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DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

January 8, 1998

MEMORANDUM FOR WILLIAM MARSHALL
ASSOCIATE COUNSEL TO THE PRESIDENT
GENERAL COUNSEL OFFICE

CC: MARTHA FOLEY
NATIONAL SECURITY COUNCIL

FROM: JOSEPH H. GUTTENTAG
DEPUTY ASSISTANT SECRETARY (INTERNATIONAL TAX)

SUBJECT: **International Family Planning**

At our meeting on Tuesday we promised to provide you with some additional materials. Enclosed is an analysis of the different definitions of lobbying in federal laws. We also draw your attention to a portion of the income tax regulations dealing with lobbying activities of section 501(c)(3) organizations which reads as follows:

> "Lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take actions with respect to legislation." U.S. Treasury Regulations section 56.4911-2(c)(2).

We have read the Atwood memo which you furnished to us.

We also had promised to respond to certain questions you raised. You inquired as to limitations on U.S. charities which provide funds overseas to organizations which engage in lobbying. First, the IRS takes the position that lobbying a foreign government is the same as lobbying a government in the US for purposes of the limitations imposed by section 501(c)(3). Second, if a U.S. organization provides funds to a foreign entity earmarked for lobbying, the funds would count as lobbying expenses in calculating the U.S. entity's lobbying expense limitations. U.S. law gets rather fuzzy beyond these issues.

Based on our meeting and our understanding of the various issues, our recommendations are as follows:

Proposal

1. We should propose that recipients of AID funds be prohibited from engaging in lobbying.

2. For a definition of lobbying we should refer to section 501(c)(3) of the Internal Revenue Code and the corresponding regulations.

Reasons for Proposal

This approach ties in with the Smith approach but provides a much more limited restriction on lobbying as described in the materials we have furnished to you. In particular, the organizations receiving grants could address issues and propose programs so long as their efforts are not tied to a particular piece of legislation or legislative proposal. Read on however, for our reasons.

Having given further thought to the proposal to limit the restriction to abortion lobbying we vote against it. We think that real enforcement of such a limitation is perilous and unlikely to be effective, and accordingly will come back to haunt us when Congress seeks evidence that we are enforcing the standard. The IRS might even be forced to say that a content-based limitation would be unadministrable. We think that the general limitation is less obtrusive and can be administered without doing a time-consuming detailed review of the content of each lobbying communication. It can be defended on the grounds that we think it wrong to use AID grants to subsidize lobbying of foreign governments. (At the same time we could continue to maintain our domestic opposition to the legislation championed by Congressman Istook which would prevent nonprofits receiving federal grants from engaging in lobbying on the grounds that receipt of a federal grant should not limit an organization's ability to participate in our own democratic process.) The limited abortion lobbying proposal is harder to defend as we are thrusting our policies into the legislative debate in a foreign country. These are issues more in your court than ours.

We also suggest, though this would not be in the original proposal, that foreign entities adversely affected by our proposal could adopt regimes similar to those adopted in the United States of bifurcating activities as we do between a (c)(3) and a (c)(4). Through this mechanism, they could preserve their lobbying activities in organizations that are to no degree supported by U.S. funds.

There is a quick fix on the issues. Give me a call if I can be of any help.

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The Exempt Organization Tax Review

MAY 1997

LENGTH: 10597 words

DEPARTMENT: CONFERENCE NOTES (SPR)

CITE: 16 Exempt Org. Tax Rev. 795

HEADLINE: 16 Exempt Org. Tax Rev. 795 - ANALYSIS OF THE DIFFERING DEFINITIONS OF 'LOBBYING' IN FEDERAL LAW.

AUTHOR: Troyer, Thomas A.,
Boisture, Robert A.,
Lauber, Albert G.
Caplan & Drysdale

SUMMARY:
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Thomas A. Troyer, Robert A. Boisture, and Albert G. Lauber, all of Caplan & Drysdale, Washington, prepared the report for INDEPENDENT SECTOR in preparation for the anticipated release of a General Accounting Office report on a perceived need to 'harmonize' three definitions of lobbying (under sections 4911 and 162(e)) and the Lobbying Disclosure Act of 1995. They conclude that the definitions serve different purposes and should not be 'harmonized.'

Mr. Troyer presented the report at a briefing hosted by INDEPENDENT SECTOR April 7.

TEXT:
INDEPENDENT SECTOR has asked us to review the subject of the current examination by the General Accounting Office of the differing definitions of the term 'lobbying' in three separate parts of federal law, with a particular view to determining whether any revision of the definition of that term in section 4911 of the Internal Revenue Code, concerning charitable organizations, is desirable. /1/

Our research of the relevant legislative history and other authorities and our analysis of the issues involved lead us to conclude, most importantly, that no such revision is either desirable or appropriate. Accordingly, INDEPENDENT SECTOR urges GAO to recommend that Congress make no such change.

I. Background and Summary of Analysis

INDEPENDENT SECTOR (IS) is a national coalition of public charities, foundations, corporations, and voluntary organizations that serves as a forum to encourage charitable giving, volunteering, and nonprofit initiative. It currently has approximately 800 member organizations.

As part of the Lobbying Disclosure Act of 1995 (the 'LDA'), Congress directed the General Accounting Office to prepare a report comparing the definitions of the term 'lobbying' in three distinct statutory contexts: IRC section 4911, which governs lobbying by certain public charities; IRC section 162(e), which governs lobbying by for-profit businesses; and the Lobbying Disclosure Act, which governs registration of paid lobbyists and public disclosure of their lobbying activities. See 2 U.S.C. section 1610(d)(1). The act also asks GAO to report any statutory changes to the LDA or the code 'that the Comptroller General may recommend to harmonize the definitions. ' Id. section 1610(d)(3).

Our research and analysis strongly suggest that 'harmonization' should not be an important goal in approaching these issues. The definitions of 'lobbying' in section 4911, 162(e), and the LDA belong to separate statutory regimes, animated by wholly different legislative purposes. In each case, Congress defined 'lobbying' in a manner appropriate to the specific and distinct goals it sought to accomplish. Hence, because of the fundamental differences in the policies and purposes underlying the three definitions, IS recommends that GAO report to Congress that 'harmonization' of the three ought not to be an important objective of any congressional reconsideration of them.

Beyond that, our research and analysis disclose that no sound basis exists for revising section 4911. Congress enacted this provision for the plainly stated purpose of encouraging charities to participate more fully in the legislative process within carefully specified limits. The section 4911 definition of 'lobbying' has been carefully crafted, by Congress, the Treasury Department, and the Internal Revenue Service, to achieve that objective. Examination of the legislative histories and purposes of the definitions of 'lobbying' in IRC section

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162(e) and the LDA -- altogether different as they are from the history and purpose of section 4911 -- demonstrates that their differences from the section 4911 definition afford no justification for change of the section 4911 definition. Accordingly, INDEPENDENT SECTOR urges GAO to recommend that Congress make no such change.

INDEPENDENT SECTOR takes no position on whether the section 162(e) definition should be modified. With a single, limited exception, it also takes no position on whether the LDA definition should be modified. However, to the extent that harmonization is thought desirable despite the different legislative purposes underlying the three laws, analysis indicates that it should be accomplished by aligning the definition of 'lobbying' in section 162(e) more closely with the section 4911 definition in two respects.

II. The Section 4911 Definition of 'Lobbying'

A. Application of the Definition

The definition of 'lobbying' in IRC section 4911 applies only to charitable organizations that have elected to have their legislative expenditures governed by IRC section 501(h). In order to make this election, a charity must be tax-exempt under IRC section 501(c)(3) and must be recognized as a 'public charity' under section 509(a). Thus, the section 4911 definition applies generally to charities that have widespread public support and are eligible to receive tax-deductible contributions. /2/

Public charities, by their nature and tax status, are barred from conferring any sort of private benefit, financial or otherwise. They must be organized and operated exclusively for religious, educational, or other charitable purposes -- all purposes that the law has long determined to serve public, not private, interests. Since its inception, the federal tax law has specified that 'no part of the net earnings' of any charity may 'inure to the benefit of any private shareholder or individual.' IRC section 501(c)(3). Last year Congress amended the code to provide powerful additional assurance -- in the form of so-called 'intermediate sanctions' -- that charities' assets will be strictly confined to use for public purposes. IRC section 4958.

Moreover, section 501(c)(3) has long prohibited charities from engaging in political campaign activities. That bar is strict and absolute. A charity may not contribute to a political campaign; endorse a candidate for public office; or support or oppose a political candidate in any way, directly or indirectly. Nor may a charity contribute to, organize, manage, or be identified with a Political Action Committee (PAC).

A charity that violates any of these rules loses its tax exemption and its qualification to receive tax-deductible contributions. A private party who diverts charitable assets to private benefit becomes subject to a series of sanctions carefully tailored to enforce restoration of those assets to the charity for their intended public purposes. See IRC section 4958. Violation of the political prohibition also triggers penalty taxes on the charity and (in certain circumstances) the individuals who manage it. See IRC section 4955. To afford an additional safeguard, the code grants the IRS the special, highly unusual power to seek prompt court injunctions against proscribed political activities without awaiting the end of the offending charity's tax year, as the IRS must do in most other civil or criminal proceedings. See IRC section 7409.

Consistent with these legal rules requiring charities to operate in the public interest, charities can play critically important roles in the formation of public policy. In providing a vehicle by which individual citizens can come together and express their views on issues of public concern, charities constitute a unique component of our democratic process. In contrast to business interests, ordinary citizens often lack the ability, inclination, or means to participate individually in legislative debates. Thus, when charities bring their members and supporters into the policymaking process, they provide legislators with citizens' views that otherwise would not be expressed. Further, charities often possess data, experience, and expertise, gained through hands-on provision of public services, that can provide legislators key ingredients for fully informed exercise of their legislative functions.

B. Background of Section 4911

1. Prior Law: The 'Substantial Part' Test

In 1934, Congress amended the statutory predecessor of section 501(c)(3) to include the restriction that 'no substantial part' of an organization's activities may constitute 'carrying on propaganda, or otherwise attempting, to influence legislation.'

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The legislative history is scant. /3/ The committee reports contain no description whatever of the grounds for the amendment. In explaining the amendment on the Senate floor, its sponsor, Sen. David Reed, R-Pa., stated that the statutory language 'goes much further than the Senate Finance Committee intended to go' and that the Committee intended the restriction on lobbying to deny deductions only for 'selfish' contributions 'made to advance the personal interests of the giver.' 78 Cong. Rec. 5861 (1934). The language was, however, enacted without refinement or further explanation.

In the four decades between 1934 and the enactment of section 4911, neither the courts nor the IRS ever succeeded in developing a clear definition of the 'substantial part' test. In particular, the IRS and the courts refused to adopt any bright-line standard based on the percentage of an organization's total expenditures devoted to lobbying. See, e.g., Christian Echoes National Ministry v. United States, 470 F.2d 849 (10th Cir. 1972); Haswell v. United States, 500 F.2d 1133 (Ct. Cl. 1974); GCM 36148 (Jan. 28, 1975). Instead, a vague 'facts and circumstances' analysis was applied to determine whether a charity's lobbying was 'substantial,' with inevitably unpredictable results. Besides creating quantitative problems, this approach created uncertainty of a qualitative nature: difficult line-drawing problems arose as judges attempted to distinguish between 'lobbying' and 'educational activities.' See, e.g., Kuper v. Commissioner, 332 F.2d 562 (3d Cir. 1964); League of Women Voters v. United States, 180 F. Supp. 379 (Ct. Cl. 1960).

Not surprisingly, the uncertainty surrounding application of the 'substantial part' test caused most charities to steer altogether clear of legislative debates. This reluctance was exacerbated by the extreme sanction for any miscalculation: revocation of the charity's tax exemption and its qualification to raise tax-deductible contributions. In practical terms, the 'substantial part' test thus erected a near-absolute bar against charities' participation in the formation of public policy.

2. The Enactment of Section 4911

In 1971, Congress began what became a six-year effort to address the fundamental irony inherent in recognizing charities' essential contribution to public welfare, while simultaneously denying them any meaningful role in formulating public policy. In March 1971, Sen. Muskie, D-Maine, introduced the first of a succession of bills designed to clarify and liberalize the tax-law restriction against lobbying by public charities -- and thus encourage them to participate more fully in the legislative process at the national, state, and local levels. S. 1408, 92d Cong., 1st Sess. (1971). The legislative history leaves no doubt about the purpose of this congressional initiative:

Senator Muskie:

> 'It makes no sense to decide that these organizations operate in the public interest and grant them tax-exempt status and then silence them when they attempt to speak to those who must decide public policy.' 117 Cong. Rec. 8517 (1971).
> 'These organizations can be a valuable source of information; they can broaden legislators' understanding of proposed legislation, and they can suggest valuable legislative alternatives.' 121 Cong. Rec. 42028 (1975).

Sen. Nelson, D-Wis.:

'The present law governing legislative activities of public charities is unduly restrictive, difficult to administer, and undemocratic. The present law effectively inhibits a diverse, informed, and important segment of our society from presenting its views either to Congress or State and local legislative bodies, and deprives legislators of the experience and knowledge of these charities.' 119 Cong. Rec. 5746 (1973)

' Charities represent the public in many important areas such as health, education, and the environment. These groups have much information to contribute and a wide range of helpful experience that could greatly assist the consideration and enactment of this country's laws.' 119 Cong. Rec. 5749 (1973).

Sen. Bob Dole, R-Kan.:

'Charities can be and should be important sources of information on legislative issues.' 121 Cong. Rec. 42032 (1975).

Rep. Barber Conable, R-N.Y.:

'The role of the charities in a pluralistic society -- something we are all dedicated to -- is constructive and the charities should not be muzzled.' 119 Cong. Rec. 42632 (1973).

The process by which Congress codified its intent to encourage lobbying by charities was careful and deliberate. In 1972, bills designed to achieve this objective were introduced in both the House and the Senate. See S. 3036, 92d Cong., 2d Sess. (1972); H.R. 13270, 92d Cong., 2d Sess. (1972). The Ways and Means Committee held three full days of hearings on the subject, and more than 100 witnesses submitted testimony. See Hearings on H.R. 13720 Before the House Comm. on Ways and Means, 92d Cong., 2d Sess. (May 3-5, 1972). Representatives of leading charitable institutions testified about their capacity to make useful contributions to the consideration of public policy -- specifically, legislative policy -- and urged the Committee to allow them sufficient freedom to make those contributions. Members of Congress, the Chairman of the ABA Tax Section, the Chairman of President Nixon's Council on Environmental Quality, and a wide range of other witnesses testified in favor of liberalizing the existing tax restraint on charities' legislative activities. Id.

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At least eight other bills with the same objective were introduced during the next four years. After numerous revisions of the draft legislation, additional hearings were held in 1976. See Hearings on H.R. 13500 Before the House Comm. on Ways and Means, 94th Cong. 2d Sess. (May 12, 1976). The Coalition of Concerned Charities, consisting of some 80 public charities, expressed its support for the final bill. The Treasury Department supported the bill without reservation, stating its understanding that the bill comprised both a clarification and a liberalization of existing law. Id. at 10-12 (statement of William M. Goldstein, Dept. Asst. Sec'y for Tax Policy).

