

KNOWLEDGE NUGGET # 7

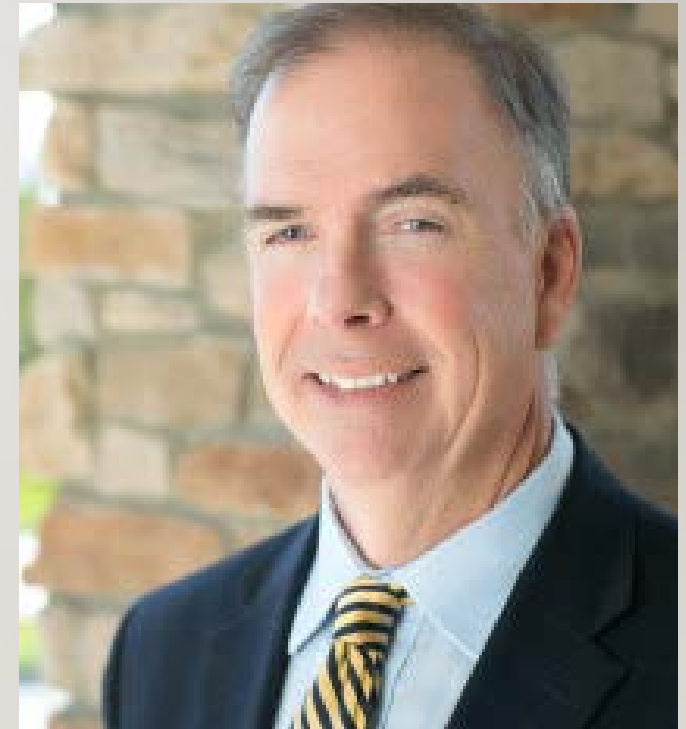
LOBBYING BY COMMUNITY FOUNDATIONS

WHAT ARE THE RULES?



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LOBBYING BY COMMUNITY FOUNDATIONS

- As community foundations explore their community leadership role, they may want to undertake activities that try to influence public policy, commonly known as “lobbying”
- All 501-c-3 organizations – including community foundations -- face certain rules and regulations when they venture into lobbying activities
- This presentation is designed to provide some background on laws governing lobbying by community foundations
- Before engaging in lobbying activities, community foundations are strongly encouraged to check with your legal counsel regarding rules in your state

BACKGROUND

- Federal tax laws already allow every charitable nonprofit to engage in some legislative lobbying activities.
- The Internal Revenue Code, in 1934, determined that, for charities, “no substantial part of the activities” may be for “carrying on propaganda, or otherwise attempting, to influence legislation.”
- All charitable nonprofits – including community foundations -- may freely engage in legislative lobbying as long as that activity amounts to only an “insubstantial” amount of their activities.
 - *Note: There is no limitation on “self-defense lobbying”, i.e., lobbying on legislation that directly affects a community foundation*

POLITICAL CAMPAIGN ACTIVITIES VS LOBBYING

- It's important to note that the law makes a clear and important distinction between **political campaign activities** and **lobbying**
- Form 990 defines **political campaign activities** as “All activities that support or oppose candidates for elective federal, state, or local public office.”
- A community foundation **cannot, under any circumstances, engage in political campaign activities**

COMMUNITY FOUNDATION INVOLVEMENT IN POLITICAL CAMPAIGNS

- Political campaign activity does **not** include any activity to encourage participation in the electoral process, such as voter registration or voter education, **provided that the activity does not directly or indirectly support or oppose any candidate**
- Engaging in unlawful political campaign activities **could result in revocation of nonprofit status, monetary penalties, or both**
- Community foundation staff or board members who wish to personally engage in political campaign activities should **make sure their personal involvement does not include any connection to the community foundation** (such as use of their community foundation email address, or a link to the community foundation's website)

WHAT IS “LOBBYING”?

- The IRS defines “lobbying” as *“All activities intended to influence foreign, national, state, or local legislation”*
- Lobbying can be either “direct” or “grassroots”
 - **Direct lobbying** - costs incurred for the purposes of attempting to influence legislation through communication with any member or employee of a legislative body or with a government official or employee that may participate in the formulation of the legislation.
 - **Grassroots lobbying** - any attempt to influence legislation through an attempt to affect the opinions of the general public or any part of the general public
- Generally, either grassroots or direct lobbying communications **needs to refer to a specific piece of legislation** and **reflect a view on the legislation** before it the activity will be considered “lobbying”

SO ... WHAT IS “INSUBSTANTIAL” LOBBYING?

- The definition of “insubstantial” **has not been provided** by Congress or the IRS
- Community foundations can lobby, and then provide evidence that their lobbying is an “insubstantial” part of their activities – which the IRS is free to accept or reject using its own **subjective** criteria
- To avoid the uncertainty of a nonprofit's lobbying activity being measured with this **subjective** test, community foundations can file Form 5768 “*Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation*”

WHY FILE FORM 5768?

- Filing Form 5768 is also known as "taking the 501(h) election"
- The 501(h) election allows the community foundation to **opt out** of the vague "**substantial**" **activity test** and use the friendlier "**expenditure**" **test**.

