

## Joint Committee on Taxation: Political and Lobbying Activities of Tax-Exempt Organizations (April 2022)

8-11 minutes : 6/4/2022

The Subcommittee on Taxation and IRS Oversight of the Senate Committee on Finance held a public hearing on May 4, 2022, entitled “Laws and Enforcement Governing the Political Activities of Tax Exempt Entities.” The Joint Committee on Taxation (JCT) prepared a document in connection with the hearing containing an overview of present-law rules governing the political campaign and lobbying activities of tax-exempt organizations, a description of the present-law disclosure rules applicable to such organizations, and data relating to such organizations. The document, JCX-7-22 (April 29, 2022), is available on the JCT site [here](#).

### Excerpts from the Introduction

Although the tax laws prohibit a section 501(c)(3) (generally, charitable) tax-exempt organization from engaging in political campaign activity, other types of section 501(c) tax-exempt organizations are not so prohibited, provided that the campaign activities are not the organization’s primary activities. This includes section 501(c)(4) social welfare organizations, section 501(c)(5) labor organizations, and section 501(c)(6) trade associations and business leagues.

While labor organizations have a longer history of participating in political campaign activity, the involvement of section 501(c)(4) and (6) organizations in political campaign activity increased significantly in recent decades. One explanation for this increase might be the relative anonymity that is afforded to donors to such organizations, as compared with section 527 political organizations, which now must file periodic reports that detail contributions to the organization. Only certain section 527 organizations report to the Federal Election Commission (“FEC”) under the Federal Election Campaign Act (“FECA”), and, prior to 2000, a section 527 organization only filed a return with the IRS if it had taxable income. In response to an increased awareness of these non-FEC regulated “stealth” political action committees (“PACs”), the Congress amended section 5273 in July 2000 generally to require reporting either to the IRS, the FEC, or a State, including detailed periodic IRS reports of contributions and expenditures that are filed electronically and made available to the public ....

Another likely reason for the increased use of section 501(c) organizations for political campaign activity is the Supreme Court’s 2010 decision in *Citizens United v. Federal Election Commission*. The decision generally permits (under the election laws) unlimited corporate and union spending from general treasury funds on independent expenditures and electioneering communications, including expenditures and communications made by section 501(c) tax-exempt organizations. The *Citizens United* decision thus provides a clearer path under the election laws for section 501(c)(4), (5), and (6) organizations to engage in political campaign activity that was previously thought to be impermissible under such laws.

...

Section 501(c) organizations are permitted to engage in lobbying, although limits apply to the lobbying activities of a section 501(c)(3) organization. In general, a section 501(c)(3) organization does not qualify for tax exemption unless “no substantial part” of its activities constitutes “carrying on propaganda, or otherwise attempting, to influence legislation.” Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.

For purposes of determining whether lobbying activities are a substantial part of a public charity’s overall functions, a public charity may choose between two standards, the “substantial part” test or the “expenditure”

test. The substantial part test derives from the statutory language quoted above and uses a facts-and-circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.

Section 527 provides a limited tax-exempt status to "political organizations," meaning a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an "exempt function." For purposes of section 527, the term "exempt function" means: "the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." Thus, by definition, the purpose of a section 527 organization is to accept contributions or make expenditures for political campaign (and similar) activities. Section 527 organizations are generally exempt from Federal income tax on contributions they receive, but they are subject to tax on their investment income and certain other income.

### **Excerpts from Data Relating to Tax-Exempt Organizations**

As of fiscal year 2020, there were more than 1.9 million tax-exempt organizations described in section 501(c) or (d) or classified as political organizations described in section 527. Of these organizations, nearly 1.8 million were exempt under section 501(c) of the Code, and 1.4 million were religious and charitable organizations exempt under section 501(c)(3). These 1.4 million religious and charitable organizations were the largest category of tax-exempt organization, totaling greater than 73 percent of all tax-exempt organizations, nonexempt charitable trusts, and split-interest trusts. These data include only those organizations that received recognition of tax-exempt status from the IRS and therefore do not include organizations, such as churches, that are not required to, and choose not to, seek recognition of tax-exempt status from the IRS.

...

Table 2, below, provides the total number of returns and other forms for fiscal years 2017 to 2020, including Forms 990, 990-EZ, 990-N, 990-PF, and 990-T, 4720 (excise tax return of charities and other persons), 5227 (split-interest trust information return), and 8872 (political organization report of contributions and expenditures). The total number of returns filed ranged from 1.53 million to 1.6 million in fiscal years 2017, 2018, and 2019, and dropped to approximately 1.36 million in 2020.

...

Table 3 also shows the number of public charities that reported lobbying expenditures as well as the aggregate reported amount of lobbying expenditures, with the number of organizations and dollar amounts being broken out between charities that elected the expenditure test under section 501(h) and nonelecting public charities.

- Lobbying Expenditures Incurred by Section 501(h)-Electing Public Charities – 2017: Number of returns – 3,204, Aggregate dollar expenditures reported on all returns – \$215,000,468; 2018: Number of returns – 3,448, Aggregate dollar expenditures reported on all returns – \$229,142,754.
- Lobbying Expenditures Incurred by Nonelecting Public Charities – 2017: Number of returns – 6,160, Aggregate dollar expenditures reported on all returns – \$462,310,368; 2018: Number of returns – 6,070, Aggregate dollar expenditures reported on all returns – \$462,080,983.

Table 4, below, reports the political expenditures reported on Forms 990 or 990-EZ for organizations that are tax-exempt under Code sections 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), or 501(c)(9).

- Political Expenditures – 2017: Number of returns – 1,617, Aggregate dollar expenditures reported on all returns – \$281,404,548; 2018: Number of returns – 1,826, Aggregate dollar expenditures reported on all returns – \$596,160,302.

### **Observation**

In each of 2017 and 2018, fewer than 10,000 public charities out of more than 1,000,000 (i.e., less than 1%) have reported lobbying expenditures? The untapped power of public charities to lobby on some of the most important issues that impact many of their missions is staggering. Educating charity leaders is part of the solution, but we need a tipping point actor or event to exponentially increase the power of charities to effect public policies and laws in a way that helps them advance their missions and the communities they serve.

[Previous Chapter](#)

[Next Chapter](#)