

When Does Your Activity Become Lobbying?

What Your Nonprofit Needs To Know

501(c)(3) public charities are legally allowed to engage in a limited, but generous, amount of lobbying activity. Attorneys at Alliance for Justice are often asked when an organization needs to begin measuring its activities as lobbying. Many people are surprised to learn that **preparation and research time spent in anticipation of lobbying counts as reportable lobbying**.

The Internal Revenue Code offers two ways for 501(c)(3) public charities to measure lobbying activities: (1) the “501(h) expenditure test,” or (2) the “insubstantial part test.” No matter how you measure your lobbying, preparation for lobbying work counts.

If your organization measures its lobbying under the 501(h) Expenditure Test

If your organization is a 501(h) electing charity, IRS regulations clearly state that costs, such as transportation, photocopying, and other similar expenses, spent in support of lobbying are expenditures for lobbying communications. This includes all staff time and overhead costs that support lobbying.

When does the clock start ticking?

You must begin measuring your lobbying activity when the primary purpose of your preparation or research is to engage in lobbying activity.

Example - An organization researches, prepares, and prints a safety code for electrical wiring. The organization sells the code to the public where it is widely used by professionals in the installation of electrical wiring. A number of states codify all, or part, of the code of standards as mandatory safety standards. On occasion, the organization lobbied state legislators for passage of the code of standards for safety reasons. Because the primary purpose of preparing the code of standards was the promotion of public safety and the standards were specifically used in a profession for that purpose, separate from any legislative requirement, the research, preparation, printing, and public distribution of the code of standards is not an expenditure for a direct (or grassroots) lobbying communication.

Example – The same organization prepares the safety code primarily to have it codified in the state legislature. All of the preparation costs, including staff time spent on research, transportation costs, photocopying, and other similar expenses, incurred in lobbying state legislators for passage of the code of standards into law are reportable direct lobbying expenditures.

If your organization measures its lobbying under the Insubstantial Part Test

If your 501(c)(3) charity has not chosen to measure its lobbying under the 501(h) expenditure test, the courts have made it clear that supporting activities are included as attempts to influence legislation. This includes research, discussion, and similar activities.

When does the clock start ticking?

Attempting to influence legislation does not necessarily begin at the moment the organization first addresses itself to the public or to the legislature. All of the facts and circumstances are considered

when determining when preparation and research is considered in support of lobbying communications.

Time spent in discussing public issues, formulating and agreeing upon positions, and studying them in preparation of adopting a position all count as lobbying.

Example – An organization is active in promoting legislation on education and health issues. The time spent on the lobbying activity counts towards the “insubstantial part” of the organization’s activities. All time spent preparing publications that indicate a position on legislation are included as lobbying preparation. Prior statements or articles setting forth the organization’s general positions that do not relate to any specific legislation is not included as lobbying.

More details about public charity lobbying activities and the 501(h) expenditure test can be found in Being A Player: A Guide to the IRS Lobbying Regulations for Advocacy Charities, available from Alliance for Justice. Alliance for Justice also offers Worry-Free Lobbying for Nonprofits: How To Use the 501(h) Election to Maximize Effectiveness, available to download for free from our website at www.allianceforjustice.org.

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