transferred to a fund established to accomplish the purpose, or (ii) to the extent of the amount transferred or, if less, the amount agreed upon to be expended to accomplish the purpose, if there exists an agreement, oral or written, whereby the transferee may cause the transferee to expend amounts to accomplish the purpose or whereby the transferee agrees to expend an amount to accomplish the purpose. Treas. Reg. § 56.4911-4(f)(4).

92 Treas. Reg. § 56.4911-3(c)(3)(i). The final regulations clarify and limit the meaning of the term “transfer” to situations where the charity receives less than fair market value in return for the transfer. Treas. Reg. § 56.4911-3(c)(3)(i)(A). Also, the final regulations do not apply the transfer rule if the transfer is made for less than fair market value and a significant number of the general public receive goods or services from the charity at the same favorable (less than fair market value) price. See Treas. Reg. § 56.4911-3(c)(3)(i)(D).

93 See Treas. Reg. §§ 56.4911-3(c) and 56.4911-4(e). See discussion of Treas. Reg. § 56.4911-4(e) under subsection 1 above.

Treas. Reg. § 56.4911-3(b), Example (3).

Treas. Reg. § 56.4911-3(b), Examples (8) and (9).


Compare Treas. Reg. § 56.4911-3(b), Examples (4) and (5), with Example (8).

Treas. Reg. § 56.4911-3(b), Example (7).

Treas. Reg. § 56.4911-3(a)(3).

Treas. Reg. § 56.4911-3(b), Examples (11) and (12).
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