

THE 501(H) ELECTION: A MORE OBJECTIVE MEASURE

The IRS stipulates that nonprofits can lobby, but only up to a certain amount, and could lose their tax-exempt status if they do more than an “insubstantial” amount of lobbying. The definition of “insubstantial” is, however, subject to interpretation. Therefore, to avoid the uncertainty of a nonprofit's lobbying activity being measured with this subjective test, many charitable nonprofits should consider filing for the 501(h) election. The 501(h) election allows nonprofits to choose to be measured by the objective “expenditure test” which is more well-defined than the “insubstantial” test.

Reasons that a 501(c)(3) nonprofit should consider taking the 501(h) election:

1. The 501(h) expenditure test has clearer definitions and excludes certain activities that would otherwise constitute “influencing legislation.”
2. Efforts that don't cost the organization money – such as volunteer efforts – don't count towards the limits.
3. A nonprofit that chooses the 501(h) election is less likely to lose its exemption for a single year's excessive expenditures than a non-electing charity.
4. Individual managers of an electing charity which exceeds the expenditure limits are not personally penalized.
5. An electing organization may spend up to a quarter of its overall lobbying limit on “grassroots” lobbying (i.e. urging the general public to contact its legislators about the organization's position on a certain piece of legislation) OR up to the entire amount of the limit on direct lobbying.

HOW DO I FILE THE 501(H) ELECTION?

Nonprofits can take the 501(h) election by filling out the one-page form: [IRS Form 5768](#). The form stays in effect until the organization self-revokes the election, so there is no need to re-file annually. Electing nonprofits report their lobbying expenditures annually through the Form 990.

WHAT ARE THE EXPENDITURE LIMITS UNDER 501(H)?

This limit is generally based upon the size of the organization and may not exceed \$1,000,000, as indicated in the table below. The expenditure limits are determined based on an organization's “exempt-purpose expenditures.” In general, an exempt-purpose expenditure is paid or incurred by an electing public charity to accomplish the organization's exempt purpose. It does not include payments for investment management, unrelated businesses and certain fundraising costs.

LOBBYING CEILINGS UNDER THE 1976 LOBBY LAW¹

Annual exempt-purpose expenditures	Total Direct Lobbying Expenditures ceiling	Total Grassroots lobbying Expenditures ceiling
Up to \$500,000	20% of exempt-purpose expenditures up to \$100,000	¼ of the total direct lobbying expenditures ceiling
\$500,000 - \$1,000,000	\$100,000 + 15% of excess over \$500,000	\$25,000 + 3.75% of excess over \$500,000
\$1 million - \$1.5 million	\$225,000 + 5% of excess over \$1.5 million	\$43,750 + 2.5% of excess over \$1.5 million
\$1.5 million - \$17 million	\$225,000 + 5% of excess over \$1.5 million	\$56,250 + 1.25% of excess over \$1.5 million
Over \$17 million	\$1 million	\$250,000

¹ <http://www.clpi.org>

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