

PhilanthroPolicy 101: Advocacy for Foundations and Charities

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ARIZONA GRANTMAKERS FORUM

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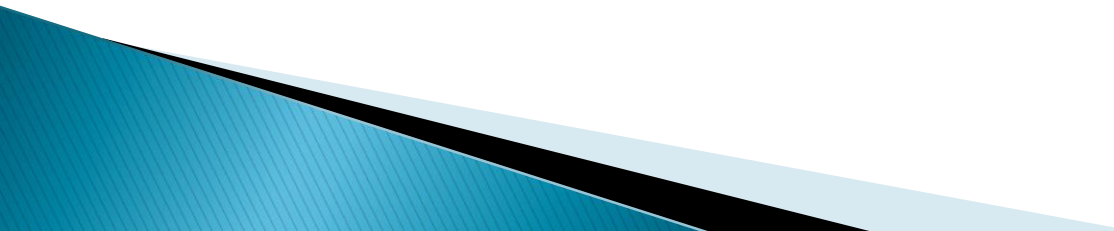
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First, Ask a Rabbi*

If I am not for myself, who is for me?
When I am for myself, what am I?
If not now, when?

— Hillel (circa 70 B.C. - 10 A.D.)

*On religious questions, if you don't like the answer, you may ask a different rabbi. On tax law, not so much.

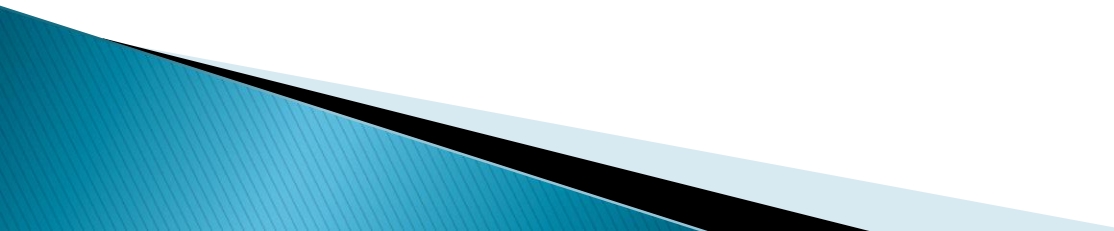


(c)(3) Exempt Organizations (EOs)

501(c)(3) Charities – both PCs and PFs

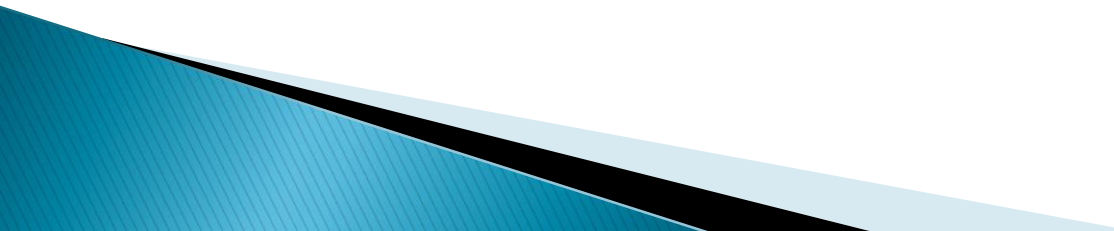
- Charitable, religious, educational, scientific, testing, amateur sports, preventing cruelty to kids or animals
- Organized and operated exclusively for exempt purposes
- Assets permanently restricted
- Tax-exempt and ***tax-deductible***
- No election activity for or against candidates

501(c)(3) EOs: PCs and PFs

- Assumed to be a private foundation (PF) unless qualifying as a public charity (PC)
 - PCs have much greater flexibility, fewer prohibitions and limits, greater deductibility
 - Idea is raising money from general public makes for a better charity (transparency, competence, corporate governance)
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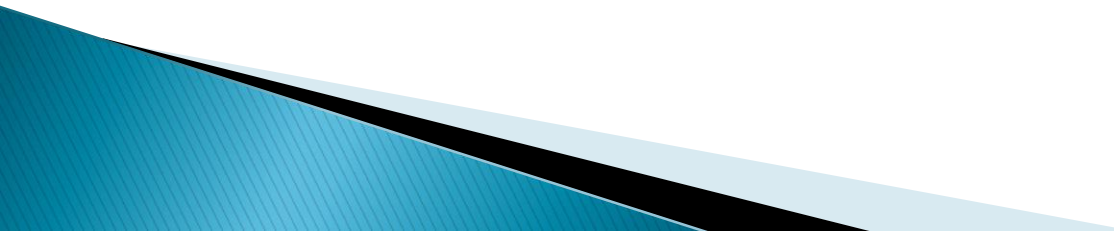
Benefits of Public Charity Status