The statute that emerged from this painstaking process -- IRC section 4911 and its companion provision, IRC section 501(h) -- enjoyed broad bipartisan support. Chairman Ullman, D-Ore., had long been a vigorous proponent of the legislation. The Committee's senior Republican, Rep. Barber Conable, led the effort to press the legislation to enactment and introduced the final bill. Among the members of the Ways and Means Committee who sponsored that bill were

Reps. Gibbons, D-Fla.; Rangel, D-N.Y.; Vanderjagt, R-Mich.; and Frenzel, R-Minn. The 43 Senators who joined in sponsoring the Senate version included Sens. Muskie; Dole; Baker, R-Tenn.; Cranston, D-Calif.; Stevens, R-Alaska.; and Leahy, D-Vt. The bill passed both Houses of Congress without opposition.

C. The Section 4911 Statutory Framework

Under section 4911 and its companion provision, section 501(h), eligible public charities can elect to have the limitation on their lobbying specified in dollar terms, with the limits computed as fixed percentages of the organization's annual charitable-purpose expenditures. The overall lobbying ceiling equals 20 percent of the first $ 500,000 of such charitable expenditures. The percentage declines as expenditures rise, and the ceiling reaches a maximum allowance of $ 1 million per year for organizations with annual budgets exceeding $ 17 million. /4/ Only 25 percent of this amount may be devoted to 'grassroots' lobbying. Expenditures that exceed either the grassroots or overall lobbying limits are subject to a 25 percent penalty tax. An organization loses its tax-qualified status if it exceeds either of these ceilings by more than 50 percent over a four-year period.

The linchpin of this regime is the section 4911 definition of 'lobbying.' Under this definition, 'influencing legislation' includes both 'grassroots' and 'direct' lobbying, defined as follows:

> Grassroots: 'any attempt to influence any legislation through an attempt to affect the opinions of the general public or any segment thereof' IRC section 4911(d) (1)(A) .
> Direct: 'any attempt to influence any 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' IRC section 4911(d)(1)(B) .

The statute defines 'legislation' to include 'action with respect to Acts, bills, resolutions, or similar items by the Congress, any State legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure' IRC section 4911(e)(2) .

Section 4911 also codifies five important exceptions to the definition of lobbying. Thus, even if a communication would constitute 'lobbying' under the general definitions above, it is excluded by IRC section 4911(d)(2) if it falls within any of the following categories:

(A) Making available the results of 'nonpartisan analysis, study, or research';
(B) Providing 'technical assistance' to a governmental body (or committee thereof) in response to a written request from that body;
(C) Appearances before, or communications to, a legislative body with respect to legislation affecting 'the existence of a charity , its powers and duties, tax-exempt status, or the deduction of contributions to it ';

(D) Certain communications with a charity's members concerning legislation of interest to them; and
(E) Communications with executive branch officials and employees, unless the primary purpose is to influence legislation.

These exceptions have a long history in the tax law affecting charities. The phrase 'nonpartisan analysis, study, or research' entered the tax law in 1959 as an exception to a regulatory description of 'action' organizations. See Treas. reg. section 1.501(c)(3)-1(c)(3)(iv). In 1969, Congress enacted IRC section 4945(e), which defines 'lobbying' for purposes of the ban against legislative activities by private foundations. Like section 4911, section 4945(e) defines 'lobbying' to exclude 'nonpartisan analysis,' 'technical assistance,' self-defense lobbying, and executive-branch communications. (Because private foundations rarely have members, an exception for membership communications was not included in section 4945(e)). Both the legislative history and subsequent IRS interpretations indicate that Congress viewed section 4945(e) -- and the exceptions in particular -- as codifying existing law that was applicable to all charities, not just private foundations. See S. Rep. No. 91-552, 91 Cong. 1st Sess. 48 (1969); Technical Memorandum of Treasury Position on H.R. 13270, at 11 (Sept. 30, 1969). Accord GCM 36127 (Jan. 2, 1975); GCM 34289 (May 3, 1970).

D. The Treasury Department Regulations

In 1986, the Treasury Department issued proposed regulations defining 'lobbying' for purposes of section 4911. Prop. reg. section 56.4911-2 (1986). This definition was drawn almost verbatim from regulations that Treasury had proposed in 1980, under section 162(e) of the code, to define

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'lobbying' by for-profit businesses. See Prop. reg. section 1.162- 20(c)(4) (1980). The 1986 proposed regulations thus represented an early effort by Treasury to harmonize the definitions of 'lobbying' applicable respectively to business taxpayers and to charities.

The 1986 proposed regulations defined 'lobbying' broadly, using terms that commentors found vague and difficult to apply. Specifically, the proposed regulations defined 'lobbying' to include communications that merely 'pertained' to legislation. They also treated any communication pertaining to legislation (other than 'academic or scientific' material) that was distributed to the public as grassroots lobbying, whether or not the communication urged recipients to take any action on legislation.

The response to the proposed regulations was immediate and overwhelmingly negative. By the spring of 1987, Treasury and the IRS had received well over 4,000 written comments on the 1986 proposals, almost all of which urged that they be withdrawn or modified. Congress itself was sharply critical of Treasury's first attempt to interpret section 4911, finding the proposed regulations at odds with the clarifying and remedial purposes of the 1976 legislation. In an extraordinary display of congressional unanimity, the Senate Finance Committee, the House Ways and Means Committee, and the Senate Committee on Appropriations each sent letters to the IRS in early 1987 urging that the proposed regulations be withdrawn. /5/ Numerous other members of Congress wrote individual letters to the same effect. /6/

These letters criticized the proposed regulations for reintroducing into the tax law the very ambiguity -- and resulting deterrent to charities' active participation in the legislative process -- that Congress had sought to eliminate by enacting section 4911 in 1976. Members of Congress objected strongly to Treasury's proposed definition for its overbreadth, noting that it swept into 'lobbying' many educational and permissible advocacy activities that charities had traditionally conducted. The letters insisted that the section 4911 definition of 'lobbying' had to be sufficiently clear to allow charities to participate in public policy debates with confidence that they would not be putting their tax-qualified status at risk. The following excerpts are representative of the views expressed by Congress:

Senate Finance Committee:

> ' Sections 501(h) and 4911 , enacted with strong bipartisan support, clarified the lobbying rights of nonprofit groups. We are concerned that the proposed regulations do the opposite. They appear to introduce ambiguity about what activities constitute lobbying by such groups and we feel they restrict lobbying in ways not intended by the 1976 Act.' Finance Comm. Letter, at 1

House Ways and Means Committee:

> 'The proposed regulations have already dramatically affected the operations of many public and private charitable organizations by inhibiting their traditional educational and advocacy and fund raising activities. * * * Members of Congress depend on information provided by nonprofit organizations. Their information and expression of opinion enrich our ability to make well-informed public policy decisions. Any administrative decision by the Service that would inhibit the ability of these organizations to conduct their legitimate exempt activities would constitute a disservice to all.' W&M Comm. Letter, at 1.

Senate Appropriations Committee:

> ' T he proposed rules are so ambiguous and broad that they threaten to severely limit present beneficial activities of public charities. Specifically, the regulations' definition of grassroots lobbying and the inclusion of education and research under the lobbying umbrella could serve to undermine much of the important work carried out by public charities.' Appropriations Comm. Letter, at 1.

Rep. Brooks, D-Texas:

> 'Public charities are the situs of an enormous wealth of expertise and information on matters of vital interest to this nation. To prevent these groups from sharing their expertise and information with the general public would be tragic. To prevent them sharing their expertise and information with federal, state, and local legislators -- the makers of this nation's policy -- would be disastrous.' Letter from Chairman Brooks to Commissioner Gibbs (Feb. 19, 1987), at 1.

By April 1987, it was clear that the proposed regulations were unacceptable, and IRS instructed its examiners to use pre-1986 standards until revised final regulations were issued. IRS Announcement IR-87-49 (April 9, 1987). Public hearings were held, and IRS Commissioner Gibbs established an Exempt Organization Advisory Group to provide assistance with the redrafting process. See IRS News Release (IR-87-71)

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(June 3, 1987). Former IRS Commissioner Donald C. Alexander chaired the Advisory Group, which included legal experts and academics specializing in the exempt organization field and representatives of tax-exempt charities (including INDEPENDENT SECTOR). Id. In December 1988, after several public meetings of the Advisory Group, Treasury issued revised proposed regulations interpreting section 4911.

Treasury solicited and received additional public comments on the revised proposed regulations, and an additional public hearing was held on them. See Preamble to the 1990 Final Regulations, 55 Fed. Reg. 35579, 35580 (1990). The Commissioner's Exempt Organization Advisory Group met further. Building on this additional analysis and commentary, the Treasury and IRS drafters worked out further revisions and refinements of the 1988 proposals. The process culminated in the finalization of regulations in 1990. Id.

The 1990 regulations, which remain in effect, consist of a carefully organized and articulated set of rules establishing objective and generally easy-to-apply criteria for determining whether an activity is, or is not, lobbying. In contrast to the 1986 proposed regulations, which defined lobbying to include any communication 'pertaining to' legislation, the 1990 regulations provide that a communication will be lobbying only if it 'refers to specific legislation' and 'reflects a view on such legislation.' Treas. reg. section 56.4911-2(b)(1)(ii). 'Specific legislation' is defined to include both pending bills and 'specific legislative proposal s .' Treas. reg. section 56.4911-2(d)(1)(ii). Furthermore, a communication does not constitute grassroots lobbying unless it contains a 'call to action' -- generally, an encouragement for members of the public to contact legislators. See Treas. reg. section 56.4911-2(b)(ii). Each of these rules is extensively illustrated by examples.

A second key aspect of the current regulations is the detailed guidance they provide for the allocation of expenditures (in whole or in part) to lobbying. In general, charities must count as lobbying expenditures all direct costs of producing a lobbying communication (including salaries and deferred compensation), as well as an allocable share of overhead costs. See Treas. reg. section 56.4911-3(a)(1). The regulations also deal with the issue of when the subsequent legislative use of nonlobbying materials, such as 'nonpartisan analysis,' will cause the cost of producing such materials to be allocated in part to lobbying. See Treas. reg. section 56.4911-2(b)(v). These rules provide unambiguous directions to charities about how to characterize the various aspects of their operations which bear on legislation and on the computation of their permissible lobbying amounts.

In sum, the legislative history of section 4911, amplified by the congressional reaction to the 1986 proposed regulations, makes three points abundantly clear:

First, Congress in enacting section 4911 intended to clarify and liberalize the tax-law restrictions on charitable lobbying. Congress accordingly insisted that the term 'lobbying' should be defined as unambiguously as possible and in a manner that did not inhibit charities from expressing their views on public policy.

Second, all but one of the exceptions to the definition of lobbying incorporated in section 4911(e)(2) -- in particular those for 'nonpartisan analysis,' 'technical assistance,' and 'self-defense' -- had been part of the tax law for many years. /7/ Those exceptions cover educational work, research, policy analysis and other activities which have long been part of charities' essential public-service mission. In its 1987 reaction against Treasury's first proposed regulations, Congress strongly reaffirmed its intention that such activities should not be swept into the definition of charitable lobbying.

Third, Congress made its intent clear that 'lobbying' by charities should appropriately be defined more narrowly than 'lobbying' by for-profit businesses. Section 4911 on its face includes five exceptions to lobbying that have no counterpart in section 162(e). And Congress explicitly stated that Treasury's 1986 definition of 'lobbying' for charities was too broad, even though it mirrored the definition that prior regulations had developed for business taxpayers.

III. The Section 162(e) Definition of 'Lobbying'

The Lobbying Disclosure Act directs GAO to consider a second tax-law definition of lobbying, that contained in section 162(e). Unlike the lobbying provisions affecting charities, section 162(e) does not prohibit businesses from lobbying, nor does it limit the amount of lobbying they may do. Rather, it denies a deduction for lobbying costs as an 'ordinary and necessary' business expense. As explained more fully below, section 162(e) was a revenue-raising provision designed principally to discourage business lobbying. As befits a code provision designed to discourage lobbying rather than to encourage it, the section 162(e) definition of 'lobbying' is more inclusive than the section 4911 definition for charities. Any objective comparison of the two definitions must recognize the quite different -- indeed, largely contrary -- roles that these two provisions play in the tax law.

A. The Section 162(e) Statutory Framework

Section 162(e), as amended in 1993, generally bars taxpayers from claiming a business expense deduction for state and federal lobbying costs. The only exceptions to this otherwise blanket disallowance are communications directed to 'local councils' and de minimis lobbying entailing costs of less than $ 2,000 per year. See IRC section 162(e)(2) & (5)(B). Specifically, section 162(e)(1) provides that no deduction shall be allowed for:

Influencing legislation;

Any attempt to influence the general public, or segments thereof, with respect to elections, legislative matters, or referendums; or

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> Any direct communication with a covered executive branch official in an attempt to influence his or her official actions or positions. 'Covered executive branch officials' are defined narrowly to include only the president, vice president, key White House officers, cabinet-level officials, and certain other high-level individuals. IRC section 162(e)(6).

The section 162(e) definition of 'lobbying' has some points in common with the section 4911 definition. The term 'legislation' in section 162(e)(4)(B) is defined by cross-reference to section 4911(e)(2). And the meaning of 'influencing legislation' in section 162(e)(4)(A) follows verbatim the definition of direct lobbying in section 4911(d)(1)(B).

Significantly, however, section 162(e) includes none of the five exceptions to lobbying found in section 4911(d)(2). Thus, businesses may not deduct the costs of preparing and distributing 'nonpartisan analysis'; of furnishing 'technical assistance' to a legislative body; or of lobbying in their own self-defense. Further, the costs of high-level executive branch contacts are nondeductible by businesses even if those contacts do not concern legislation.

The legislative history shows that Congress considered including in section 162(e) a variety of exceptions to the definition of 'lobbying.' The Conference Report discusses the section 4911 exceptions at some length. See H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 598-599 (1993). A 'technical assistance' exception modeled on section 4911(d) (2)(B) was included in the House bill. See H.R. Conf. Rep. No. 103-213, supra, at 601. And a range of exceptions to the definition of executive branch lobbying were contained in the Senate amendment. See id. at 602-603. As the report explains, however, ' t he conference agreement does not include any of the statutory exceptions to the general disallowance rule,' apart from a narrow exclusion for communications compelled by law or subpoena. Id. at 607. Congress thus made a deliberate decision to define 'lobbying' more broadly in section 162(e) than in section 4911.

B. Congress's Purpose in Amending Section 162(e)

Prior to 1993, businesses had been allowed to deduct the costs of direct (but not grassroots) lobbying with respect to legislation of 'direct interest to the taxpayer.' See Treas. reg. section 1.162-20(c)(2). Congress's reasons for eliminating this deduction are not discussed in the committee reports, but they can easily be surmised. In proposing the amendment, the administration stated that ' t he deduction for lobbying expenses inappropriately subsidizes corporations and special interest groups for intervening in the legislative process.' Department of the Treasury, Administration Revenue Proposals 45 (February 1993).

Important impetus for eliminating the lobbying deduction for businesses stemmed from the 1992 presidential campaign, which focused negative attention and public hostility on paid lobbyists. Featuring prominently in that campaign were charges that persons with money -- and thus the ability to buy influence -- were able to obtain governmental favors unavailable to ordinary citizens. This political atmosphere made the lobbying deduction for business a natural target for elimination.

Further, Congress viewed a subsidy for business lobbying as inappropriate during a time of fiscal constraint:

> The Committee has determined that in the context of deficit reduction, it is appropriate to limit the business deduction for lobbying expenses. H.R. Rept. 103-111, 103rd Cong., 1st Sess. 659 (1993).

