



State Office Newsletter

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Should Your PTA Make the 501(h) Election for Lobbying Expenditures?

As 501(c)(3) organizations, PTAs can legally lobby. Because PTAs can engage in lobbying, PTA leaders should become familiar with the advantages of making the 501(h) election to report lobbying expenditures. Lobbying by PTA volunteer leaders and staff provides expertise to government decision makers that could result in better-informed law and policy decisions furthering the PTA mission.

Two myths causing PTAs some reluctance when making this decision are that this will change their 501(c)(3) status and will cause an increased possibility of being audited by the IRS. Neither is true. You have to be a 501(c)(3) in order to make the 501(h) election, and the IRS has stated that it is not audit criteria for them. It is, in fact, a clarification and simplification of determining lobbying expenditures by charitable organizations.

Making the 501(h) election

Making the 501(h) election is simply a matter of filing IRS form 5768, which can be obtained on the IRS website, www.irs.gov, or by calling (800) TAX-FORM (829-3676). Generally, organizations that elect may spend 20 percent of the first \$500,000 of their total annual expenditures or \$100,000 on

lobbying; 15 percent of the next \$1 million to \$1.5 million; and 5 percent of the next \$1.5 million to \$17 million. Included within this formula is the stipulation that no more than 25 percent of your total expenditures on lobbying can be for grassroots lobbying.

The very broad definition of grassroots lobbying is when PTAs ask the general public to contact legislators or other government employees, while direct lobbying is when a PTA or its members contact legislators or other government employees. For more specific information, visit the IRS website.

If an organization exceeds any of the designated levels of lobbying expenditures in a year, the excess expenditure becomes subject to a 25 percent excise tax. The organization does not lose its tax exemption and its ability to receive deductible charitable contributions. The electing charity only loses its tax-exemption if the sum of its lobbying expenditures, over a four-year computation period, exceeds its overall or grassroots ceilings for that entire period by more than 50 percent.

Lobbying expenditures are reported on Schedule A of form 990 or 990EZ. Part VI-A is for electing public charities

(PTAs). It may look complicated, but this section gives specific information on the extent of lobbying allowed. The second half of Part VI-A on Schedule A accounts for the four-year averaging and would be the section to determine a violation of expenditure rules that results in loss of tax exemption.

Part VI-B of Schedule A is for nonelecting public charities and, even though it may look less complicated, offers very little information as to lobbying expenditures allowed.

Deciding not to file a 501(h)

If a PTA does not elect to take advantage of the lobbying provisions under this 1976 lobby law, which added section 501(h) to the IRS code, it remains subject to the vague “insubstantial” rule that has been in the tax code since 1934. Under this provision, if a charity engages in more than insubstantial lobbying, it loses its 501(c)(3) status and its right to receive tax-deductible charitable contributions. Unfortunately, insubstantial has never been defined under the law, with the result that charities that do lobby but have not elected to come under 501(h) cannot be certain how much lobbying they may conduct without jeopardizing their tax-exempt status. As an added incentive to make the 501(h) election, not only can excise taxes be levied but management, as well as the PTA, may be held liable for these taxes.

People sometimes confuse the words “lobbying” and “advocacy.” The legal definition of lobbying is attempting to influence legislation. Advocacy covers a much broader range of activities that may or may not include lobbying. You may want to think of it this way:

lobbying always involves advocacy but advocacy does not always involve lobbying. Almost all social changes started out with non-lobbying advocacy but may later have used lobbying to get the needed change in public law.

This information is presented with the understanding that National PTA does not render legal advice.