

## Electing the 501(h) Expenditure Test

Most 501(c)(3) public charities will benefit from “electing” the 501(h) lobbying expenditure test. The rules that govern lobbying under 501(h) are clearer than those that apply under the “insubstantial” standard.

### Step 1 – Complete Form 5768

[IRS Form 5768](#), *Election/Revocation of Election by an Eligible Section 501(c)(3) Organization To Make Expenditures To Influence Legislation*, is the first step in electing to be governed by the 501(h) expenditure test. An organization simply supplies its name, address, and the first tax year to which it wants the election to apply. The form needs to be signed by an authorized officer, usually the president or treasurer. The election applies retroactively to the first day of the fiscal year in which the form is filed and, generally, to all subsequent years. For example, a form filed in December 2006 will bring an organization under section 501(h) from January 1, 2006 forward (assuming the organization operates under the calendar year).

### Step 2 – Make a Copy

Make a copy of Form 5768 before mailing it to the IRS because the agency will NOT send a confirmation letter.

### Step 3 – Track Lobbying Expenditures

Under 501(h), your organization can spend up to 20% of its first \$500,000 exempt purpose budget on direct lobbying. Direct lobbying is defined as any communication, with a legislator, expressing a view about specific legislation. Organizations with budget expenditures over \$500,000 should apply the following formula:

$$\begin{aligned} & 20\% \text{ of the first } \$500,000 \\ & + 15\% \text{ of the next } \$500,000 \\ & + 10\% \text{ of the next } \$500,000 \\ & \quad + 5\% \text{ of the remaining} \\ & = \text{the overall lobbying limit} \end{aligned}$$

Grassroots lobbying is defined as any communication with the general public, expressing a view about specific legislation, with a call to action. A call to action refers to four different ways the organization asks the public to respond to its message: (1) asking the public to contact their legislators or staffers; (2) providing the address, phone number, website, or other contact information for the legislators; (3) providing a mechanism to contact legislators such as a tear off postcard, petition, letter, or email link to send a message directly to the legislators; or (4) listing the recipient’s legislator, the names of legislators voting on a bill, or those undecided or opposed to organization’s view on the legislation. An organization that has made the 501(h) election can never spend more than 25% of their overall lobbying limit on grassroots lobbying.

Therefore, a 501(c)(3), that has made the 501(h) election, with an annual budget of \$500,000, would have an overall lobbying limit of \$100,000 and a grassroots lobbying limit of \$25,000.

All public charities, including 501(h) electing charities need to keep track of their lobbying expenditures for their 990 Form and in the event of an IRS audit.

**Note:** To revoke your organization’s 501(h) election, follow steps 1 and 2, filling out the revocation portion of Form 5768 (question 2).

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nonprofits, and provides technical assistance for nonprofits engaging in advocacy. For additional information, please feel free to contact the Alliance for Justice.

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Form **5768**

(Rev. December 2004)

Department of the Treasury  
Internal Revenue Service

**Election/Revocation of Election by an Eligible  
Section 501(c)(3) Organization To Make  
Expenditures To Influence Legislation**

(Under Section 501(h) of the Internal Revenue Code)

For IRS  
Use Only ▶

Name of organization

Employer identification number

Number and street (or P.O. box no., if mail is not delivered to street address)

Room/suite

City, town or post office, and state

ZIP + 4

**1 Election**—As an eligible organization, we hereby elect to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending.....and all subsequent tax years until revoked.  
(Month, day, and year)

**Note:** This election must be signed and postmarked within the first taxable year to which it applies.

**2 Revocation**—As an eligible organization, we hereby revoke our election to have the provisions of section 501(h) of the Code, relating to expenditures to influence legislation, apply to our tax year ending.....  
(Month, day, and year)

**Note:** This revocation must be signed and postmarked before the first day of the tax year to which it applies.

Under penalties of perjury, I declare that I am authorized to make this (check applicable box)  election  revocation on behalf of the above named organization.

(Signature of officer or trustee)

(Type or print name and title)

(Date)

**General Instructions**

Section references are to the Internal Revenue Code.

Section 501(c)(3) states that an organization exempt under that section will lose its tax-exempt status and its qualification to receive deductible charitable contributions if a substantial part of its activities are carried on to influence legislation. Section 501(h), however, permits certain eligible 501(c)(3) organizations to elect to make limited expenditures to influence legislation. An organization making the election will, however, be subject to an excise tax under section 4911 if it spends more than the amounts permitted by that section. Also, the organization may lose its exempt status if its lobbying expenditures exceed the permitted amounts by more than 50% over a 4-year period. For any tax year in which an election under section 501(h) is in effect, an electing organization must report the actual and permitted amounts of its lobbying expenditures and grass roots expenditures (as defined in section 4911(c)) on its annual return required under section 6033. See Schedule A (Form 990 or Form 990-EZ). Each electing member of an affiliated group must report these amounts for both itself and the affiliated group as a whole.

To make or revoke the election, enter the ending date of the tax year to which the election or revocation applies in item 1 or 2, as applicable, and sign and date the form in the spaces provided.

**Eligible Organizations.**—A section 501(c)(3) organization is permitted to make the election if it is not a disqualified organization (see below) and is described in:

1. Section 170(b)(1)(A)(ii) (relating to educational institutions),
2. Section 170(b)(1)(A)(iii) (relating to hospitals and medical research organizations),
3. Section 170(b)(1)(A)(iv) (relating to organizations supporting government schools),
4. Section 170(b)(1)(A)(vi) (relating to organizations publicly supported by charitable contributions),
5. Section 509(a)(2) (relating to organizations publicly supported by admissions, sales, etc.), or
6. Section 509(a)(3) (relating to organizations supporting certain types of public charities other than those section 509(a)(3) organizations that support section 501(c)(4), (5), or (6) organizations).

**Disqualified Organizations.**—The following types of organizations are not permitted to make the election:

- a. Section 170(b)(1)(A)(i) organizations (relating to churches),

- b. An integrated auxiliary of a church or of a convention or association of churches, or

- c. A member of an affiliated group of organizations if one or more members of such group is described in a or b of this paragraph.

**Affiliated Organizations.**—Organizations are members of an affiliated group of organizations only if (1) the governing instrument of one such organization requires it to be bound by the decisions of the other organization on legislative issues, or (2) the governing board of one such organization includes persons (i) who are specifically designated representatives of another such organization or are members of the governing board, officers, or paid executive staff members of such other organization, and (ii) who, by aggregating their votes, have sufficient voting power to cause or prevent action on legislative issues by the first such organization.

For more details, see section 4911 and section 501(h).

**Note:** A private foundation (including a private operating foundation) is not an eligible organization.

**Where To File.**—Mail Form 5768 to the Internal Revenue Service Center, Ogden, UT 84201-0027.