Congress and the administration, in other words, assumed that businesses have sufficient motivation and resources to lobby wholly apart from any tax incentive, and simply withdrew the federal subsidy for that activity. Unlike section 4911, section 162(e) imposes no limit or restriction on taxpayers' ability to lobby: businesses have always been able to lobby, both at the direct and the grassroots levels, to a degree limited only by their resources. Section 162(e) requires only that the expenses associated with their lobbying be paid with post-tax, as distinguished from pre-tax, dollars.

C. The Rationale for Defining Business and Charitable Lobbying Differently

In view of its different legislative purposes, it is hardly surprising that Congress deliberately defined 'lobbying' more expansively in section 162(e) than in section 4911. Congress enacted section 4911 to encourage charities to participate more fully in the legislative process, subject to specified dollar limits on their expenditures. Since Congress wished to give charities broad scope for lobbying within those limits, Congress naturally defined 'lobbying' relatively narrowly. By contrast, the 1993 amendment to section 162(e) was a revenue-raising measure aimed at discouraging business lobbying by increasing its after-tax cost. Given those legislative goals, a more expansive definition of lobbying is exactly what one would expect.

The quite different effects that section 162(e) and section 4911 have on the organizations to which they apply also explain the different definitions of 'lobbying.' Section 4911 categorically bars charities from engaging in legislative activities beyond specified dollar limits -- on pain of losing their tax exemption and qualification to raise tax-deductible contributions. The effect of defining lobbying more broadly in section 4911, therefore, would be flatly and entirely to curtail the amount of lobbying charities can do. Section 162(e), by contrast, while requiring businesses to fund their lobbying with after-tax dollars, leaves them free to lobby as much as they wish. A broader definition of business lobbying thus has no preclusive effects; it simply raises the cost of lobbying at the margin by 35 percent.

The chief differences between the definitions of business and charitable lobbying arise from Congress's decision not to include in section 162(e) any of the five exceptions to lobbying that are contained in section 4911(d)(2). The absence of these exceptions is explained by the different legislative purposes animating the two provisions, as well as by key distinctions between businesses and charities.

> The exception for 'nonpartisan analysis' (IRC section 4911(d)(2)(A)) has been well established in the charitable

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tax law since as early as 1959. It covers educational activities traditionally performed by charities. That is also at least very largely true of the 'technical assistance' exception. In enacting these exceptions, Congress guarded against the risk of inhibiting charities' performance of activities lying at the core of their public-service mission. By contrast, educational activities are no more than peripheral to the purposes of most for-profit corporations. And section 162(e) in any event does not prohibit businesses from engaging in legislatively directed educational activities; it simply increases their after-tax cost.

The exception for 'self-defense' lobbying (IRC section 4911(d)(2)(C)) is a necessary corollary of the section 4911 statutory framework, which categorically prohibits lobbying beyond specified dollar limits. Were it not for this exception, a charity that petitioned Congress to protect its tax-exempt status could face the risk of losing its exemption by the very act of lobbying. /8/ Section 162(e), on the other hand, leaves business taxpayers free to lobby as much as they want, and there is little risk that they will be deterred from lobbying in their own self-defense by the necessity of using after-tax dollars.

As distinguished from section 4911(d)(2)(E), restricting the limits on charities' direct lobbying to contacts with legislators, their employees, and executive branch personnel participating in the legislative process, section 162(e)(6) includes high-level executive branch contacts within the scope of business lobbying even if those contacts do not concern legislation. This difference is traceable to one of Congress's key purposes in amending section 162(e): to end the suspicion that moneyed interests can use tax-subsidized expenditures to buy governmental favors unavailable to ordinary citizens. That risk theoretically exists with high-level executive branch officials no less than with the legislative branch, and section 162(e) accordingly covers both. Charities, by contrast, have never been perceived as attempting to 'buy influence,' and this congressional purpose thus has no application to section 4911.

The exception for membership communications (IRC section 4911(d)(2)(D)) has no direct application to business taxpayers; and if by analogy it were extended to communications between business corporations and their shareholders, it could produce serious erosion of the fundamental section 162(e) rule. It is, accordingly, absent from section 162(e).

Congress's decision to treat business and charitable lobbying differently rests on sound policy grounds. A key basis for the difference is the essentially different legal character of the organizations involved. Businesses entities, by their very nature, exist to produce private benefit; and that motive virtually guarantees their commitment of time and resources to lobbying. The laws that govern charities, on the other hand, confine them strictly to public purposes; and those purposes can make them a uniquely valuable resource for the legislative process.

Again, when charities do lobby, their voices are far more muted than those of business groups. A recently completed IS survey of the Lobbying Disclosure Act reports of Fortune 500 companies for the first six months of 1996 and charitable organization reports to the IRS of lobbying expenditures for all of 1992 (the latest year for which IRS data are available) discloses Fortune 500 lobbying expenditures totaling approximately $ 208 million, compared with total charitable lobbying expenditures of $ 52 million. This survey is far from definitive; indeed, its results provide only the roughest of approximations of the lobbying expenditures of the two classes of organizations. But when one bears in mind that (1) the $ 208 million total for the Fortune 500 is for six months only, and the total for charities is for a full year, (2) the total for the Fortune 500 includes only federal lobbying, while the total for charities is for lobbying at the federal, state, and local levels, and (3) the Fortune 500 reports represent only a fraction of total business lobbying even at the federal level, while the figure reported for charities represents at least most of the charitable universe, /9/ it is difficult to escape the conclusion that businesses' lobbying expenditures are massively larger than charities'.

For all of these reasons, then, there is sound justification for Congress's decision to define lobbying more expansively for businesses than for charities; and 'harmonization' of the two definitions would be fundamentally contrary both to the policy differences underlying the two sections and to their specific, quite distinct purposes.

However, to the extent that greater harmonization of the two definitions is thought desirable, that objective would seem better accomplished by aligning section 162(e) more closely with section 4911 than the reverse. The deliberately broad definition of section 162(e) is inherently inconsistent with the purpose of section 4911 to encourage charities to participate robustly in the legislative process. On the other hand, two specific revisions of the section 162(e) definition appear possible within the policy of that section. So long as the stringent requirements for 'nonpartisan analysis, study,

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or research' are met, the preparation and distribution of such materials by businesses may yield public benefit for the legislative process without significantly undermining the section 162(e) goal of ruling out lobbying subsidized by the government. Again, the section 4911 exception for 'technical assistance' provided to government bodies at the written request of those bodies would seem sufficiently under the control of the requesting government entities to leave limited margin for the promotion of special interests and, at the same time, to possess a realistic possibility of advancing public interests in the functioning of the government bodies involved. Hence, modification of the section 162(e) definition on these two points, derived from the section 4911 definition, would seem possible without serious dilution of the policies underlying section 162(e).

IV. The Definition of 'Lobbying' in the Lobbying Disclosure Act

Congress has also asked GAO to address a third definition of 'lobbying,' that contained in the LDA itself. See 2 U.S.C. section 1601 et seq. Congress's reasons for enacting this legislation are stated plainly in the statutory text. Section 1601 specifies that Congress enacted the LDA to make the process of representative government work better -- and increase public confidence in the integrity of that process -- by requiring public disclosure of paid lobbyists' efforts to influence government action. See also S. Rep. No. 103-37, 103d Cong., 1st Sess. 23 (1993). In the words of Sen. Cohen, R-Maine, the legislation aimed to address the public's suspicion that 'high paid hired guns' gain preferential access to public officials 'behind the closed doors of government.' Ibid. The LDA achieves its objective by requiring paid lobbyists to register with Congress and file semiannual statements listing their lobbying activities and the amount of money spent on them. The LDA does not restrict lobbying in any way, nor does it affect (apart from paperwork and bookkeeping costs) the after-tax costs of lobbying. Simply put, the LDA is a 'sunshine law.'

A. The LDA Statutory Framework

The LDA defines 'lobbying' to include both 'lobbying contacts' and efforts in support of such contacts, including planning activities, research, and other background preparatory work intended, at the time performed, for use in lobbying. See 2 U.S.C. 1602(7). Subject to the exceptions noted below, lobbying contacts include all oral or written communications by a person who is a lobbyist /10/ with 'covered officials' in the executive or legislative branch concerning the formulation, modification, or adoption of federal legislation, regulations, executive orders, or other policy positions. 2 U.S.C. 1602(8). Lobbying also includes contacts with a 'covered official' concerning: (1) the negotiation, award, or administration of a federal program, policy, contract, grant, loan, permit, or license; and (2) nominations subject to Senate confirmation. Ibid. The legislative history makes clear that 'lobbying' for LDA purposes includes only direct lobbying; grassroots lobbying does not trigger registration or reporting under the act. 141 Cong. Rec. S10511, S10550-S10551 (daily ed. July 24, 1995) (statements of Sen. McConnell, R-Ky., and Sen. Levin, D-Mich.).

The LDA defines 'covered legislative branch officials' broadly to include Members of Congress and their staffs, as well as staff of any congressional committees or caucuses. 2 U.S.C. section 1602(4). The term 'covered executive branch official' is defined considerably more broadly than in section 162(e): it includes not only White House and cabinet-level officials, but also personnel at or above the assistant secretary or deputy director level, as well as high-ranking military personnel. 2 U.S.C. section 1602(3). Contacts with less senior federal officials -- even if expressly intended to influence government action -- do not constitute lobbying contacts and, thus, are not subject to reporting under the LDA.

The LDA expressly excludes from the definition of 'lobbying contact' 19 different types of communications. See 2 U.S.C. section 1602(8)(B). The following exceptions have greatest practical significance: statements to the media; ministerial contacts involving no attempt to influence legislation; testimony presented to congressional committees or subcommittees; written responses to specific oral or written requests from covered officials; responses to published government requests for public comments; and communications filed in (or otherwise included in the record of) any public proceeding.

B. Rationale for the LDA's Distinct Definition of 'Lobbying'

Generally, the LDA definition of 'lobbying' is narrower, in two respects, than the section 4911 and section 162(e) definitions: it excludes lobbying at the state and local levels, /11/ and it excludes all grassroots lobbying. Grassroots lobbying, by its nature, does not raise concerns about 'closed door' dealings between moneyed private interests and public officials; and in view of its purpose to deal with that concern, Congress appropriately excepted such lobbying from the act. Again, the prior registration law which the act was designed to replace concerned only federal lobbying, and in developing the act, Congress made no effort to address the complex issues of federalism which would attend national regulation of state and local lobbying. Hence, state and local lobbying also falls properly outside the LDA.

On the other hand, the LDA defines lobbying at the federal level more broadly than either section 4911 or section 162(e). The differences are numerous and often technical. For present purposes a summary of the most significant variations will suffice. The LDA defines 'lobbying' to include communications about policy initiatives, even though they have not yet become sufficiently concrete to constitute 'specific legislative proposals' within the meaning of sections 4911 and 162(e).

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The LDA covers attempts to influence executive branch action on matters unrelated to legislation; such attempts are excluded from 'lobbying' altogether by section 4911, and are covered by section 162(e) to a lesser extent. The LDA definition, unlike section 162(e), incorporates several 'technical assistance' exceptions. But their scope differs from the 'technical assistance' exception applicable to charities under section 4911(d)(2)(B). In the case of charities, technical assistance may take the form of written responses or (as is often the case) of participation by charities' personnel in brainstorming sessions with committee staffs. The LDA, on the other hand, excludes only written responses; participation in oral give-and-take discussions appear to be reportable.

Most of these differences are easily understandable in light of the wholly different purposes that section 4911, section 162(e), and the LDA were enacted to serve. As a sunshine law, the LDA is designed to bring paid lobbyists' governmental contacts out from behind closed doors. This purpose is best served by a broad definition reaching all circumstances in which such efforts might conceivably occur. As the legislative history observes, previous disclosure statutes had failed precisely because their coverage was too narrow. See, e.g., S. Rep. No.103-37, supra, at 24. The breadth of the LDA definition is also justified by the modest burdens it imposes: broader registration and reporting requirements. By contrast, the effect of defining 'lobbying' more broadly under section 162(e) would be to increase businesses' after-tax lobbying costs and, under 4911, to prohibit some charitable lobbying altogether.

The legislative history explains the LDA's more expansive definition of executive branch lobbying. The HUD/Wedtec scandal, which involved government contracts rather than legislation, appears to have been an archetype for the activity Congress intended the LDA to bring to light. See 141 Cong. Rec. S10511, S10550 (statement of Sen. Levin). The Wedtec case dramatically illustrated that influencing administrative action, no less than influencing legislative action, falls naturally within the ambit of a sunshine statute like the LDA.

As Congress explicitly noted, the broad LDA definition of 'lobbying' follows from the purposes underlying that law, and it was not intended to reflect any judgment about the narrower scope of the section 4911 definition of that term. As stated in the 1993 Senate Report:

> The Committee recognizes that the Internal Revenue Code uses a different definition of lobbying, which excludes lobbying on matters other than legislation. In crafting a broad definition of lobbying for the purpose of ensuring that efforts to influence Congress and the executive branch are subject to public scrutiny, we do not intend to suggest that the definitions currently in use in the Internal Revenue Code are deficient. Unlike this bill, the Internal Revenue Code is not primarily intended for the purpose of ensuring public disclosure, and the Committee recognizes that the different purposes of the tax law justify a different definition of lobbying. S. Rep. No. 103-37, supra, at 29.

This judgment by Congress is surely correct. In each instance where the section 4911 and LDA definitions differ, the differences are clearly justified by reference to congressional intent. For example:

> Given the LDA's broad prophylactic purpose, 'lobbying' is appropriately defined to include communications concerning policy initiatives even before they have ripened into pending or proposed legislation. But it would be wholly contrary to Congress's intent to inject such ambiguity into the section 4911 definition of 'lobbying,' which appropriately includes only communications concerning 'specific legislative proposals' and legislation already pending in a legislative body. As the congressional letters to Treasury and the IRS in reaction against the proposed 1986 regulations repeatedly emphasize, a major reason for the enactment of section 4911 was the need for a clear and objective definition of 'lobbying' in order to encourage charities to participate confidently in legislative debates. /12/
>
> The exception for 'nonpartisan analysis, study, or research' (IRC section 4911(d)(2)(A)) in the tax law avoids inhibiting charities' performance of educational activities at the core of their public-service mission. That risk does not arise in the case of paid business lobbyists covered by the LDA. Congress's fundamental objective in the LDA was to expose the extent of such lobbyists' legislative contacts, without regard to the character of those communications.
>
> Prompted in part by the Wedtec scandal, the LDA appropriately defines 'lobbying' to include high-level executive branch contacts. Section 4911(d)(2)(E), by contrast, excepts such contacts from the definition of 'lobbying' unless they explicitly concern legislation. The tax law has never limited charities' ability to engage in such executive branch communications, and charities have never been accused of abuses in that arena. From the time of the Slee decision in 1930, the tax limitations on lobbying have been concerned exclusively with attempts to influence legislation. Many federal agencies

> rely heavily on charities as service providers and sources of information (as do executive and administrative bodies at the state and local levels). If charities were required to include the costs of such executive branch contacts under their lobbying ceilings -- ceilings that are relatively modest, have been heavily eroded by inflation, and in any event were enacted to cover legislative action only -- a number of charities might well be forced to curtail significantly their participation in the legislative process. That result would be plainly inconsistent with Congress's intent in enacting section 4911.

The unique and relatively broad definition of 'lobbying' set forth in the LDA, then, is specifically suited to Congress's prophylactic purpose in enacting that law.

