

Electing the 501(h) Expenditure Test

Most 501(c)(3) public charities will benefit from “electing” the 501(h) lobbying expenditure test. The rules that govern lobbying under 501(h) are clearer than those that apply under the “insubstantial” standard.

Step 1 – Complete Form 5768

[IRS Form 5768](#), *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation*, is the first step in electing to be governed by the 501(h) expenditure test. An organization simply supplies its name, address, and the first tax year to which it wants the election to apply. The form needs to be signed by an authorized officer, usually the president or treasurer. The election applies retroactively to the first day of the fiscal year in which the form is filed and, generally, to all subsequent years. For example, a form filed in December 2006 will bring an organization under section 501(h) from January 1, 2006 forward (assuming the organization operates under the calendar year).

Step 2 – Make a Copy

Make a copy of Form 5768 before mailing it to the IRS because the agency will NOT send a confirmation letter.

Step 3 – Track Lobbying Expenditures

Under 501(h), your organization can spend up to 20% of its first \$500,000 exempt purpose budget on direct lobbying. Direct lobbying is defined as any communication, with a legislator, expressing a view about specific legislation. Organizations with budget expenditures over \$500,000 should apply the following formula:

20% of the first \$500,000
+ 15% of the next \$500,000
+ 10% of the next \$500,000
+ 5% of the remaining
= the overall lobbying limit

Grassroots lobbying is defined as any communication with the general public, expressing a view about specific legislation, with a call to action. A call to action refers to four different ways the organization asks the public to respond to its message:

- (1) asking the public to contact their legislators or staffers;
- (2) providing the address, phone number, website, or other contact information for the legislators;
- (3) providing a mechanism to contact legislators such as a tear off, postcard, petition, letter, or email link to send a message directly to the legislators; or

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(4) listing the recipient's legislator, the names of legislators voting on a bill, or those undecided or opposed to organization's view on the legislation. An organization that has made the 501(h) election can never spend more than 25% of their overall lobbying limit on grassroots lobbying.

Therefore, a 501(c)(3), that has made the 501(h) election, with an annual budget of \$500,000, would have an overall lobbying limit of \$100,000 and a grassroots lobbying limit of \$25,000.

Note 1: All public charities, including 501(h) electing charities need to keep track of their lobbying expenditures for their 990 Form and in the event of an IRS audit.

Note 2: To revoke your organization's 501(h) election, follow steps 1 and 2, filling out the revocation portion of Form 5768 (question 2).

Please free to contact us at info@millermusmar.com or call us at 703-437-8877 and we can help you with this and any tax related matters.

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