



Chapter 10

Does the Filer Lobby? & About the 501(h) Election

A number of nonprofit groups advocate for changes in public policy and as part of their advocacy efforts engage in lobbying. The term “lobbying” refers to attempts to influence legislators (or those who work with them) or to support or oppose the enactment of some legislation. It may be done by directly contacting legislators (direct lobbying) or by asking others to contact them (grassroots lobbying). Organizations exempt under section 501(c)(3) are permitted to engage in some lobbying, but if they do too much they may jeopardize their tax-exemption. Line 4 of Part IV (Checklist of Required Schedules) page 3 asks whether the filer engaged in lobbying activities. If the filer answers “Yes,” it must complete Schedule C, Part II.

Thus, if a reader of a filer’s Form 990 wanted to know more about the filer’s lobbying activity, she could do so by reviewing Part II of Schedule C. There are several reasons why a reader may be interested in learning whether a filer has engaged in lobbying activity. The reader may think, for example, that groups like the filer ought not only help people but in addition should advocate for changes that will address the problems that caused its clients to need help. Or a reader might have different ideas and believe that groups like the filer ought to stay completely clear of the political process and thus not engage in lobbying activity. In some cases a filer may be a group that advocates for a position or positions with which the reader disagrees. She may then want to know the extent of its lobbying activity.

Organizations complete Part II-A of Schedule C if they have chosen, under section 501(h), to have the question of whether they have engaged in a permissible amount of lobbying decided by how much they spend on lobbying. Groups who have not so chosen the 501(h) election must complete Part II-B. (See below for more about the section 501(h) election.) For those filers who have completed Part II-A, a reader, by examining this part, can learn the total amount the

filer spent on lobbying (Line 1c) and of this total amount, how much was spent on grassroots lobbying (Line 1a) and how much on direct lobbying (Line 1b). Lines 2c and f of Part II-A also report these amounts for the past four years. By subtracting the amount reported at Line 2f (grassroots lobbying expenditures) from the amount reported at Line 2c (total lobbying expenditures) you determine the amount of direct lobbying expenditures for the year in question.

As noted, those organizations that have not chosen to have the question of whether they have engaged in a permissible amount of lobbying decided by how much they spend on lobbying must complete Part II-B of Schedule C. By examining this part a reader can learn a fair amount about the filer's lobbying activities, including whether it used volunteers, paid staff, media advertisements and the like.

Organizations exempt under section 501(c)(3) are prohibited from participating or intervening in any campaign on behalf of, or in opposition to, any candidate for political office, and, if they do so, a 10% tax is imposed on such activities. Part I-B of Schedule C reports the amount of such tax paid, if any.

More about Section 501(h) Election

For an organization to remain eligible for tax-exempt status under section 501(c)(3), it must not engage in too much lobbying activity. Section 501(c)(3) provides in relevant part that an organization shall be eligible for tax-exemption so long as "... no substantial part of the activities of which is carrying on propaganda, or otherwise attempting, to influence legislation (except as otherwise provided in subsection (h))...". Since under the "no substantial part" test there is very little guidance to help section 501(c)(3) organizations know what is too much lobbying, in 1976 the Congress added subsection (h) to section 501. Subsection (h) generally allows section 501(c)(3) organizations to elect to have the question of whether they are engaging in too much lobbying decided on the basis of how much money they spend on lobbying, i.e., the level of their lobbying expenditures. We will refer to this election as the "(h) election." Generally, section 501(c)(3) organizations are permitted under the (h) election to spend up to 20% of the first \$500,000 of their budget on lobbying and reduced percentages of budget amounts above \$500,000 with an overall cap of \$1 million. Of the permissible amounts, only 25% may be spent on grassroots lobbying. Generally, grassroots lobbying involves contacting members of the general public and urging them to,

in turn, contact legislators to urge the legislator to act favorably or unfavorably on some proposed legislation.

The (h) election provides very clear guidance as to what is and is not lobbying. Its rules are liberal in the sense of characterizing activity which might be considered lobbying if a group has not made the election, as not constituting lobbying.

Many close observers of the nonprofit sector think that groups that do lobbying at any significant level are well advised to make the election. It appears, however, that few have done so.