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From the standpoint of public charities, moreover, there is little need to 'harmonize' the LDA definition with the section 4911 definition to reduce duplicative paperwork requirements. Congress has already recognized that requiring charities to compute their lobbying expenditures under two different definitions would be burdensome. The LDA accordingly allows charities which have filed a section 501(h) election to use the section 4911 definition of 'lobbying' when they report their lobbying expenditures to Congress. See 2 U.S.C. section 1610. INDEPENDENT SECTOR supported this latter provision of the LDA while the act was under consideration in Congress, and it continues to do so now.

Conclusion

The definition of 'lobbying' contained in section 4911 has resulted from a long and deliberate effort by Congress, the Treasury Department, and the Internal Revenue Service to craft rules that encourage charities to participate in the legislative process within carefully stated limits. The definitions of 'lobbying' in section 162(e) and the LDA are components of very different statutory schemes, animated by very different legislative purposes. In each case, Congress has defined 'lobbying' in a manner appropriate to the particular goals it sought to accomplish. An effort to 'harmonize' the definitions would very likely do violence to the policies and purposes underlying one or more of the statutory regimes. Accordingly, INDEPENDENT SECTOR recommends that GAO report to Congress that 'harmonization' should not be an important objective of any congressional reconsideration of the definitions.

Furthermore, INDEPENDENT SECTOR urges GAO to recommend that Congress make no change in section 4911. The clear and unique legislative intent underlying this section, coupled with the long and painstaking work of Congress, Treasury, and the IRS to carry out that intent, solidly supports the distinct definition of 'lobbying' applicable to public charities.

INDEPENDENT SECTOR takes no position on whether the definition of 'lobbying' contained in section 162(e) should be modified. It urges retention of the LDA provision permitting charities which elect the section 4911 definition for tax purposes to use that definition for LDA purposes also; but it otherwise takes no position on whether the LDA definition should be revised. To the extent that harmonization of the definitions is thought desirable despite the critical examination of that objective here, analysis reveals that it should be accomplished by aligning the definition of 'lobbying' in section 162(e) more closely with the definition in section 4911 in two specific respects.

/1/ Unless otherwise noted, all statutory references are to the Internal Revenue Code of 1986, as amended (the 'code' or 'IRC'). All references to regulations are to the Treasury regulations in effect under the code (Treas. reg.). The terms 'charity' and 'charitable' are used in their generic sense throughout, including all organizations described in IRC section 170(c)(2).

/2/ Certain entities, despite their status as public charities, are not eligible to elect coverage under IRC section 501(h). They include churches and their affiliates (which raise special First Amendment concerns); organizations engaged in testing for public safety; and section 509(a)(3) supporting organizations operated to benefit labor unions, trade associations, and social welfare organizations exempt under section 501(c)(4).

/3/ A leading case antedating the statutory amendment distinguished between lobbying for general social reform (which it found impermissible) and lobbying on legislation that would directly affect a charity's ability to carry out its charitable purposes (which the court found permissible). Slee v. Commissioner, 42 F.2d 184 (2nd Cir. 1930), aff'g 15 B.T.A. 710 (1929). In contemporary terms, the Slee decision established a broad version of the 'self defense' exception that Congress ultimately incorporated in section 4911.

/4/ Section 4911 was enacted before Congress began routinely to index tax provisions for inflation, and as a result the real value of the lobbying expenditure limits has been eroded by more than 60 percent.

/5/ See letter from Sen. Moynihan, D-N.Y., et al. to IRS Commissioner Lawrence B. Gibbs (Feb. 24, 1987) (16 of 20 members signing) (Finance Comm. Letter); letter from Rep. Rangel, et al. to IRS Commissioner Lawrence B. Gibbs (Mar. 3, 1987) (20 of 36 members signing) (W&M Comm. Letter); Letter from Sen. DeConcini, D-Ariz., et al. to IRS Commissioner Lawrence B. Gibbs (Feb. 19, 1987) (16 of 27 members signing) (Appropriations Comm. Letter).

/6/ Letter from Chairman Rostenkowski, D-Ill., to Commissioner Gibbs (Feb. 25, 1987); letter from Chairman Brooks, D-Texas, to Commissioner Gibbs (Feb. 19, 1987); letter from Sen. Simon, D-Ill., to Secretary Baker (Jan. 30, 1987); letter from Rep. Boucher, R-Va., to Secretary Baker (Feb. 5, 1987); letter from Rep. Clarke, D-N.C., to Secretary Baker (May 11, 1987); letter from Rep. English, Okla., to Secretary Baker (Mar. 4, 1987); letter from Rep. Howard, D-Tenn., to Secretary Baker (Feb. 12, 1987); letter from Rep. Kildee, D-Mich., to Secretary Baker (Mar. 12, 1987); letter from Rep. Ravenel, R-S.C., to Secretary Baker (Feb. 23, 1987). See also 'Sen. Melcher Says That Public Charities' Lobbying Rules Are Out of Line With Statute, Tax Notes, Mar. 30, 1987, p. 1265 (describing letter from Sen. Melcher, D-Mont., criticizing the proposed regulations as violating the spirit of the 1976 legislation); 'Writers Voice Opposition to Proposed Regulations on Lobbying by Public Charities,' Tax Notes, Mar. 23, 1987, p. 1160 (describing letter from Rep. Quillen, R-Tenn., urging that an advisory committee be created to help draft new regulations).

/7/ Of the five exceptions, only that for membership communications had no antecedent in prior tax law.

/8/ Doubtless for the same reason, an analogue to the exception was recognized in the charitable tax law even before the introduction of the 'substantial part' test into the statute in 1934 (see discussion of Slee v. Commissioner, 42 F.2d 184 (2nd Cir. 1930), aff'g 15 B.T.A. 710 (1929), in Part II.B.1. above), and neither Treasury nor the IRS attempted to apply the substantial part limitation to the legislative efforts of private foundations in their own behalf in the period of the 1960s during which the special restrictions on private foundations, ultimately adopted in the Tax Reform Act of 1969, were evolving, being formulated, and, finally, proceeding to enactment. The statutory self-defense exception first appeared in the code as a part of the 1969 foundation law, recognizing the exclusion of self-defense activities of private foundations from the general restriction on foundation lobbying. IRC section 4945(e).

/9/ Because churches, their integrated auxiliaries, and conventions and associations of churches are not required to file returns with the IRS, the reported figure does not include their lobbying expenditures.

/10/ A 'lobbyist' for this purpose is an employee who makes at least two lobbying contacts and devotes at least 20 percent of his/her time to lobbying. 2 U.S.C. 1602(10). This definition is intended to rule out registration and reporting duties for persons who engage in de minimis lobbying.

/11/ Section 162(e)(2) also excepts direct lobbying at the local level.

/12/ See text above at pages 14-16.

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Runquist & Associates Los Angeles, California

Lobbying

Section 501(c)(3) organizations

In general.--The Internal Revenue Code rules governing lobbying by charitable organizations described in section 501(c)(3) can be viewed as creating three separate regimes. There is a separate set of rules for private foundations under section 4945. In addition, with respect to public charities, the Code differentiates between public charities that affirmatively elect to be subject to special rules under sections 501(h) and 4911 (commonly referred to as "electing public charities") and all other public charities that do not make this election (commonly referred to as "non-electing public charities").[38] In general, the operation of the lobbying restrictions does not depend on whether the lobbying activities of a charity are intended to further its charitable purposes (with an exception for so-called "self-defense direct lobbying" described below).[39] However, whether or not public policy discussions (even if technically not lobbying) are intended to benefit a large segment of the population or a charitable class, as opposed to the private interests of a limited group of individuals, [may be[redacted] relevant to the determination whether the activity satisfies the section 501(c)(3) requirement that the organization be "operated exclusively" for charitable or other exempt purposes or, instead, whether the organization serves substantial non-exempt purposes inconsistent with section 501(c)(3) status. (This issue is commonly referred to as the "private benefit" test.)[40]

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nonetheless entitled to an exemption under Rev. Proc. 98-19 if: (a) more than 90 percent of all annual dues (or similar amounts) are received from persons who each pay annual dues of $75 or less (provided that the organization is not described in section 501(c)(6)); (b) more than 90 percent of all annual dues are received from charities, governmental entities, or tax-exempt organizations which themselves are exempt from the section 6033(e) rules; or (c) the organization maintains records (and notifies the IRS) that 90 percent or more of the annual dues paid to the organization are not deductible to its members, without regard to any political campaign or lobbying expenditures made by the organization.

[38] See generally Hopkins, Bruce R., Charity, Advocacy, and the Law, 130-235 (1992).

[39] See Haswell v. United States, 500 F.2d 1133, 1142 (Ct. Cl. 1974)("The applicability of the influencing legislation clause is not affected by the selfish and unselfish motives and interests of the organization, and it applies to all organizations whether they represent private interests or the interests of the public."); Kindell and Reilly, "Lobbying Issues," Continuing Professional Education Exempt Organizations Technical Instruction Program for FY 1997 (published by Department of the Treasury, Internal Revenue Service)(hereafter cited as "1997 IRS CPE Text") at 272 (no distinction between "good" and "bad" legislation).

[40] See American Campaign Academy v. Commissioner, 92 T.C. 1053 (1989)(because the operational test under sec. 501(c)(3) "examines the actual purpose for the organization's activities and not the nature of the activities or the organization's statement of purpose," the court looked beyond the four corners of the organization's charter to discover "the actual objects motivating the organization" and found that political campaign school had a partisan purpose and the secondary benefit to the Republican entities and candidates was more than incidental);

Limitation on lobbying activities

Section 501(c)(3) expressly provides that an organization is not entitled to tax-exempt status under that section unless "no substantial part of the activities of [the organization] is carrying on propaganda, or otherwise attempting, to influence legislation" (commonly referred to as "lobbying").[41] Thus, public charities may engage in some lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax.[42] In contrast, private foundations are subject to the restriction that lobbying activities--even if insubstantial so as not to jeopardize the foundation's tax-exempt status--may result in the foundation being subject to penalty excise taxes, unless one of the statutory exceptions contained in section 4945(e) (such as for nonpartisan analysis or self-defense lobbying) apply.

Definition of "lobbying" and "action" organizations

There is no statutory definition under section 501(c)(3) of "propaganda, or otherwise attempting, to influence legislation."[43] However, Treasury regulations provide that an organization is an "action" organization not entitled to tax-exempt status under section 501(c)(3)

The Fund for the Study of Economic Growth and Tax Reform v. Internal Revenue Service, civil action no. 97-0747 (D.C. Dist.)(Feb. 24, 1998)(taking into account "overt partisan statements" of creators of the organization and finding that the organization did not qualify for sec. 501(c)(3) status because it supported a "one-sided political agenda" and, thus, engaged in substantial non-exempt activities). See also Better Business Bureau v. United States, 326 U.S. 279 (1945)(holding that regardless of the number of activities that educated business persons and the general public, organization was not entitled to tax-exempt status as "educational" entity because its "activities are largely animated by a commercial purpose" and "are directed fundamentally to ends other than that of education"); Callaway Family Association, Inc. v. Commissioner, 71 T.C. 340 (1978)(organization found to have engaged in substantial nonexempt activities serving private interests by conducting genealogical research focusing on the Callaway family and by urging family members to join by asserting that the organization was "for you, about you"); **Christian Manner International v. Commissioner, 71 T.C. 661, 669 (1979)("actual purpose" of organization was commercial publication of its president's books and to provide him an "outlet for the exposition of his theories").**

[41] See Regan v. Taxation With Representation of Washington, 461 U.S. 540 (1983)(holding that restrictions on lobbying activities of charitable organizations are constitutionally valid).

[42] Treasury Regulation sec. 1.501(c)(3)-1(c)(3)(ii) provides: "An organization will not fail to meet the operational test merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation."

[43] As discussed infra, there is a statutory definition of "influencing legislation" under section 4911(d) for public charities that make an election under section 501(h) to have their lobbying efforts judged against a sliding-scale, numeric standard.

due to its lobbying activities if a substantial part of the organization's activities is (1) contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (2) advocating the adoption or rejection of legislation. Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(ii). Thus, attempts to influence legislation under section 501(c)(3) include directly contacting members of a legislative body (and their staffs) to propose, support, or oppose legislation (so-called "direct lobbying"), and also include urging the public to contact legislative bodies, or otherwise attempting to influence public opinion, with respect to legislation (so-called "grass roots lobbying"). Except as specifically provided for in Treasury regulations (described below), the IRS takes the position that whether a particular communication constitutes an attempt to influence legislation generally is determined on the basis of the facts and circumstances surrounding the communication in question.[44]

For purposes of section 501(c)(3), the term "legislation" includes action 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.[45] "Action" by the Congress or by a State legislature or local council refers to introduction, amendment, enactment, defeat, or repeal of Acts, bills, resolutions, or similar items.[46] Contacting executive branch officials generally is not considered lobbying for purposes of section 501(c)(3), unless the charity requests that the executive branch official support or oppose legislation to be considered by a legislative body.[47] Legislation need not actually be formally introduced if a specific legislative proposal is being advocated.[48]

Discussions of broad social or public policy issues (without advocating a specific legislative proposal) generally do not constitute attempts to influence legislation for purposes of

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[44] See 1997 IRS CPE Text at 273.

[45] Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(ii). The IRS has stated that the section 501(c)(3) prohibition on substantial lobbying activities applies to attempts to influence legislation of a foreign country. See Rev. Rul. 73-440, 1973-2 C.B. 177; 1997 IRS CPE Text at 272.

[46] See Notice 88-76, 1988-2 C.B. 392. Actions taken by a legislative body with respect to confirmation of a nominee for a public office (e.g., Federal judges) are included within the term "legislation" for section 501(c)(3) purposes, and also may be "exempt function" activities for purposes of the section 527(f) tax. See Announcement 88-114, 1988-37 I.R.B. 26 (Sept. 12, 1988), 1993 IRS CPE Text at 448, footnote 8 (stating that IRS has made no final determination on the sec. 527 issue), and the discussion below of section 527(f)).

[47] See Rev. Rul. 67-293, 1967-2 C.B. 185; 1997 IRS CPE Text at 277.

[48] See Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 1175 (10th Cir. 1972)(urging public to contact legislators to support prayer in school and oppose foreign aid constituted attempts to influence legislation).

section 501(c)(3).[49] However, even if a public discussion of broad social or policy issues does not constitute an attempt to influence legislation for purposes of section 501(c)(3), there is still a separate issue of whether the discussion is educational (or furthers some other charitable purpose).[50] Thus, if an organization conducts substantial public discussions or disseminates materials concerning broad social or policy issues in a manner that does not further an educational or other exempt purpose, then such activity could jeopardize the organization's tax-exempt status under section 501(c)(3), not because the organization has engaged in substantial lobbying, but rather because it has engaged in substantial activities that do not further an exempt purpose.[51]

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[49] **See Rev. Rul. 66-256, 1966-2 C.B. 210 (discussion of broad social issues does not count against lobbying limit under sec. 501(c)(3)).** A parallel rule for private foundations also exempts from the definition of "lobbying" discussions of broad social, economic, and similar problems, even if the problems are of a type with which the government would be expected to deal ultimately. See Treas. Reg. sec. 53.4945-2(d)(4). Moreover, as discussed further below, regulations promulgated under section 4911 provide a similar exception for discussions of broad social and policy issues by public charities making the section 501(h) election, with special rules for certain mass media advertising. See Treas. Reg. secs. 56.4911-2(c)(2) and 56.4911-2(b)(5). Likewise, regulations promulgated under section 162 provide that expenditures for institutional or "good will" advertising--including advertising which keeps the taxpayers name before the public and which presents views on economic, financial, social, or other subjects of a general nature--generally are deductible as trade or business expenses rather than being viewed as attempts to influence legislation, provided that such expenditures are related to patronage the taxpayer might reasonably expect in the future. Treas. Reg. sec. 1.162-20(a)(2).