Advantages of PC status include:

- ▶ No tax on net investment income, no absolute self-dealing prohibition, no minimum distribution requirements, no termination tax
 - ▶ No excess business holding limitations or jeopardizing investment limitations
 - ▶ Less restrictive taxable expenditure rules
 - ▶ Cash donations deductible up to 50% AGI (PF 30%)
 - ▶ LT Cap Gain property up to 30% of AGI (PF 20%)
 - ▶ ***Can engage in limited lobbying***
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PF Taxable Expenditures

Excise tax is significant enough to act as a bar to any of these activities:

- ▶ Propaganda and influencing legislation
 - ▶ Election activity or partisan voter registration
 - ▶ Grants to individuals (with some exceptions)
 - ▶ Grants other than to PCs (unless PF exercises “expenditure responsibility”)
 - ▶ For anything other than 501(c)(3) purposes
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Other key EO types

501(c)(4)—Public Education & Social Welfare

- ▶ Tax-exempt, but **not** tax-deductible
- ▶ Unlimited lobbying
- ▶ Can do “secondary” electioneering, but must follow federal and state election laws
- ▶ Initiative or referendum committees
- ▶ Potential *Citizens United* vehicles
 - Essentially no disclosure, plus anything you can do, they can do 10 or 100 times bigger
- ▶ How your donors/founders may act on their own

Lobbying by Public Charities

- ▶ Lobbying is permitted, but must be “no substantial part” of activities
 - Qualitative test—5% OK, but 10% too much?
 - Quantitative “Safe harbor”: Election under 501(h)
 - Clear dollar limits & definition of lobbying
 - Must elect by filing Form 5768

Quantitative “Safe Harbor” Test

Overall limit under Section 501(h):

- ▶ 20% of first \$500,000
- ▶ + 15% of next \$500,000
- ▶ + 10% of next \$500,000
- ▶ + 5% of remaining, subject to overall cap of \$1 million

Plus “grassroots lobbying” sub-limit of 25%

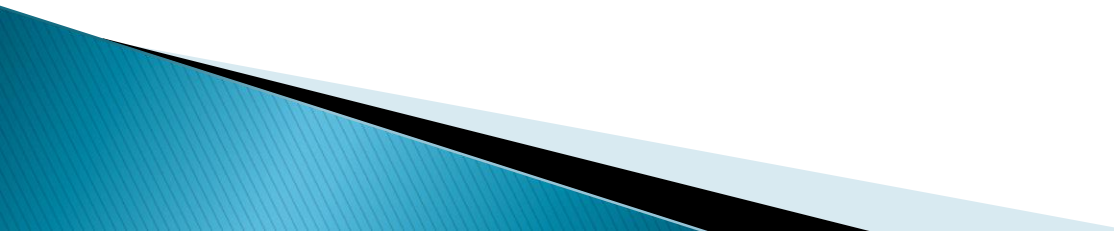
Section 501(h) Examples

- EO with a \$2 million budget:
 - 20% of \$500,000 = \$100,000
 - 15% of \$500,000 = 75,000
 - 10% of \$500,000 = 50,000
 - 5% of \$500,000 = 25,000
- Total permitted \$250,000, with \$62,500 (25%) cap on grassroots lobbying
- EO with > \$17 million probably could exceed \$1 million cap in 501(h), don't elect?


Political Campaign Activity is *Verboten*

- ▶ Can't support or oppose “any candidate for public office”
 - Can't favor one candidate over another
 - Can't oppose a candidate in some manner
 - Can't do things that ***have the effect*** of favoring a candidate or group of candidates, says the IRS
- ▶ Includes nonpartisan elections (judicial retention voting?)
- ▶ Initiative or referendum campaigns involve legislation—and thus permissible lobbying

What Is Lobbying (the IRS view)?

