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Lobbying for Your Agency: Avoiding the Tax and Legal Pitfalls

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Topics for Today

Review existing law & new changes

- Wait a Minute, My Agency Can Lobby?
- Tax Rules
 - Lobbying vs. political activities
 - “No substantial part” test
 - 501(h) election
- Lobbying Disclosure
 - Who must be registered under the LDA
 - Semiannual reports by lobbyists under the LDA
 - States
- Gift Rules
 - Federal legislative branch
 - Federal executive branch
 - States
- Conclusion/Questions



Wait a Minute, I Can Lobby?

“I thought 501(c)(3)s couldn’t do that.”



Tax Rules for Lobbying

- There is a common misperception about 501(c)(3) lobbying—501(c)(3) organizations are permitted to engage in lobbying, though there are limits.
- Internal Revenue Code and Regulations do not use the term “lobby”—rather, the act is generally referred to as “carrying on of propaganda” and “attempting to influence legislation.”
- Code Section 501(c)(3) says limit is “no substantial part” of the activities may be carrying on of propaganda or otherwise attempting to influence legislation.



Tax Rules for Lobbying

- Stark line drawn between lobbying activities and political campaign activities—501(c)(3) organizations are absolutely prohibited from engaging in political campaign activities.
- Political campaign activity is generally giving of support for the election or defeat of a candidate for office.
- In practice, IRS views this more broadly than federal election law.



Tax Rules for Lobbying

- Two options if you want to lobby as a 501(c)(3)
 - Go the “no substantial part” route
 - Go the “501(h) election” route



Tax Rules for Lobbying

- No substantial part
 - Subjective
 - Vague definition—includes “attempting to influence legislation by propaganda or otherwise” and advocating “proposing, supporting, or opposing of legislation.”
 - IRS applies on a case-by-case basis
 - One benefit to this approach is IRS may be less likely to pursue given the vague statutory and regulatory backdrop



Tax Rules for Lobbying

- 501(h) election
 - Expenditure test
 - Gives more clarity to the taxpayer
 - Definitions of what constitutes lobbying are specific, do not encompass a broad range of activities
 - Establishes limits for overall lobbying expenditures



Tax Rules for Lobbying

- 501(h) election (continued)
 - Direct lobbying tied to attempts to influence legislations with government officials or employees
 - Grassroots lobbying tied to attempts to influence general public or segment thereof on legislative matters
 - Limits
 - Sliding scale 20% to 5% (of exempt purpose expenditures)
 - Hard cap of \$1,000,000
 - Grassroots can only be 25% of permitted lobbying expenditures



Lobbying Disclosure

Federal and State



What is a Lobbyist?

TWO PART TEST

- More than one lobbying contact
AND
- More than 20% of time on lobbying activities



Lobbying Contact

- Any oral or written communication (including an electronic communication) to a covered executive branch official or a covered legislative branch official that is made on behalf of a client with regard to—
 - the formulation, modification, or adoption of Federal legislation (including legislative proposals);
 - the formulation, modification, or adoption of a Federal rule, regulation, Executive order, or any other program, policy, or position of the United States Government;
 - the administration or execution of a Federal program or policy (including the negotiation, award, or administration of a Federal contract, grant, loan, permit, or license);
or
 - the nomination or confirmation of a person for a position subject to confirmation by the Senate.



Other Definitions

COVERED LEGISLATIVE BRANCH OFFICIALS

- Anyone in Congress – from Members to the receptionist

COVERED EXECUTIVE BRANCH OFFICIALS

- President, Vice President, & Executive Office of the President
- Levels 1 through 5 of the Executive schedule (cabinet & some below)
- Certain military officers
- Schedule C political appointments



Other Definitions

LOBBYING ACTIVITY

- Contacts and efforts in support of such contacts, including preparation and planning activities, research and other background work that is intended, at the time it is performed, for use in contacts, and coordination with the lobbying activities of others.



Overview of Reporting

- Quarterly Reporting
- Semiannual Lobbyist Report



Contents of Quarterly Reports

- Amount spent on lobbying
 - Minimum amount to report \$5,000 (instead of \$10,000)
 - Rounded to nearest \$10,000 (instead of \$20,000)
 - LDA or IRC
- Individuals who act as lobbyists
 - 20 year look back for covered officials
- Issue areas lobbied
- Agencies/houses of Congress lobbied



LD-203

- Semiannual disclosure of “political” contributions
- Each organization with in-house lobbyist must complete form
- Each registered lobbyist must complete the form
- Includes certification of Gift Rule compliance
- Online system



Don't Forget the States

- Virtually every state has some type of registration and reporting regime; know your state's requirements before lobbying
- See, for example, Florida Statutes 11.045
 - Lobbyist is a person who is employed and receives payment ...for the purpose of lobbying.



Legislative Gift Rules



Congressional Gift Rule

FOR NON-LOBBYISTS

- Basic Rule:
 - Gifts of up to \$49.99
 - Total for year of up to \$99.99
- Unless:
 - There is an applicable exemption
 - Then may give more



Congressional Gift Rule

FOR LOBBYISTS

- Basic Rule:
 - No gifts or travel from lobbyists or entities that retain or employ lobbyists
- Unless:
 - There is an applicable exemption
- Cannot expense “gifts”
 - No reimbursement
 - No deductions
 - May pay using own money if preexisting friendship (discussed below).
- Does not apply to executive branch gifts
 - \$20 limit



Congressional Gift Rule Exceptions

- Personal Friendship
- Widely Attended Events
- Charity Events
- Receptions



Executive Branch Ethics Rules

- The new rules apply to all political appointees:
 - Appointed by President and Vice President
 - Senior Executive Service appointments
 - Schedule C appointments
 - Will eventually include other career agency officials
- Requires appointees to sign pledge
- More strict than existing Executive Branch Rules



Executive Branch Gift Ban—Gifts from Lobbyists

- Bans gifts from registered lobbyists and organizations registered under the LDA
- Exceptions:
 - Based on personal relationship
 - Discounts and similar benefits
 - Resulting from spouse's employment
 - Gifts to President or Vice President
 - Authorized by agency regulation or accepted under specific statutory authority



Gift Rules

- Don't forget the states!



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