[50] See, e.g., The Nationalist Movement v. Commissioner, 102 T.C. 558 (1994), aff'd 37 F.3d 216 (5th Cir. 1994)(publication of materials advocating social and political change was not "educational" activity under sec. 501(c)(3) because presentation of viewpoints was unsupported by facts, made substantial use of inflammatory and disparaging terms, and expressed conclusions based on emotions rather than objective evaluation); Rev. Proc. 86-43, 1986-2 C.B. 729 (which describes the so-called "methodology test" for judging whether advocacy of a particular viewpoint is considered "educational" under sec. 501(c)(3), see footnote 82 supra). Also, compare National Alliance v. United States, 710 F.2d 868 (D.C. Cir. 1983)(denial of tax-exempt status to organization that published newsletter promoting racial hatred and violence against minority groups was upheld because the newsletter "cannot reasonably be considered intellectual exposition" and, thus, no possibility that it could be found to be "educational within any reasonable interpretation of the term") with Big Mama Rag, Inc. v. United States, 631 F.2d 1030 (D.C. Cir. 1980)(holding that Treasury regulation that defined "educational" activity as requiring a "full and fair exposition" was unconstitutionally vague and susceptible to discriminatory enforcement).

[51] See Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, at 411, footnote 7 (discussing implications of making sec. 501(h) election). See also footnote 40 supra (regarding private benefit issues).

Despite this general rule for discussions of broad social issues, Treasury Regulation section 1.501(c)(3)-1(c)(3)(iv) provides for a separate, distinct test under which an organization is treated as an "action organization"--and, thus, not entitled to sec. 501(c)(3) status--if it has the following two characteristics: (1) its main or primary objective or objectives (as distinguished from its incidental or secondary objectives) may be attained only by legislation or a defeat of proposed legislation; and (2) it advocates, or campaigns for, the attainment of such main or primary objective or objectives as distinguished from engaging in nonpartisan analysis, study, or research and making the results thereof available to the public. In determining whether an organization has such characteristics, all the surrounding facts and circumstances, including the articles and all activities of the organization, are to be considered. In essence, the "action" organization test of Treasury Regulation section 1.501(c)(3)-1(c)(3)(iv) allows substantial lobbying to be found due to the nature of the organization and its aims.[52]

Exceptions for non-electing public charities

Even when a communication refers to a specific legislative proposal (or the organization's primary objective may be attained only by passage or defeat of legislation), the dissemination of nonpartisan analysis or research with respect to a legislative proposal (or the organization's primary objective), while not advocating legislative action, is not considered lobbying for purposes of section 501(c)(3). See, e.g., Rev. Rul. 64-195, 1964-2 C.B. 138 (organization conducted nonpartisan analysis of a proposed constitutional amendment and disseminated materials to the public, but did not advocate approval or disapproval of the amendment); Rev. Rul. 70-79, 1970-1 C.B. 127 (some of the policies formulated by the organization could be carried out only through legislation, but organization was entitled to (c)(3) status due to the educational nature of activities and because it did not make any specific legislative recommendations).[53] Likewise, responding to a governmental request for testimony is

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[52] See The Fund for the Study of Economic Growth and Tax Reform v. Internal Revenue Service, civil action no. 97-0747 (D.C. Dist.)(Feb. 24, 1998)(finding that two-part test for "action" organization was satisfied because organization conceded that the only way of achieving its policies was through legislative reform, and because press reports and other evidence indicated that the organization "actively engaged in advocacy and furthering a particular political agenda"); Rev. Rul. 62-71, 1962-1 C.B. 85 (research and publications of organization, considered alone, may be educational, but section 501(c)(3) status was not available because the organization was primarily involved not only in teaching but in advocating the adoption of a doctrine that could be effective only by enactment of legislation); **Roberts Dairy Co. v. Commissioner, 195 F.2d 948 (8th Cir. 1952)**; 1997 IRS CPE Text at 276.

[53] See also 1997 IRS CPE Text at 274. As discussed infra, a slightly different rule may apply with the nonpartisan analysis exceptions under sections 4911 and 4945, where nonpartisan analysis of a legislative proposal is allowed to advocate a particular position or viewpoint, without being treated as lobbying, provided that the communication does not "directly encourage" the recipient to take action within the meaning of Treas. Reg. sec. 56.4911-2(b)(2)(iii)(A)-(C). It remains unclear how the nonpartisan analysis exception for non-electing public charities compares to the nonpartisan analysis exception under sections 4911 and 4945.

not treated as a lobbying activity. **See, e.g., Rev. Rul. 70-449, 1970-2 C.B. 112 (providing technical advice).**[54] In addition, advocacy by a charity with respect to legislation that could affect the powers or existence of the organization itself (so-called "self-defense lobbying") generally is considered to be exempt from the section 501(c)(3) lobbying restriction.[55]

Attribution

Similar to questions that arise with respect to the political campaign prohibition under section 501(c)(3) (discussed previously), when an individual affiliated with a charity makes a lobbying communication, the question arises whether the lobbying should be viewed as an activity of the individual acting in his or her private capacity or whether the activity should be attributed to the charity.[56] In general, resolution of this issue depends on whether the lobbying activities are within the scope of the individual's authority to act as an agent for the organization (or, if not, whether the organization implicitly ratified the individuals acts).[57] The lobbying activities of a section 501(c)(4) organization will not be attributed to an affiliated charity, so long as the entities are separately incorporated, the records show legally distinct entities, and there are fair-market-value reimbursements for any shared facilities or services.[58] However, because the lobbying restriction is not absolute under section 501(c)(3), a charity may provide some support to lobbying efforts undertaken by another entity, provided that the provision of such support

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See Hopkins, Bruce R., Charity, Advocacy, and the Law, at 168 (1992)(inadvisable to borrow to heavily from sec. 4911 rules for nonpartisan analysis when judging activities of non-electing public charities); Galston, supra at 1344-45, footnote 263 (noting that more generous nonpartisan analysis exception under secs. 4911 and 4945 may eventually be applied to non-electing public charities).

[54] **[Here also, it is not clear whether the exception for nonelecting public charities is as broad as the technical advice exception for electing public charities under section 4911, which (as discussed later on) does not require that presentation of advice or assistance to a governmental body satisfy the requirements for nonpartisan analysis. See Treas. Reg. sec. 56.4911-2(c)(3).]**

[55] Although there is no precedential ruling from the IRS with respect to self-defense lobbying by a non-electing public charity seeking to protect the organization's own existence or powers under the law (see 1997 CPE at 277, footnote 20), the IRS recognized the self-defense exception in GCM 34289 (May 8, 1970) prior to the enactment of section 501(h). See also Galston at 1284, footnote 40. For the counterpart "self-defense" exceptions for public charities making the 501(h) election, see section 4911(d)(2)(C) and Treas. Reg. sec. 56-4911-2(c); for the counterpart "self-defense" exception for private foundations, see section 4945(e) and Treas. Reg. sec. 53-4945-2(d).

[56] See footnote 14 supra.

[57] **See PLR 9507020 (date?)**; 1997 IRS CPE Text at 277-78.

[58] See footnote 15 supra.

(along with any lobbying activities directly conducted by the charity) does not violate the "substantial part" test (or, 501(h) expenditure limits, if elected by the charity).

Determination of substantiality

In addition to the definitional question of whether a communication constitutes "lobbying" for purposes of section 501(c)(3), there is a second issue of whether the level of an organization's lobbying activities is "substantial." Except for public charities that make the section 501(h) election (as discussed below), there is no bright-line, mechanical rule for determining whether lobbying activities are substantial relative to the organization's other activities. Rather, the particular facts and circumstances surrounding all activities of the organization (including volunteer time) must be examined. In particular, an arithmetical percentage test (e.g., looking at the percentage of the budget, or employee's time, spent on lobbying) while relevant, has been held not determinative.[59] When Congress enacted section 501(h), it was specifically provided in section 501(h)(7) that the determination of whether the lobbying of a non-electing charity is "substantial" is not affected by the numeric tests provided for by sections 501(h) and 4911 (described below).

Lobbying rules for electing public charities

Section 501(h) election

Certain public charities may elect under section 501(h) to have the amount of permitted lobbying expenditures measured under the statutory, arithmetical tests set forth in sections 501(h) and section 4911.[60] The arithmetical tests provide an alternative to the imprecise, facts-and-circumstances test of substantiality that otherwise applies to section 501(c)(3) organizations. For a public charity making the section 501(h) election, the allowable amount of lobbying expenditures that can be made for any tax year is determined under a sliding-scale formula. Specifically, the allowable amount of all lobbying (i.e., direct and grass roots lobbying

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[59] See, e.g., Haswell v. United States, 500 F.2d 1133 (Ct Cl. 1974); Christian Echoes National Ministry, Inc. v. United States, 470 F.2d 849 (10th Cir. 1972); 1997 IRS CPE Text at 279-280 (factors to be considered are percentage of budget, amount of volunteer time, and continuous or intermittent nature of lobbying, and the extent of supporting activities; a 5 percent safe-harbor has at times been applied as a general rule of thumb, and lobbying activities that exceed roughly 16-20 percent of total activities are generally considered substantial). See also Galston, "Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities," 71 Texas L. Rev. 1269, 1279-1280 (1993).

[60] Public charities eligible to make the section 501(h) election include educational institutions, hospitals, and organizations receiving a certain proportion of support from the general public, but not churches and certain church-related entities (secs. 501(h)(4) and (5)). Churches were made ineligible for the section 501(h) election at their own request. See Joint Committee on Taxation, General Explanation of the Tax Reform Act of 1976, 1976-3 C.B. (vol. 2) at 419-420.

combined) is limited to the sum of (a) 20 percent of the first $500,000 of the organization's exempt purpose expenditures[61] for the year, plus (b) 15 percent of the next $500,000 of such expenditures, plus (c) 10 percent of the third $500,000 of such expenditures, plus (d) 5 percent of any additional such expenditures. In no event, however, can the allowable amount of lobbying for an organization making the section 501(h) election exceed $1 million for any year.[62] Grass roots lobbying is subject to a separate limitation, equal to 25 percent of the overall permissible lobbying amount (sec. 4911(c)(4)).[63] In order to prevent organizations from avoiding the dollar limitations of section 501(h) by dividing themselves into technically separate but related entities, section 4911(f) treats certain affiliated organizations under common control as one organization for purpose of applying the section 501(h) arithmetical tests.[64]

If the lobbying expenditures (for either all lobbying or grass roots lobbying in particular) of an organization making the section 501(h) election exceed the allowable amounts under section 4911, then an excise tax penalty is imposed on the organization equal to 25 percent of the excess lobbying expenditures (sec. 4911(a)). Imposition of this excise tax penalty under section 4911 may, in some cases, effectively operate as an intermediate sanction short of revocation of the organization's tax-exempt status. However, if the electing organization's lobbying expenditures (for either all lobbying and grass roots lobbying in particular) normally are more than 150 percent of the allowable amounts, then not only will the organization be subject to the excise tax penalties under section 4911, but the organization will lose its tax-exempt status (secs. 501(h)(1) and 501(h)(2)(B)),[65]

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[61] For this purpose, "exempt purpose expenditures" are defined as expenditures to accomplish the organization's exempt purposes, including properly allocable salary payments, overhead, an allowance for depreciation on a straight-line basis, and all lobbying expenditures, but not including fundraising costs and certain capital expenditures. Section 4911(e)(1); Treas. Reg. sec. 56.4911-4.

[62] Section 4911(c)(2).

[63] In contrast to the arithmetical test for organizations making the section 501(h) election, the substantial part test for non-electing organizations does not focus solely on expenditures made by the organization and it makes no distinction between direct and grass roots lobbying. See 1997 CPE Text at 301; Galston, "Lobbying and the Public Interest: Rethinking the Internal Revenue Code's Treatment of Legislative Activities," 71 Texas L. Rev. 1269, 1280 (1993)(discussing advantages and disadvantages of sec. 501(h) election for organizations that engage in more grass roots lobbying than direct lobbying or that rely on volunteers for their lobbying).

[64] See Treas. Reg. sec. 56.4911-7.

[65] The determination of whether an organization's lobbying expenditures normally exceed 150 percent of the allowable amounts generally is made by comparing the sum of the organization's lobbying expenditures for the determination year and the three preceding years to the sum of the allowable lobbying amounts for those years (Treas. Reg. sec. 1.501(h)-3(b)).

Definition of lobbying under section 4911

For purposes of the section 501(h) arithmetical test, lobbying expenditures are defined as "expenditures for the purpose of influencing legislation (as defined in section 4911(d))."[66] Section 4911(d), in turn, defines the term "influencing legislation" as --

> (A) any attempt to influence any legislation[67] through an attempt to affect the opinions of the general public or any segment thereof [i.e., "grass roots lobbying communications"], and
>
> (B) any attempt to influence any 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 communications"].[68]

However, section 4911(d)(2) specifically excludes from the definition of "influencing legislation" the following activities:

> (A) making available the results of nonpartisan analysis, study, or research;
>
> (B) providing of technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a

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[66] In theory, the definition of "expenditures for the purpose of influencing legislation" under section 4911 applies only to public charities that have made the section 501(h) election. In practice, however, the definitions and exceptions of section 4911(d)--as well as the parallel rules under section 4945(e)--are generally viewed as codifying existing law and practice for determining whether "lobbying" has been undertaken by any organization described in section 501(c)(3). See, e.g., GCM 39694 (Jan. 21, 1988)(administration of Code is best effectuated by uniform application of lobbying rules for all charities); GCM 34289 (May 5, 1970); S.Rep. No. 91-552, 91 Cong., 1st Sess. 48-49 (1969); Haswell v. United States, 500 F.2d 1133, 1147 (Ct. Cl. 1974). **[See also BNA Portfolio at A-52 (and authorities cited therein).]**

[67] "Legislation" includes action by legislative bodies but does not include action by "executive, judicial, or administrative bodies." Treas. Reg. sec. 56.4911-2(d)(3). The term "administrative bodies" includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive. Treas. Reg. sec. 56.4911-2(d)(4).

[68] Lobbying with respect to a referendum or ballot initiative subject to a vote by the general public (unless it comes within the nonpartisan analysis exception) is considered "direct lobbying," based on the rationale that, in this context, members of the general public are functioning as legislators. See Treas. Reg. sec. 56.4911-2(b)(1)(iii).

governmental body or to a committee or other subdivision thereof in response to a written request by such body or subdivision, as the case may be;

(C) appearances before, or communications to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization (i.e., "self-defense direct lobbying");

(D) communications between the organization and its bona fide members with respect to legislation or proposed legislation of direct interest to the organization and such members, other than communications which (1) directly encourage members to contact a legislative body in an attempt to influence legislation, or (2) directly encourage members to urge persons other than members to attempt to affect the opinions of the general public or to contact a legislative body in an attempt to influence legislation; and

(E) any communication with a government official or employee, other than --

> (I) a communication with a member or employee of a legislative body (where such communication would otherwise constitute the influencing of legislation), or
>
> (ii) a communication the principal purpose of which is to influence legislation.