- ▶ Attempting to influence specific legislation
 - ▶ Includes contacting staff as well as elected officials
 - ▶ Grassroots lobbying—contacting members of public to urge them to contact legislators (“call to action”)
 - ▶ Initiative or referendum campaigns (“no candidate, no problem”—within limits)
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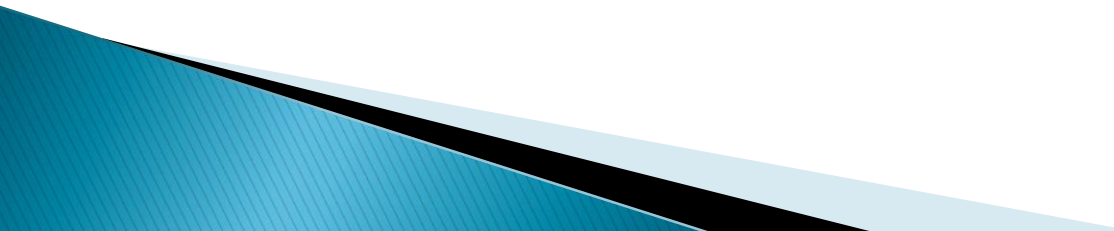
What Isn't Lobbying?

- ▶ Nonpartisan analysis, study, or research
 - Full and fair discussion, no direct call to action, no broad dissemination
 - ▶ Written requests for advice or assistance
 - ▶ Organizational “self defense”
 - ▶ Communication to “bona fide” members if no call to action (no grassroots lobbying)
 - ▶ “Administrative” bodies
 - School & zoning boards, tax districts (limited jurisdiction)
 - ▶ If no money, then no 501(h) accounting
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What Is (and Isn't) Lobbying

- ▶ “Specific legislation” does not include:
 - Regulations
 - Enforcement of existing laws
 - Executive Orders
 - Litigation
 - ▶ “Specific legislation” does include:
 - Constitutional amendments
 - Bond measures
 - Treaties
 - Legislative confirmations
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Difficult Situations for PCs


- ▶ Individual activity by charity leaders
 - ▶ Issue advocacy vs. campaign intervention
 - ▶ Inviting officeholder (candidate?) to speak
 - ▶ Voter education, registration, and GOTV
 - ▶ Business activity (leasing space, rental or sale of mailing lists)
 - ▶ Web sites
 - ▶ Timing of activity
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Lobbyist Regulation

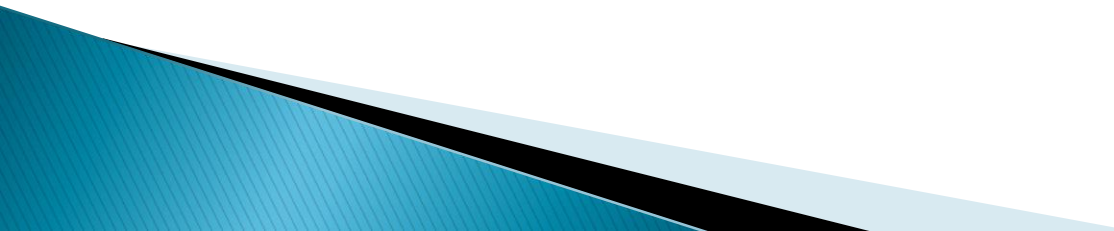
If you do lobby as an organization, may need to register and report:

- ▶ Federal law (LDA/HLOGA)
 - 20% of employee time, >1 contact, \$12K spend
- ▶ State law (A.R.S. §41-1231)
 - Can be triggered by any expenditure or appearing on behalf of employer or entity
- ▶ Definition of lobbying is broader than IRS
 - Includes volunteers, nonpartisan research
- ▶ PC hires a lobbyist and they report?

What Can a Private Foundation Do?

- ▶ Not lobbying, not prohibited
 - Nonpartisan analysis, study, or research
 - Respond to written requests for assistance
 - Organizational “self defense”
 - Litigation
 - Convening public sessions, or educate legislators and public officials, on broad topics
 - Enforcement of existing laws
 - Relationships with elected officials
 - ▶ Partnering with PCs or government
 - Jointly funded projects with government units
 - Grants to PCs; just can’t fund PC lobbying. Thus, no earmarking, or exclude from grant
 - ▶ Your donors/leaders can act on their own
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You Must Remember This

- ▶ IRC limits lobbying by PCs to “no substantial part” of activities (or within 501(h) limits)
 - ▶ But within those limits, lobbying is legitimate, encouraged, and protected
 - ▶ And PFs, while prohibited from actual lobbying, can impact public policy and attention in limited, but effective, ways
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Questions?

- ▶ For further information: www.afj.org,
www.bolderadvocacy.org, or
www.independentsector.org
- ▶ Or email or call me at the contact information below:

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