THE EXPENDITURE TEST

WITH 501(H) ELECTION

- The 501(h) election provides for a **fixed dollar limit** to the “lobbying nontaxable amount” that is based on the community foundation’s exempt purpose expenditures.
- Form 5768 can be filed and applied **retroactively** to the first day of the year in which it was filed.
- The 501(h) election is then in effect for **all subsequent years** unless revoked by filing a second version of the 5768.

DIRECT LOBBYING LIMITS UNDER THE 501(H) ELECTION

Total Exempt Purpose Expenditures	Related Direct Lobbying Nontaxable Amount
Not over \$500,000	20% of total exempt purpose expenditures
Over \$500,000 but not over \$1,000,000	\$100,000 + 15% of the excess over \$500,000
Over \$1,000,000 but not over \$1,500,000	\$175,000 + 10% of the excess over \$1,000,000
Over \$1,500,000 but not over \$17,000,000	\$225,000 + 5% of the excess over \$1,500,000
Over \$17,000,000	\$1,000,000
<i>The nontaxable amount for grassroots lobbying expenditures is 25% of these amounts</i>	

WHAT IF YOUR LOBBYING EXCEEDS THE EXPENDITURE LIMITS?

- If a community foundation exceeds the nontaxable amount of lobbying expenditures, they will need to pay excise tax by filing *Form 4720 Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code*
- The excise tax will be 25% of the amount of expenditures over the nontaxable amount.
- Furthermore, if the community foundations's lobbying expenditures on average exceed 150% of the nontaxable direct lobbying or grassroots lobbying amount over a four-year period, **the community foundation will lose its exempt status.**

FORM 990 DISCLOSURE

- An organization that answered "Yes" on Form 990, Part IV, *Checklist of Required Schedules*, line 4 must complete the appropriate parts of Schedule C and attach Schedule C to Form 990.
 - “*Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year?*”

EXAMPLE, FORM 990, SCHEDULE C, PART II-A

Filed Form 5768
Foundation for the Carolinas

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

A Check if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures)

B Check if the filing organization checked box A and "limited control" provisions apply

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1a Total lobbying expenditures to influence public opinion (grass roots lobbying)															
b Total lobbying expenditures to influence a legislative body (direct lobbying)		36,000													
c Total lobbying expenditures (add lines 1a and 1b)		36,000													
d Other exempt purpose expenditures		321,419,622													
e Total exempt purpose expenditures (add lines 1c and 1d)		321,455,622													
f Lobbying nontaxable amount Enter the amount from the following table in both columns		1,000,000													
<table border="1" style="width: 100%;"> <thead> <tr> <th style="width: 50%;">If the amount on line 1e, column (a) or (b) is:</th> <th style="width: 50%;">The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000	Over \$17,000,000	\$1,000,000		
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Over \$17,000,000	\$1,000,000														
g Grassroots nontaxable amount (enter 25% of line 1f)		250,000													
h Subtract line 1g from line 1a If zero or less, enter -0-		0													
i Subtract line 1f from line 1c If zero or less, enter -0-		0													
j If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?			<input type="checkbox"/> Yes <input type="checkbox"/> No												

EXAMPLE, FORM 990, SCHEDULE C, PART II-B

Has **Not** Filed Form 5768
Central Indiana Community
Foundation

Schedule C (Form 990 or 990-EZ) 2018 Page **3**

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

For each "Yes" response on lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity

	(a)		(b)
	Yes	No	Amount
1 During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of			
a Volunteers?		No	
b Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?		No	
c Media advertisements?		No	
d Mailings to members, legislators, or the public?		No	
e Publications, or published or broadcast statements?		No	
f Grants to other organizations for lobbying purposes?	Yes		14,100
g Direct contact with legislators, their staffs, government officials, or a legislative body?		No	
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?		No	
i Other activities?		No	
j Total. Add lines 1c through 1i			14,100
2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?		No	
b If "Yes," enter the amount of any tax incurred under section 4912			
c If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

Part IV Supplemental Information

Provide the descriptions required for Part I-A, line 1, Part I-B, line 4, Part I-C, line 5, Part II-A (affiliated group list), Part II-A, lines 1 and 2 (see instructions), and Part II-B, line 1. Also, complete this part for any additional information

Return Reference	Explanation
SCHEDULE C, PART II-B, LINE 1F	GRANTS TO OTHER ORGANIZATIONS FOR LOBBYING PURPOSES LOBBYING EXPENSES ARE PAID TO OUTSIDE ORGANIZATIONS THAT LOBBY ON BEHALF OF COMMUNITY FOUNDATIONS AND RELATED ISSUES

Schedule C (Form 990 or 990EZ) 2018

SUMMARY

- Community foundations are subject to the same rules as all 501-c-3 organizations when it comes to lobbying activities
- Lobbying is permitted, but must be an insubstantial part of your activities
- Community foundations can clarify the extent of their lobbying by filing Form 5768 and "taking the 501(h) election"
- Community foundations are strongly encouraged to consult with their legal counsel and their auditors if they have questions about this process

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