With respect to communications with legislators and government officials, Treasury regulations provide a two-part test for determining if such a communication by an organization making the section 501(h) election constitutes a "direct lobbying communication." Under this two-part test, a communication with a legislator or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation (provided that the principal purpose of the communication is to influence legislation), will be treated as a "direct lobbying communication" under section 4911 <u>only if</u> the communication <u>both</u> (1) refers to "specific legislation" (meaning legislation that has already been introduced in a legislative body or a specific legislative proposal that the organization either supports or opposes[69]), <u>and</u> (2)

[69] "Specific legislation" may be identified by its formal name, by a widely used term in connection with the legislation, or even by its content or effect. See 1997 CPE Text at 296-297.

reflects a view on such legislation.[70]

With respect to communications with the general public, Treasury regulations provide a three-part test for determining whether such a communication by an organization making the section 501(h) election constitutes a "grass roots lobbying communication." Under this three-part test, a communication with the general public will be treated as a "grass roots lobbying communication" under section 4911 only if the communication: (1) refers to specific legislation; (2) reflects a view on such legislation; and (3) encourages the recipient to take action with respect to the legislation (referred to as a "call to action" requirement) in at least one of four specifically enumerated ways.[71] In this regard, the first two requirements for "grass roots lobbying communications" generally are interpreted in the same manner as under the two-part test for "direct lobbying" (with an exception described below for certain mass media advertising that is presumed to refer to specific legislation). With respect to the third requirement--i.e., a "call to action"--this requirement is satisfied only if the communication (a) states that the recipient should contact a legislator or an employee of a legislative body, or should contact any other government official or employee (provided that the principal purpose of urging contact with such official or employee is to influence legislation), (b) states the address, telephone number, or similar information of a legislator or employee of a legislative body, (c) provides for a petition, tear-off postcard, or similar material for the recipient to communicate with any legislative or government official, or (d) specifically identifies one or more legislators who will vote on the legislation as: opposing the organization's view with respect to the legislation; being undecided with respect to the legislation; being the recipient's representative in the legislature; or being a member of the legislative committee or subcommittee that will consider the legislation.[72] To be considered a "call to action" a communication must satisfy at least one of

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[70] Treas. Reg. sec. 56.4911-2(b)(1)(ii). The Treasury regulations do not specifically define the term "reflects a view." Instead, the regulations contain examples which are somewhat conclusory. One example refers to a "position letter" sent to Congress "to gain support" for specific legislation--which thus constitutes a "direct lobbying communication"--while another example refers to a paper discussing a State's environmental problems but which "does not reflect a view." See Treas. Reg. sec. 56.4911-2(b)(4)(I)(examples (1) and (3)).

[71] Treas. Reg. sec. 56.4911-2(b)(2)(ii).

[72] Treas. Reg. Sec. 56.4911-2(b)(2)(iii). Merely naming the main sponsor(s) of the legislation for purposes of identifying the legislation will not constitute a "call to action." Id. A communication that merely identifies one or more legislators who will vote on the legislation as supporting the communication's view (as opposed to identifying legislators as opposing the communication's view, or as being undecided with respect to the legislation, or as being the recipient's representative in the legislature) is not a "grass roots lobbying communication" as long as the communication does not include one of the four specific types of "calls to action." See Treas. Reg. sec. 56.4911-2(b)(4)(ii)(A), Example (7); Hopkins, Bruce R., Charity, Advocacy, and the Law at 145 (1992).

these four specific tests enumerated in the Treasury regulations.[73] Thus, except in the case of certain mass media advertisements (as described in the following paragraph), no matter how clearly an organization identifies a specific legislative proposal or comments on the merits of that legislation when it communicates with the general public, the absence of a "call to action" means that the communication is not a "grass roots lobbying communication" for purposes of section 4911.[74]

Mass media advertisements

Under a special rule contained in the section 4911 regulations, certain mass media advertisements that otherwise do not satisfy the three-part test for a "grass roots lobbying communication" may nevertheless be treated as "grass roots lobbying communications." Under this special rule, if, within two weeks before a vote by a legislative body or committee (but not subcommittee) on "highly publicized"[75] legislation, a paid advertisement appears in the mass media (i.e., television, radio, billboards and certain general circulation newspapers and magazines[76]), then such an advertisement will be presumed to be a "grass roots lobbying communication" if it (1) reflects a view on the general subject of such legislation, and (2) either (a) refers to the highly publicized legislation or (b) encourages the public to communicate with legislators on the general subject of such legislation. Treas. Reg. sec. 56.4911-2(b)(5).[77] This presumption may be rebutted if the organization demonstrates that the advertisement is a type of mass media communication regularly made by the organization (without regard to the timing of the legislation) or that the timing of the advertisement was unrelated to the upcoming legislative action. If a mass media advertisement falls outside the special rule of Treasury regulation sec.

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[73] See 1997 CPE Text at 300-301 (an exhortation to the public to "oppose" a particular legislative proposal is not, by itself, a "call to action" under sec. 4911).

[74] See 1997 CPE Text at 298-299.

[75] Treas. Reg. sec. 56.4911-2(b)(5)(iii)(C) provides that "highly publicized" means frequent coverage on television and radio, and in general circulation newspapers, during the two weeks preceding the vote by the legislative body or committee. However, the regulation goes on to state that, even where legislation receives frequent coverage, it is "highly publicized" only if "the pendency of the legislation or the legislation's general terms, purpose, or effect are known to a significant segment of the general public (as opposed to the particular interest groups directly affected) in the area in which the paid mass media advertisement appears." Id.

[76] Where an electing organization is itself a mass media publisher or broadcaster, all portions of that organization's mass media publications or broadcasts are treated as paid advertisements in the mass media, except those specific portions that are advertisements paid for by another person. Treas. Reg. sec. 56.4911-2(b)(5)(iii)(B).

[77] See 1997 CPE Text at 308-09 (noting that presumption does not apply if an advertisement appears even one day more than two weeks before a vote; nor does the presumption apply if public pressure from an advertising campaign results in a scheduled vote being canceled).

56.4911-2(b)(5), or if the special rule applies but the presumption is rebutted, then the general three-part test applies for determining whether the advertisement constitutes a "grass roots lobbying communication."

Discussions of broad social issues

Consistent with the definitions of "direct lobbying communications" and "grass roots lobbying communications" under section 4911, Treasury regulations provide that "[e]xaminations and discussions of broad social, economic, and similar problems are neither direct lobbying communications under section 56.4911-2(b)(1) nor grass roots lobbying communications under section 56.4911-2(b)(2) even if the problems are of the type with which government would be expected to deal ultimately." Treas. Reg. sec. 56.4911-2(c)(2).[78] Consequently, lobbying communications do not include public discussion, or communications with members of legislative bodies or governmental employees, the general subject of which is also the subject of legislation before a legislative body, so long as such discussion does not address itself to the merits of a specific legislative proposal and so long as such discussion does not directly encourage recipients to take action with respect to legislation. Id.[79] This treatment of discussions of broad social and policy issues is implicit in the two-part definition of "direct lobbying" and the general three-part definition of "grass roots lobbying," because both definitions require that the communication in question "reflects a view" on a specific legislative proposal (and the general definition of "grass roots lobbying communication" under section 4911 further requires that there be a specific "call to action").[80] Moreover, if a mass media advertisement appearing within two weeks of a vote reflects a view on a general social or policy issue that also is the subject of highly publicized legislation, then the advertisement could be presumed to be a grass roots lobbying communication only if the advertisement also refers to

[78] The counterpart regulation for private foundations is Treas. Reg. sec. 53.4945-2(d)(4).

[79] For example, Treas. Reg. sec. 56.4911-2(b)(4)(ii)(a), example (4), points out that an organization could encourage members of the public to send their legislators a coupon to "support a drug free America" without referring to any specific legislation, and this would not be treated as a "grass roots lobbying communication" under the general three-part test. However, if such a communication appeared in a paid mass media advertisement within two weeks of a vote on highly publicized legislation concerning drug abuse, then such a communication potentially could be presumed to be a "grass roots lobbying communication" under Treas. Reg. sec. 56.4911-2(b)(5).

[80] See 1997 CPE Text at 306, footnote 37 (noting that the exception in the sec. 4911 regulations for discussion of broad social problems was included to provide parity with a pre-existing exception under sec. 4945, but, as a substantive matter, the exception is "superfluous" given the definitions of lobbying communications in the sec. 4911 regulations). See also McGovern, Accettura, and Skelly, "The Revised Lobbying Regulations--A Difficult Balance," Tax Notes (Dec. 26, 1988)("the revised definition of grass roots lobbing will reduce or eliminate the need for organizations to depend upon the exception for discussion of broad social, economic, and similar problems.")

specific legislation or encourages the public to communicate with legislators on the general social or policy issue. Thus, if there is neither a reference to specific legislation nor a mass media "call to action" regarding the general social or policy issue that is also the subject of legislation that is voted on within two weeks, then the public discussion of broad social or policy issues is not a lobbying communication under section 4911.[81]

Statutory exceptions under section 4911

Even if a communication by an organization meets the definition of a "direct lobbying" or "grass roots lobbying" communication under the general rules described above, the communication nonetheless may be exempt if one of the five statutory exceptions of section 4911(d)(2) apply. The first of these statutory exceptions is "making available the results of nonpartisan analysis, study, or research" (sec. 4911(d)(2)(A)). With respect to this exception, Treasury Regulation section 56.4911-2(c)(1)(ii) provides that the term "nonpartisan analysis, study, or research" means "an independent and objective exposition of a particular subject matter, including any activity that is 'educational' within the meaning of [Treasury Regulation] section 1.501(c)(3)-1(d)(3)."[82] Treasury Regulation section 56.4911-2(c)(1)(ii) goes on to

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[81] As discussed previously, whether or not the discussion is conducted in a manner that furthers an educational or other exempt purpose (or violates the private benefit test) is a separate question. See footnotes 40 and 50 supra.

[82] Treas. Reg. sec. 1.501(c)(3)-1(d)(3) provides that "an organization may be educational even though it advocates a particular position or viewpoint so long as it presents a sufficiently full and fair exposition of the pertinent facts as to permit an individual or the public to form an independent opinion or conclusion." In Rev. Rul. 86-43, 1986-2 C.B. 729--which was issued to address the vagueness concerns identified in the Big Mama Rag decision, see footnote 50 supra--the IRS indicated that the focus of the IRS in applying Treas. Reg. sec. 1.501(c)(3)-1(d)(3) is not upon the viewpoint or position advocated, but rather upon the method used by the organization to communicate its viewpoint. Rev. Proc. 86-43 indicates that the method used by the organization "will not be considered educational if it fails to provide a factual foundation for the viewpoint or position being advocated, or if it fails to provide a development from the relevant facts that would materially aid a listener or reader in a learning process." Further, Rev. Proc. 86-43 indicates that the presence of any of the following factors in the presentations made by an organization is indicative that the method used by the organization to advocate its views is not educational: (1) the presentation of viewpoints unsupported by facts is a significant portion of the organization's communications; (2) the facts that purport to support the viewpoints or positions are distorted; (3) the organization's presentations make substantial use of inflammatory and disparaging terms and express conclusions more on the basis of strong emotional feelings than of objective evaluations; and (4) the approach used in the organization's presentations is not aimed at developing an understanding on the part of the intended audience or readership because it does not consider their background or training in the subject matter. However, Rev. Proc. 86-43 goes on to provide that, even if one or more of the above four factors are present, the IRS will look to all facts and circumstances to determine whether an organization nonetheless may be considered "educational." An examination of the factors listed in Rev. Proc. 86-43 is commonly

provide: "Thus, 'nonpartisan analysis, study, or research' 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. The mere presentation of unsupported opinion, however, does not qualify as 'nonpartisan analysis, study, or research.'"[83]

Treasury Regulations provide that nonpartisan analysis that reflects a view on specific legislation is not within the section 4911(d)(2)(A) exception if the communication "directly encourages" the recipient to take action--meaning that the communication expressly states that the recipient should contact a legislative or government official or employee, includes the address, telephone number or similar information of a such official or employee, or includes a petition tear-off postcard, or similar material for the recipient to send to such an official or employee. However, nonpartisan analysis within the section 4911(d)(2)(A) exception is allowed to include a limited (or implicit) "call to action" that specifically identifies one or more legislators who will vote on the legislation as (1) opposing the organization's views with respect to the legislation, (2) being undecided with respect to the legislation, (3) being the recipient's representative in the legislature, or (4) being a member of the legislative committee or subcommittee that will consider the legislation.[84]

Under section 4911(d)(2)(A), an organization may choose any suitable means, including oral or written presentations or disseminations to the news media, to distribute its nonpartisan analysis or research. However, communications may not be limited to, or be directed toward, persons who are interested solely in one side of a particular issue (Treas. Reg. sec. 56.4911-2(c)(1)).[85]

The four additional statutory exceptions provided for by section 4911(d)(2) include (1)

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referred to as the "methodology test." See The Nationalist Movement v. Commissioner, 102 T.C. 558 (1994)(upholding constitutionality of methodology test).

[83] As discussed in more detail infra, it is not clear whether the IRS intends to use the arguably stricter "full and fair exposition" test with respect to advocacy involving legislation, or whether satisfying the "methodology" test of Rev. Proc. 86-43 (which can be viewed as a subset of the "full and fair exposition" test) would suffice, even if both sides of the debate on a legislative issue are not presented. It is also questionable whether use of the "full and fair exposition" test (without the overlay provided by the "methodology" test) for judging advocacy with respect to legislation test would be constitutionally permissible in view of the Big Mama Rag decision (see footnote 50 supra). Compare The Nationalist Movement v. Commissioner, 102 T.C. at ___, footnote 17 (doubtful whether IRS could require presentation of opposing views) with The Fund for the Study of Economic Growth and Tax Reform v. Internal Revenue Service (where the court found that the organization did not conduct nonpartisan analysis, but the court did not refer to either the "full and fair exposition" test or the "methodology" test).

But see recent NEA case

[84] Treas. Reg. secs. 56.4911-2(b)(2)(iii) and 56.4911-2(c)(1)(vi).

[85] See 1997 IRS CPE text at 302-03.

providing technical advice or assistance upon written request from a governmental body[86], (2) so-called self-defense direct lobbying--that is, communications with a legislative body with respect to a possible decision by the body which might affect the existence of the organization, its powers and duties, or its tax-exempt status, or the deduction of contributions to the organization[87], (3) communications between an organization and its bona fide members, provided that the communication does not directly encourage the members to contact legislators or to urge nonmembers to influence legislation[88], and (4) communications with government officials or employees, provided that the communication is not a direct lobbying communication with a member or employee of a legislative body and, in the case of other government officials, does not have the principal purpose of influencing legislation.[89]

Cost allocations.--In addition to defining direct and grass roots lobbying communications and the five statutory exceptions, Treasury regulations issued under section 4911 provide detailed guidance for allocating particular expenditures to lobbying communications. In general, public charities making the section 501(h) election are required to treat as lobbying expenditures all direct costs of producing the communication, as well as an allocable share of overhead

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[86] Under this exception, the request for assistance or advice must be made in the name of the requesting governmental body, committee, or subdivision rather than an individual member thereof; and the response to such request must be made available to every member of the requesting body, committee, or subdivision. Treasury regulations further provide that because such assistance or advice may be given only at the express request of a governmental body, the oral or written presentation of such assistance or advice need not qualify as nonpartisan analysis, study or research. The offering of opinions or recommendations will ordinarily qualify under this exception only if such opinions or recommendations are specifically requested by the governmental body or are directly related to the materials so requested. See Treas. Reg. secs. 56.4911-2(c)(3) and 53.4945-2(d)(2).

