

WEBSITES, PART 3

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Political Campaigns

There is an absolute prohibition against organizations exempt under Section 501(c)(3) from participating in any political campaign on behalf of or in opposition to any candidate for elective public office. There are no exceptions! The IRS has revoked the exempt status of organizations that violated this rule and such revocations have been upheld by the courts. In addition to revocation, the IRS may levy a 10% excise tax on each expenditure made for political purposes (Internal Revenue Code, Section 4955)

Does the providing of a link from the exempt organization's website to that of another organization's website which does participate in a political campaign result in per se political campaign intervention? There is no specific guidance in the Code. (What guidance exists in the Internal Revenue Code on political activities by an exempt organization is 15 to 20 years old) There appears to be no rule (or legal basis for one) that would automatically attribute the statements of one organization to another solely on the basis of a web link. Generally an organization that provides a web link to another organization's web site has no control over the contents of that web site. However, I recommend that exempt organizations do not link to the web sites of political campaigns or to those sites blatantly supporting or opposing a political candidate.

Lobbying

Lobbying is an attempt to influence legislation. A Section 501(c)(3) organization may not engage in lobbying *as a substantial part of its activities*.¹ The problem is in defining what is "substantial". A 1955 case held that an organization expenditure of less than 5% of its volunteer time and effort on lobbying was insubstantial. More recent cases suggest that a percentage test is not appropriate, and that an analysis of all the facts and circumstances of an organization's legislative and other activities is required.

Direct lobbying does not include attempting to influence any local council (e.g., city council or county council) on legislation of direct interest to the exempt organization or its members.

Because of the vagueness of the "no substantial part" rule coupled with the threat of revocation of exempt status, Congress in 1976 enacted Section 501(h) to the Internal Revenue Code. Under 501(h), certain 501(c)(3) organizations may make an election to avoid the "no substantial part" test and substitute specific dollar limitations on lobbying expenditures. The initial limit is 20% of the first \$500,000 of exempt purpose expenditures. That percentage decreases as the exempt purpose expenditures increase. The top limit of \$1,000,000 in lobbying expenditures applies if the total exempt purpose expenditures totals \$17,000,000.

The rules under Section 501(h) make a distinction between "direct" lobbying and "grass roots lobbying". Direct lobbying is attempts to influence legislation through contacts with any member or employee of a legislative body. Direct lobbying includes communications with any government official or employee (other than officials or employees of administrative bodies) who participate in the formulation of legislation, *but* only if the principal purpose of the communication was to influence legislation. Direct lobbying also includes attempts to influence ballot initiatives subject to a public vote by means of communications to the public.

"Grass roots" lobbying is the attempt to influence legislation by attempts to affect the opinions of the general public or any segment of the public by means of a communication that reflects a view on the legislation and

¹ Section 501(c)(3) organizations that are classified as private foundations are generally prohibited from lobbying, subject to certain limited exceptions.

includes a “call to action”. A call to action encourages the recipient to take action in any one of the following ways:

1. Urging contact with a legislator or employee of a legislative body or any government official or employee who may participate in the formulation of legislation.
2. Giving the address, phone number, or e-mail address of legislators or employees of the legislative body.
3. Including model letters, petitions, or similar material for the recipient to communicate with the legislator or employee of the legislative body.
4. Identifying one or more legislators who will vote on the legislation as (a) opposing the exempt organization’s view; (b) being undecided; (c) being the recipients representative; or d) being on the committee or subcommittee that will consider the legislation.

The above rules apply to all means of contact (snail mail, phone, personal contact, newspaper ads) including use of the internet though e-mail, web sites, chat rooms, and (ugh), spam. The use of the internet to carry on lobbying and grass roots lobbying is dramatically more efficient in terms of both time and money. How will the IRS view this efficiency? Given the lack of guidance on the application of the “substantial part” test”, exempt organizations that plan to use this capability for lobbying or grass roots lobbying purposes would be well advised to make the 501(h) election before engaging in any such activity.

In applying the IRS Code to web sites such as a virtual store or a virtual publication we are largely on safe ground. (See Parts 1 and 2 of this series). However in view of the vagueness of the “no substantial part” test and doubts as to how the IRS will view the increased use of the internet for lobbying (even though it involves no more effort than other means), exempt organizations would be well advised to exercise the 501(h) option before engaging in any lobbying activity using the internet.

Does a link from an exempt organization’s web site to another organization’s web site that engages in lobbying constitute lobbying by the exempt organization? As noted above in connection with political activity a link to another organization’s web site should not of itself constitute attribution of the content or activities from one organization to another.

As an added precaution against attribution, I suggest exempt organizations use a “jump” or “splash” page that alerts the user that he or she is leaving the exempt organization’s web site.

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