

Maximize Your Lobbying Limit

Elect to Measure Your Lobbying Using the 501(h) Expenditure Test

501(c)(3) public charities can lobby within generous limits allowed by federal tax law. How much lobbying the organization can use depends upon which of two tests the organization uses to measure its lobbying – the “501(h) expenditure” test or the “insubstantial part” test. Most organizations will benefit from electing to measure their lobbying using the [501\(h\) expenditure test](#) because the rules governing lobbying under Section 501(h) are clearer than those that apply under the insubstantial part standard.

Electing the 501(h) Expenditure Test

Choosing the 501(h) expenditure test is as simple as filing a one page form with the IRS and will take only a few minutes to complete.

Step 1 – Complete Form 5768

The first step in electing to be governed by the 501(h) expenditure test is to complete the simple half-page form, IRS [Form 5786 Election/Revocation of Election by an Eligible Section 501\(c\)\(3\) Organization To Make Expenditures To Influence Legislation](#).¹ 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 to all subsequent years. For example, a form filed in December 2012 will bring an organization under section 501(h) from January 1, 2012 forward (assuming the organization has a fiscal year that runs from January through December).

Step 2 – Make A Copy

Next, the organization should make a copy of its completed Form 5768 and keep it with the other records of the organization.

If at some point in the future the organization finds it can do more lobbying under the insubstantial part test, the organization can revoke the 501(h) election. To revoke your organization’s 501(h) election, follow steps 1 and 2, filling out the revocation portion of Form 5768. Revocation becomes effective on the first day of the organization’s next tax year.

Step 3 – Calculate Your Lobbying Limit

Under Section 501(h), the overall limit on lobbying starts as high as 20% of those expenditures for small charities and diminishes to a smaller percentage of the expenditures for larger organizations, with a maximum cap of \$1,000,000 on an organization’s annual lobbying expenditures.² In addition to

¹ Churches (which is how the IRS defines all houses of worship) cannot file the Form 5768 because they have exempted themselves from the scope of the 501(h) expenditure test.

² You can use our [online calculator](#) to determine your organization’s annual lobbying limit.

this overall limit, the 501(h) test imposes a limit on [grassroots lobbying](#), calculated as one-quarter of the overall lobbying limit. For example, 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.

Step 4 – Track Lobbying Expenditures

For charities that have made the 501(h) election, the law requires the charity to [maintain records](#) showing expenditures for grassroots and direct lobbying (including expenditures for preparation for such lobbying). The expenses that must be tracked include staff salaries and benefits; costs of communications (e.g. printing and postage); a portion of overhead expenses attributable to lobbying; and grants, payments, or reimbursements made to others for lobbying. These expenditures are reported on [Schedule C of Form 990](#). Organizations not required to complete schedules should still track their lobbying in case of audit.

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