[87] See Treas. Reg. secs. 56.4911-2(c)(4) and 53.4945-2(d)(3); 1997 IRS CPE Text at 307-08.

[88] Treas. Reg. sec. 56.4911-5. For purposes of this exception, the term "directly encourage" has the same meaning as for the nonpartisan analysis exception. See Treas. Reg. sec. 56.4911-5(f)(6)); 1997 CPE Text at 314-17. A communication between an organization and a member of the organization which directly encourages the member to engage in direct lobbying of a member of employee of a legislative body is considered a direct lobbying communication (unless the self-defense exception applies). See section 4911(d)(3)(A); Treas. Reg. sec. 56.4911-5(f)(6)(B).

[89] When a communication is with government official or employee who is not a member of (or employed by) a legislative body, then the costs of the communications are taken into account under section 4911 only if the principal purpose of the communication is to influence legislation. See Joint Committee on Taxation, General Explanation of Tax Reform Act of 1976, at 410.

costs.[90] In addition, rules are provided for so-called "mixed purpose" expenditures and for allocating costs when non-lobbying materials (e.g., nonpartisan analysis) subsequently are used by an organization as part of a grass roots lobbying campaign.[91]

Penalties applicable to private foundations-For purposes of determining whether a private foundation should have its exemption revoked, the substantial part test under section 501(c)(3) continues to apply.[92] As a separate issue, private foundations and their managers are potentially subject to excise taxes under section 4945[93] if any expenditures are made for either direct or grass roots lobbying. Lobbying activities may be subject to tax under section 4945 even in cases where such activities are not substantial relative to the private foundation's other activities.[94] For purposes of section 4945, lobbying is defined in a manner similar to the definition under section 4911(d). Specifically, as under section 4911(d)(2), the section 4945 penalty excise taxes do not apply to (a) making available the results of nonpartisan analysis, study, or research, (b) providing technical advice to a governmental body in response to a written request, or (c) direct lobbying of a legislative body with respect to a possible decision of such body which might affect the existence of the private foundation, its powers and duties, its tax-exempt status, or the deduction of contributions to such foundation (sec. 4945(e)).[95]

Penalties applicable to public charities-- For public charities making the section 501(h) election, there is an intermediate sanction of an excise tax penalty that may be imposed in cases where an organization exceeds the so-called "lobbying nontaxable amount" (or "grass roots nontaxable amount") but the organization does not normally exceed the numeric limits by more

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[90] Treas. Reg. sec. 56.4911-3(a)(1).

[91] Treas Reg. secs. 56.4911-2(b)(2)(v) and 56.4911-3(a)(2); 1997 IRS CPE Text at 304-06. See also Hopkins, Bruce R. Charity, Advocacy, and the Law at 155-57 (1992).

[92] Joint Committee on Internal Revenue Taxation, General Explanation of the Tax Reform Act of 1969, H.R. 13270, 91st Cong., 1st Sess., at 49, footnote 21.

[93] The section 4945 penalty regime for private foundation and their managers is described in footnote **[23]** supra.

[94] **[See S. Rep. No. 552, 91st Cong., 1st Sess. 51 (1969).]** Although the section 4945 excise tax conceptually could be viewed by private foundations as a "cost of doing business" in situations where the foundation wants to engage in insubstantial lobbying (without meeting one of the statutory exceptions), private foundations generally have not adopted this view. See Galston, supra at 1278, footnote 21. In theory, a willful and flagrant lobbying expenditure that leads to imposition of a penalty excise tax under section 4945 also could lead to termination of a private foundation's tax-exempt status due to the operation of section 507(a)(2) (see footnote **[24]** supra), even though the lobbying activity might not be "substantial" under section 501(c)(3).

[95] In contrast to section 4911(d)(2), there is no explicit exception under section 4945(e) for membership communications, because private foundations generally do not have members.

than 150 percent.[96] In such cases where the electing public charity does not normally exceed the lobbying nontaxable amount by more than 150 percent, an excess tax penalty may be imposed under section 4911, but the charity's tax-exempt status may not be revoked due to the lobbying activity. In contrast, for non-electing public charities, there is no excise tax penalty that can be imposed as an intermediate sanction (i.e., in lieu of revocation of the organization's tax exempt status) due to the charity's lobbying activities. In 1987, Congress enacted section 4912, which provides for the imposition of penalty excise taxes due to improper lobbying expenditures made by a non-electing public charity (other than a church). However, the section 4912 excise taxes may be imposed only if the charity ceases to qualify for tax-exempt status under section 501(c)(3) due to its substantial lobbying activities.[97] Section 4912 imposes on such a disqualified organization an excise tax equal to five percent of the amount of lobbying expenditures incurred during the year in which the organization has ceased to qualify under section 501(c)(3) due to making lobbying expenditures. Organization managers who, without reasonable cause, agree to make lobbying expenditures knowing that they are likely to result in revocation of the organization's tax-exempt status under section 501(c)(3) also are subject to an excise tax equal to five percent of such lobbying expenditures.

A section 501(c)(3) organization also may be subject to an excise tax under section 527(f) (discussed in greater detail below) if the organization engages in activity which is "exempt function" activity under section 527 -- broadly meaning attempts to influence the selection of any individual to public office -- even though such activity is <u>not</u> prohibited political campaign intervention under section 501(c)(3) (e.g., attempts by section 501(c)(3) organizations to influence appointments to <u>nonelected</u> public office, such as Supreme Court appointments).[98]

There is no rule preventing an organization that loses its tax-exempt status under section 501(c)(3) because it engages in substantial lobbying (or normally exceeds the section 501(h) ceiling) from applying for restoration of its section 501(c)(3) status in a subsequent taxable year, at which time the organization will again be subject to the lobbying limitation.[99] However, section 504(a)(2)(A) provides that a charitable organization (other than a church) that loses its tax-exempt status under section 501(c)(3) because of excessive lobbying activities may not attempt to thereafter escape the lobbying limitation by being treated as a tax-exempt social welfare organization under section 501(c)(4).

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[96] Section 501(h)(1).

[97] See H. Rept. 100-495, 100th Cong., 1st Sess., <u>Conference Report to Accompany H.R. 3545</u>, at 1023 (1987).

[98] See Announcement 88-114, 1988-37 I.R.B. 26 (Sept. 12, 1988)(proposing that attempts to influence confirmation of a federal judicial nominee, or other nominee to a nonelective public office, constitute an "exempt function" under sec. 527(e)(2), and soliciting comments from the public on this issue). But see 1993 IRS CPE Text at 448, footnote 8 (no final determination has been made of this issue).

[99] See Joint Committee on Taxation, <u>General Explanation of the Tax Reform Act of 1976</u>, at 414.

For more information on using WESTLAW to supplement your research, see the WESTLAW Electronic Research Guide, which follows the Explanation.

§ 1601. Findings

The Congress finds that—

(1) responsible representative Government requires public awareness of the efforts of paid lobbyists to influence the public decisionmaking process in both the legislative and executive branches of the Federal Government;

(2) existing lobbying disclosure statutes have been ineffective because of unclear statutory language, weak administrative and enforcement provisions, and an absence of clear guidance as to who is required to register and what they are required to disclose; and

(3) the effective public disclosure of the identity and extent of the efforts of paid lobbyists to influence Federal officials in the conduct of Government actions will increase public confidence in the integrity of Government.

(Pub.L. 104–65, § 2, Dec. 19, 1995, 109 Stat. 691.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

Effective Dates

1995 Acts. Section 24 of Pub.L. 104–65 provided that:

"**(a)** Except as otherwise provided in this section, this Act and the amendments made by this Act [see Short Title note set out under this section] shall take effect on January 1, 1996.

"**(b)** The repeals and amendments made under sections 9, 10, 11, and 12 [amending section 4804 of Title 15, Commerce and Trade, section 219 of Title 18, Crimes and Criminal Procedure, sections 611, 613, 614, 616, 618, and 4002 of Title 22, Foreign Relations and Intercourse, section 1352 of Title 31, Money and Finance, and section 1490p of Title 42, The Public Health and Welfare, repealing sections 261 to 270 of this title and section 3537b of Title 42, and repealing provisions set out as a note under section 261 of this title] shall take effect as provided under subsection (a), except that such repeals and amendments—

"**(1)** shall not affect any proceeding or suit commenced before the effective date under subsection (a), and in all such proceedings or suits, proceedings shall be had, appeals taken, and judgments rendered in the same manner and with the same effect as if this Act had not been enacted; and

"**(2)** shall not affect the requirements of Federal agencies to compile, publish, and retain information filed or received before the effective date of such repeals and amendments."

Short Title

Section 1 of Pub.L. 104–65 provided that: "This Act [enacting this chapter, amending sections 3304 of Title 5, Government Organization and Employees, section 102 of Pub.L. 95–521, set out in the Appendix to Title 5, section 4804 of Title 15, Commerce and Trade, sections 207 and 219 of Title 18, Crimes and Criminal Procedure, section 2171 of Title 19, Customs Duties, sections 611, 613, 614, 616, 618, 621, and 4002 of Title 22,

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Foreign Relations and Intercourse, section 1352 of Title 31, Money and Finance, and section 1490p of Title 42, The Public Health and Welfare, repealing sections 261 to 270 of this title and section 3537b of Title 42, enacting provisions set out as notes under this section, section 3304 of Title 5, section 102 of Pub.L. 95–521, set out in the Appendix to Title 5, and section 207 of Title 18, and repealing provisions set out as a note under section 261 of this title] may be cited as the 'Lobbying Disclosure Act of 1995'."

LIBRARY REFERENCES

American Digest System

Congress; legislative power and exercise thereof, see United States ⚷22.
Duties of federal officers and agents and performance thereof, see United States ⚷41.

Encyclopedias

Duties of federal officers, agents, and employees, see C.J.S. United States § 41.
Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1602. Definitions

As used in this chapter:

(1) Agency

The term "agency" has the meaning given that term in section 551(1) of Title 5.

(2) Client

The term "client" means any person or entity that employs or retains another person for financial or other compensation to conduct lobbying activities on behalf of that person or entity. A person or entity whose employees act as lobbyists on its own behalf is both a client and an employer of such employees. In the case of a coalition or association that employs or retains other persons to conduct lobbying activities, the client is the coalition or association and not its individual members.

(3) Covered executive branch official

The term "covered executive branch official" means—

(A) the President;

(B) the Vice President;

(C) any officer or employee, or any other individual functioning in the capacity of such an officer or employee, in the Executive Office of the President;

(9) Lobbying firm

The term "lobbying firm" means a person or entity that has 1 or more employees who are lobbyists on behalf of a client other than that person or entity. The term also includes a self-employed individual who is a lobbyist.

* **(10) Lobbyist**

The term "lobbyist" means any individual who is employed or retained by a client for financial or other compensation for services that include more than one lobbying contact, other than an individual whose lobbying activities constitute less than 20 percent of the time engaged in the services provided by such individual to that client over a six month period.

(11) Media organization

The term "media organization" means a person or entity engaged in disseminating information to the general public through a newspaper, magazine, other publication, radio, television, cable television, or other medium of mass communication.

(12) Member of Congress

The term "Member of Congress" means a Senator or a Representative in, or Delegate or Resident Commissioner to, the Congress.

(13) Organization

The term "organization" means a person or entity other than an individual.

(14) Person or entity

The term "person or entity" means any individual, corporation, company, foundation, association, labor organization, firm, partnership, society, joint stock company, group of organizations, or State or local government.

(15) Public official

The term "public official" means any elected official, appointed official, or employee of—

(A) a Federal, State, or local unit of government in the United States other than—

(i) a college or university;

(ii) a government-sponsored enterprise (as defined in section 622(8) of this title);

(iii) a public utility that provides gas, electricity, water, or communications;

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(iv) a guaranty agency (as defined in section 1085(j) of Title 20), including any affiliate of such an agency; or

(v) an agency of any State functioning as a student loan secondary market pursuant to section 1085(d)(1)(F) of Title 20;

(B) a Government corporation (as defined in section 9101 of Title 31);

(C) an organization of State or local elected or appointed officials other than officials of an entity described in clause (i), (ii), (iii), (iv), or (v) of subparagraph (A);

(D) an Indian tribe (as defined in section 450b(e) of Title 25 [1];

(E) a national or State political party or any organizational unit thereof; or

(F) a national, regional, or local unit of any foreign government.

(16) State

The term "State" means each of the several States, the District of Columbia, and any commonwealth, territory, or possession of the United States.

(Pub.L. 104–65, § 3, Dec. 19, 1995, 109 Stat. 691.)

[1] So in original. A closing parenthesis probably should precede the semicolon.

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in text, was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, which is classified principally to this chapter. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Levels I, II, III, IV, and V of the Executive Schedule, referred to in par. (3)(D), are set out in sections 5312, 5313, 5314, 5315, and 5316, respectively, of Title 5, Government Organization and Employees.

Section 109(13) of the Ethics in Government Act of 1978, referred to in par. (4)(D), is section 109(13) of Pub.L. 95–521, which is set out in the Appendix to Title 5.

The Foreign Agents Registration Act of 1938, referred to in pars. (6) and (8)(B)(iv), is Act June 8, 1938, c. 327, 52 Stat. 631, as amended, which is classified generally to subchapter II (§ 611 et seq.) of chapter 11 of Title 22, Foreign Relations and Intercourse. Section 1(b) of such Act is classified to section 611(b) of Title 22. For complete classification of this Act to the Code, see Short Title note set out under section 611 of Title 22 and Tables.

The Federal Advisory Committee Act, referred to in par. (8)(B)(vi), is Pub.L. 92-463, Oct. 6, 1972, 86 Stat. 770, as amended, which is set out in Appendix 2 to Title 5, Government Organization and Employees.

The Whistleblower Protection Act of 1989, referred to in par. (8)(B)(xvii), is Pub.L. 101–12, Apr. 10, 1989, 103 Stat. 16, as amended, which enacted subchapters II [5 U.S.C.A. 1211 et seq.] and III [5 U.S.C.A. 1221 et seq.] of chapter 12 and section 3352 of Title 5, Government Organization and Employees, amended sections 1201 to 1206, 1209, 1211, 2302, 2303, 3393, 7502, 7512, 7521, 7542, 7701, and 7703 of Title 5 and section 4139 of Title 22, Foreign Relations and Intercourse, repealed sections 1207 and 1208 of Title 5, and enacted provisions set out as notes under sections 1201, 1211, and 5509 of Title 5. For complete classification of this Act to the Code, see Short Title of 1989 Amendment note set out under section 1201 of Title 5 and Tables.

The Inspector General Act of 1978, referred to in par. (8)(B)(xvii), is Pub.L. 95–452, Oct. 12, 1978, 92 Stat. 1101, as amended, which is set out in Appendix 3 to Title 5, Government Organization and Employees.

The Securities Exchange Act and "that Act", referred to in par. (8)(B)(xix), probably mean the Securities and Exchange Act of 1934, Act June 6, 1934, c. 404, 48 Stat. 881, as amended, which is classified generally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 3(a)(26) of such Act is classified to section 78c(a)(26) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

The Commodity Exchange Act, referred to in par. (8)(B)(xix)(I), is Act Sept. 21, 1922, c. 369, 42 Stat. 998, as amended, which is classified generally to chapter 1 (§ 1 et seq.) of Title 7, Agriculture. The second reference in par. (8)(B)(xix) to "that Act" probably means the Securities Exchange Act of 1934. See References in Text note set out under this section. For complete classification of the Commodity Exchange Act to the Code, see section 1 of Title 7 and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

LIBRARY REFERENCES

American Digest System

Congress; legislative power and exercise thereof, see United States ⚷22.
Duties of federal officers and agents and performance thereof, see United States ⚷41.

