



# Lobbying and Campaign Activities

September 18, 2012

With it being a Presidential election year, it is important for charitable and other tax exempt organizations to understand the extent to which a tax exempt organization may participate in a candidate's political campaign for public office or lobby on legislative issues. This summary provides an overview of allowable political campaign activities and lobbying activities by the following types of exempt organizations: 501(c)(3) (educational/charitable organizations), 501(c)(4) (social welfare organizations), 501(c)(5) (labor or agricultural organizations), 501(c)(6) (business leagues or trade associations), and 527 (political organizations).

## **Participation in Political Campaigns Versus Lobbying**

The IRS distinction between lobbying and political campaign activity is often confusing because both activities involve the political process. However, the distinction is an important one when analyzing what activities a tax exempt organization can conduct.

### *Participation in political campaigns for public office*

- This generally involves any participation or intervention in a political campaign on behalf of or in opposition to a candidate for public office, including elections for individuals nominated by others and all candidates for national, state, and local elective public offices.
- This includes publishing or distributing written or printed statements or making oral statements on behalf of or in opposition to a candidate.

### *Lobbying*

- The term "lobbying" is generally defined for tax purposes as any activity attempting to influence legislation, including federal, state, and local legislation, as well as public referendums. Note that, unrelated to taxes, tax exempt organizations needs to be aware of and comply with federal and state lobbyist registration rules.
- This generally includes any attempt to influence a specific piece of 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 (i.e., direct lobbying).
- This generally includes any attempt to influence a specific piece of legislation through attempting to affect the opinions of the general public or any segment of the general public (i.e., grass roots lobbying).
- This includes any communications made by an organization encouraging its members to engage in direct or grass roots lobbying.

### **Limits Applicable to Specific Tax Exempt Organizations**

#### *Section 501(c)(3) Organizations*

- Public charities and private foundations are prohibited from intervening or participating in any political campaign for public office.
- Public charities can conduct some lobbying activities so long as such activities are not, taking into account all of the facts and circumstances, a "substantial part" of their overall activities.
- Alternatively, most public charities can make an election to apply an objective test to determine whether they are conducting too much lobbying activities that is based on comparing an organization's lobbying expenses to its charitable activities expenses.
- Private foundations are generally prohibited from conducting any lobbying activities.

#### *Section 501(c)(4), (c)(5), and (c)(6) Organizations*

- Section 501(c)(4), (c)(5), and (c)(6) organizations can engage in an unlimited amount of lobbying so long as such lobbying activities are related to the organizations' exempt purposes.
- Section 501(c)(4), (c)(5), and (c)(6) organizations can intervene or participate in a political campaign for public office so long as such activities, when combined with other non-exempt activities, do not constitute the organizations' primary activities. However, such election activities are potentially subject to tax.

#### *Section 527 Organizations*

- Section 527 organizations are exempt from tax to the extent they intervene or participate in any political campaign for public office.



- Section 527 organizations can generally engage in lobbying so long as the lobbying, when combined with other non-exempt activities, does not constitute an organization's primary activity. However, amounts spent on such lobbying activities may be subject to tax.

### **Conclusion**

It is important for a tax exempt organization to have a firm grasp on what activities it can conduct with respect to a political campaign for public office versus lobbying and the applicable limitations. The penalties for failure to understand these limitations can be substantial, including the assessment of taxes on the organization and its directors, officers, and managers who approved the activity and the possible loss of tax exemption.

This summary only provides a brief overview of the applicable rules. To discuss this alert or any tax law matter, please contact your Lathrop Gage attorney or any of the attorneys listed on this alert.