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Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1603. Registration of lobbyists

(a) Registration

(1) General rule

No later than 45 days after a lobbyist first makes a lobbying contact or is employed or retained to make a lobbying contact, whichever is earlier, such lobbyist (or, as provided under paragraph (2), the organization employing such lobbyist), shall register with the Secretary of the Senate and the Clerk of the House of Representatives.

(2) Employer filing

Any organization that has 1 or more employees who are lobbyists shall file a single registration under this section on d sec- 2302, 7542, ection s and 7 and isions 1201, nplete ie, see ote set 5 and

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generally to chapter 2B (§ 78a et seq.) of Title 15, Commerce and Trade. Section 3(a)(26) of such Act is classified to section 78c(a)(26) of Title 15. For complete classification of this Act to the Code, see section 78a of Title 15 and Tables.

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behalf of such employees for each client on whose behalf the employees act as lobbyists.

(3) Exemption

(A) General rule

Notwithstanding paragraphs (1) and (2), a person or entity whose—

(i) total income for matters related to lobbying activities on behalf of a particular client (in the case of a lobbying firm) does not exceed and is not expected to exceed $5,000; or

(ii) total expenses in connection with lobbying activities (in the case of an organization whose employees engage in lobbying activities on its own behalf) do not exceed or are not expected to exceed $20,000,

(as estimated under section 1604 of this title) in the semiannual period described in section 1604(a) of this title during which the registration would be made is not required to register under this subsection with respect to such client.

(B) Adjustment

The dollar amounts in subparagraph (A) shall be adjusted—

(i) on January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) since December 19, 1995; and

(ii) on January 1 of each fourth year occurring after January 1, 1997, to reflect changes in the Consumer Price Index (as determined by the Secretary of Labor) during the preceding 4-year period,

rounded to the nearest $500.

(b) Contents of registration

Each registration under this section shall contain—

(1) the name, address, business telephone number, and principal place of business of the registrant, and a general description of its business or activities;

(2) the name, address, and principal place of business of the registrant's client, and a general description of its business or activities (if different from paragraph (1));

(3) the name, address, and principal place of business of any organization, other than the client, that—

(A) contributes more than $10,000 toward the lobbying activities of the registrant in a semiannual period described in section 1604(a) of this tile; and

(B) in whole or in major part plans, supervises, or controls such lobbying activities.

(4) the name, address, principal place of business, amount of any contribution of more than $10,000 to the lobbying activities of the registrant, and approximate percentage of equitable ownership in the client (if any) of any foreign entity that—

(A) holds at least 20 percent equitable ownership in the client or any organization identified under paragraph (3);

(B) directly or indirectly, in whole or in major part, plans, supervises, controls, directs, finances, or subsidizes the activities of the client or any organization identified under paragraph (3); or

(C) is an affiliate of the client or any organization identified under paragraph (3) and has a direct interest in the outcome of the lobbying activity;

(5) a statement of—

(A) the general issue areas in which the registrant expects to engage in lobbying activities on behalf of the client; and

(B) to the extent practicable, specific issues that have (as of the date of the registration) already been addressed or are likely to be addressed in lobbying activities; and

(6) the name of each employee of the registrant who has acted or whom the registrant expects to act as a lobbyist on behalf of the client and, if any such employee has served as a covered executive branch official or a covered legislative branch official in the 2 years before the date on which such employee first acted (after December 19, 1995) as a lobbyist on behalf of the client, the position in which such employee served.

(c) Guidelines for registration

(1) Multiple clients

In the case of a registrant making lobbying contacts on behalf of more than 1 client, a separate registration under this section shall be filed for each such client.

(2) Multiple contacts

A registrant who makes more than 1 lobbying contact for the same client shall file a single registration covering all such lobbying contacts.

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(d) Termination of registration

A registrant who after registration—

(1) is no longer employed or retained by a client to conduct lobbying activities, and

(2) does not anticipate any additional lobbying activities for such client,

may so notify the Secretary of the Senate and the Clerk of the House of Representatives and terminate its registration.

(Pub.L. 104–65, § 4, Dec. 19, 1995, 109 Stat. 696.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

LIBRARY REFERENCES

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Encyclopedias

Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1604. Reports by registered lobbyists

(a) Semiannual report

No later than 45 days after the end of the semiannual period beginning on the first day of each January and the first day of July of each year in which a registrant is registered under section 1603 of this title, each registrant shall file a report with the Secretary of the Senate and the Clerk of the House of Representatives on its lobbying activities during such semiannual period. A separate report shall be filed for each client of the registrant.

(b) Contents of report

Each semiannual report filed under subsection (a) of this section shall contain—

(1) the name of the registrant, the name of the client, and any changes or updates to the information provided in the initial registration;

(2) for each general issue area in which the registrant engaged in lobbying activities on behalf of the client during the semiannual filing period—

(A) a list of the specific issues upon which a lobbyist employed by the registrant engaged in lobbying activities, including, to the maximum extent practicable, a list of bill numbers and references to specific executive branch actions;

(B) a statement of the Houses of Congress and the Federal agencies contacted by lobbyists employed by the registrant on behalf of the client;

(C) a list of the employees of the registrant who acted as lobbyists on behalf of the client; and

(D) a description of the interest, if any, of any foreign entity identified under section 1603(b)(4) of this title in the specific issues listed under subparagraph (A);

(3) in the case of a lobbying firm, a good faith estimate of the total amount of all income from the client (including any payments to the registrant by any other person for lobbying activities on behalf of the client) during the semiannual period, other than income for matters that are unrelated to lobbying activities; and

(4) in the case of a registrant engaged in lobbying activities on its own behalf, a good faith estimate of the total expenses that the registrant and its employees incurred in connection with lobbying activities during the semiannual filing period.

(c) Estimates of income or expenses

For purposes of this section, estimates of income or expenses shall be made as follows:

(1) Estimates of amounts in excess of $10,000 shall be rounded to the nearest $20,000.

(2) In the event income or expenses do not exceed $10,000, the registrant shall include a statement that income or expenses totaled less than $10,000 for the reporting period.

(3) A registrant that reports lobbying expenditures pursuant to section 6033(b)(8) of Title 26 may satisfy the requirement to report income or expenses by filing with the Secretary of the Senate and the Clerk of the House of Representatives a copy of the form filed in accordance with section 6033(b)(8).

(Pub.L. 104–65, § 5, Dec. 19, 1995, 109 Stat. 697.)

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HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

Effective Dates

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WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1605. Disclosure and enforcement

The Secretary of the Senate and the Clerk of the House of Representatives shall—

(1) provide guidance and assistance on the registration and reporting requirements of this chapter and develop common standards, rules, and procedures for compliance with this chapter;

(2) review, and, where necessary, verify and inquire to ensure the accuracy, completeness, and timeliness of registration and reports;

(3) develop filing, coding, and cross-indexing systems to carry out the purpose of this chapter, including—

(A) a publicly available list of all registered lobbyists, lobbying firms, and their clients; and

(B) computerized systems designed to minimize the burden of filing and maximize public access to materials filed under this chapter;

(4) make available for public inspection and copying at reasonable times the registrations and reports filed under this chapter;

(5) retain registrations for a period of at least 6 years after they are terminated and reports for a period of at least 6 years after they are filed;

(6) compile and summarize, with respect to each semiannual period, the information contained in registrations and reports filed with respect to such period in a clear and complete manner;

(7) notify any lobbyist or lobbying firm in writing that may be in noncompliance with this chapter; and

(8) notify the United States Attorney for the District of Columbia that a lobbyist or lobbying firm may be in noncompliance with this chapter, if the registrant has been notified in writing and has failed to provide an appropriate response within 60 days after notice was given under paragraph (7).

(Pub.L. 104–65, § 6, Dec. 19, 1995, 109 Stat. 698.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in pars. (1), (3), (4), (7), and (8), was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1606. Penalties

Whoever knowingly fails to—

(1) remedy a defective filing within 60 days after notice of such a defect by the Secretary of the Senate or the Clerk of the House of Representatives; or

(2) comply with any other provision of this chapter;

shall, upon proof of such knowing violation by a preponderance of the evidence, be subject to a civil fine of not more than $50,000, depending on the extent and gravity of the violation.

(Pub.L. 104–65, § 7, Dec. 19, 1995, 109 Stat. 699.)

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HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in par. (2), was in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1607. Rules of construction

(a) Constitutional rights

Nothing in this chapter shall be construed to prohibit or interfere with—

(1) the right to petition the Government for the redress of grievances;

(2) the right to express a personal opinion; or

(3) the right of association,

protected by the first amendment to the Constitution.

(b) Prohibition of activities

Nothing in this chapter shall be construed to prohibit, or to authorize any court to prohibit, lobbying activities or lobbying contacts by any person or entity, regardless of whether such person or entity is in compliance with the requirements of this chapter.

(c) Audit and investigations

Nothing in this chapter shall be construed to grant general audit or investigative authority to the Secretary of the Senate or the Clerk of the House of Representatives.

(Pub.L. 104–65, § 8, Dec. 19, 1995, 109 Stat. 699.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in text, was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1608. Severability

If any provision of this chapter, or the application thereof, is held invalid, the validity of the remainder of this chapter and the application of such provision to other persons and circumstances shall not be affected thereby.

(Pub.L. 104–65, § 13, Dec. 19, 1995, 109 Stat. 701.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in text, was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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Effect of partial invalidity of statutes in general, see Statutes ⟹64(1).

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Effect of partial invalidity of statutes in general, see C.J.S. Statutes § 92.

WESTLAW ELECTRONIC RESEARCH

Statutes cases: 361k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

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W ELECTRONIC RESEARCH

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§ 1609. Identification of clients and covered officials

(a) Oral lobbying contacts

Any person or entity that makes an oral lobbying contact with a covered legislative branch official or a covered executive branch official shall, on the request of the official at the time of the lobbying contact—

(1) state whether the person or entity is registered under this chapter and identify the client on whose behalf the lobbying contact is made; and

(2) state whether such client is a foreign entity and identify any foreign entity required to be disclosed under section 1603(b)(4) of this title that has a direct interest in the outcome of the lobbying activity.

(b) Written lobbying contacts

Any person or entity registered under this chapter that makes a written lobbying contact (including an electronic communication) with a covered legislative branch official or a covered executive branch official shall—

(1) if the client on whose behalf the lobbying contact was made is a foreign entity, identify such client, state that the client is considered a foreign entity under this chapter, and state whether the person making the lobbying contact is registered on behalf of that client under section 1603 of this title; and

(2) identify any other foreign entity identified pursuant to section 1603(b)(4) of this title that has a direct interest in the outcome of the lobbying activity.

(c) Identification as covered official

Upon request by a person or entity making a lobbying contact, the individual who is contacted or the office employing that individual shall indicate whether or not the individual is a covered legislative branch official or a covered executive branch official.

(Pub.L. 104–65, § 14, Dec. 19, 1995, 109 Stat. 702.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in subsecs. (a)(1) and (b), was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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Legislative powers of Congress in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1610. Estimates based on tax reporting system

(a) Entities covered by section 6033(b) of Title 26

A registrant that is required to report and does report lobbying expenditures pursuant to section 6033(b)(8) of Title 26 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would be required to be disclosed under such section for the appropriate semiannual period to meet the requirements of sections 1603(a)(3) and 1604(b)(4) of this title; and

(2) in lieu of using the definition of "lobbying activities" in section 1602(7) of this title, consider as lobbying activities only those activities that are influencing legislation as defined in section 4911(d) of Title 26.

(b) Entities covered by section 162(e) of Title 26

A registrant that is subject to section 162(e) of Title 26 may—

(1) make a good faith estimate (by category of dollar value) of applicable amounts that would not be deductible pursuant to such section for the appropriate semiannual period to meet the requirements of sections 1603(a)(3) and 1604(b)(4) of this title; and

(2) in lieu of using the definition of "lobbying activities" in section 1602(7) of this title, consider as lobbying activities only those activities, the costs of which are not deductible pursuant to section 162(e) of Title 26.

(c) Disclosure of estimate

Any registrant that elects to make estimates required by this chapter under the procedures authorized by subsection (a) or (b) of this section for reporting or threshold purposes shall—

(1) inform the Secretary of the Senate and the Clerk of the House of Representatives that the registrant has elected to make its estimates under such procedures; and

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and exercise thereof, see United States ⇐22.

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(2) make all such estimates, in a given calendar year, under such procedures.

(d) Study

Not later than March 31, 1997, the Comptroller General of the United States shall review reporting by registrants under subsections (a) and (b) of this section and report to the Congress—

(1) the differences between the definition of "lobbying activities" in section 1602(7) of this title and the definitions of "lobbying expenditures", "influencing legislation", and related terms in sections 162(e) and 4911 of Title 26, as each are implemented by regulations;

(2) the impact that any such differences may have on filing and reporting under this chapter pursuant to this subsection; and

(3) any changes to this chapter or to the appropriate sections of Title 26 that the Comptroller General may recommend to harmonize the definitions.

(Pub.L. 104–65, § 15, Dec. 19, 1995, 109 Stat. 702.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

References in Text

This chapter, referred to in subsecs. (c) and (d)(2), (3), was, in the original, "this Act" meaning Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, known as the Lobbying Disclosure Act of 1995. For complete classification of this Act to the Code, see Short Title note set out under section 1601 of this title and Tables.

Effective Dates

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1611. Exempt organizations

An organization described in section 501(c)(4) of Title 26 which engages in lobbying activities shall not be eligible for the receipt of Federal funds constituting an award, grant, or loan.

(Pub.L. 104–65, § 18, Dec. 19, 1995, 109 Stat. 703; Pub.L. 104–99, Title I, § 129(a), Jan. 26, 1996, 110 Stat. 34.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

Amendments

1996 Amendments. Pub.L. 104–99, § 129(a), substituted "award, grant, or loan" for "award, grant, contract, loan, or any other form".

Effective Dates

1996 Acts. Section 129(b) of Pub.L. 104–99 provided that: "The amendment made by subsection (a) [amending this section] shall take effect as if included in the Lobbying Disclosure Act of 1995 [Pub.L. 104–65, Dec. 19, 1995, 109 Stat. 691, for classification of which to the Code, see Short Title note set out under section 1601 of this title and Tables] on the date of the enactment of such Act [Dec. 19, 1995]."

1995 Acts. Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].

See, also, WESTLAW guide following the Explanation pages of this volume.

§ 1612. Sense of Senate that lobbying expenses should remain nondeductible

(a) Findings

The Senate finds that ordinary Americans generally are not allowed to deduct the costs of communicating with their elected representatives.

(b) Sense of Senate

It is the sense of the Senate that lobbying expenses should not be tax deductible.

(Pub.L. 104–65, § 23, Dec. 19, 1995, 109 Stat. 705.)

HISTORICAL AND STATUTORY NOTES

Revision Notes and Legislative Reports

1995 Acts. House Report No. 104–339, see 1995 U.S. Code Cong. and Adm. News, p. 644.

Effective Dates

Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

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AND STATUTORY NOTES

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4–339,
Adm.

Effective Dates

Section effective Jan. 1, 1996, see section 24 of Pub.L. 104–65, set out as a note under section 1601 of this title.

RY REFERENCES

l exercise thereof, see United States ⚬22.

in general, see C.J.S. United States § 22.

WESTLAW ELECTRONIC RESEARCH

United States cases: 393k[add key number].
See, also, WESTLAW guide following the Explanation pages of this volume.