Defining the limits of lobbying activity for IRS Code 501 (c) (3) organizations.

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DEFINING THE LIMITS OF LOBBYING ACTIVITY
FOR IRS CODE 501(c)(3) ORGANIZATIONS

by

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B. S., University of Buffalo, 1978

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INTRODUCTION

Philanthropy has always been a cornerstone of Western culture, helping to provide funding for the cultural, humanitarian and educational aspects of society. Private donation has spawned development in science, technology, education and the arts. The government has actively encouraged charitable donation by allowing charitable contributions to be deducted from taxable income, thus decreasing the amount of tax due.

A 501(c)(3) organization is one which is defined as a non-profit corporation, unincorporated association or trust, which engages in scientific, educational, religious or other charitable activities. These organizations are exempt from paying federal income tax under Internal Revenue code section 501(c)(3). Tax deductible contributions from corporations and individuals can be used to fund a 501(c)(3), as well as foundation grants from both private corporations and philanthropic organizations.

Recognition of this tax exempt status will be granted by the Internal Revenue Service after submission of an accurate financial statement and an explanation of the group’s proposed activities, statement of purpose, governing structure and sources of funding. The IRS requires copies of the articles of incorporation and bylaws and may seek
additional information upon request prior to approval in the determination process.

The government cannot discourage contributions to groups whose goal or mission is to change the government or challenge its existing laws without violating free speech rights. However, The government can exert power by not rewarding contributions (through reduced taxes) to such groups.

The government has been unable to establish a consistent standard when it comes to determining which contributions should be deductible. This is particularly true in the area of "political activity," where the government, for example, has sometimes considered an organization's philosophy regarding social and political issues in determining whether deductions of charitable contributions are allowable. The confusion in defining what is or is not considered political activity continues to be controversial. The government's methods of defining political activity--using the Internal Revenue Code, legislative acts and subsequent court rulings--have been subject to repeated charges of bias and inconsistency.

This paper examines the restrictions imposed on the non-profit sector with regard to political and lobbying activities of these organizations. To better understand the challenges of today's non-profit sector one must first examine the history of government's efforts to deny tax-
exempt status. Provided herein is a history of the
development of laws and regulations used throughout this
century to define what constitutes "political activity," and
the legal challenges and decisions which resulted.
Throughout this century, organizations formed primarily for educational, charitable, or religious purposes have contributed to this nation's progress. Non-profit organizations have provided a strong watchdog function in advocating for the citizenry of the nation. Society has enjoyed the benefits of environmental advocacy, the exchange of ideas on such concerns as health and housing addressed in the public forum because of the work of the private non-profit sector.

Society as a whole benefits from an active philanthropic sector. Non-profit organizations throughout history have often depended on donations to fund operations such as research or outreach to the needy (many times filling service voids not met by government programs). Incentives to donors, such as exempting the amount donated from the donor's taxable income, benefit the non-profit sector. The rules regulating this exemption have been subject to a myriad of legislation and court decisions attempting to define which organizations may be granted status to receive exempt donations. The big issue of contention is "political activity" of an organization. The government has often failed to develop fair and equitable legislation regulating
the amount of political activity an organization may participate in before its tax-exempt status is jeopardized.

Many of the problems stem from vagueness of the tax code language under which charitable organizations operate. The term charity itself has had many different legal definitions, and has produced even more interpretations when examined by individuals with different interests. An early legal definition was offered in 1867 by Justice Grey (1):

A charity in the legal sense, may be more fully defined as a gift, to be applied consistently with existing laws, for the benefit of an indefinite number of persons, either by bringing their minds or hearts under the influence of education or religion, by relieving their bodies from disease, suffering or constraint, by assisting them to establish themselves in life, or by erecting or maintaining public buildings or works or otherwise lessening the burdens of government.

This definition offered some guidelines to legal scholars, administrators and legislators, but it also made countless interpretations possible. Organization bylaws often contain wording such as "seeking world peace" (2) or "education of the voting public" (3) that can be construed to mean taking an active role in promoting a particular political philosophy.

One definition of charity used by the U.S. judicial system, as well as administrative and legislative bodies is the British "Statute of Elizabeth" which was enacted in 1601.(4) Charity was seen as activity that uplifts the condition of society through relief of poverty, providing education and the promotion of science and medicine. This
was a general definition which when applied in a legal sense excluded little. Although charity was more concisely defined in later court decisions in the U.S. beginning as early as 1867 (5), the courts have generally recognized that to limit the use of the "charitable" designation would effectively deny the society at large of the many benefits it receives through private contributions.

As part of the income tax law of 1894 an individual's donation to "any corporation, association or organization set up exclusively for religious, educational or charitable purposes" was considered tax-exempt. (6) The following year this law was overturned resulting in denial of tax-exemptions for individual contributors to charitable organizations. (7) It was not until the passage of the Taxation Act of 1913 that tax-exemption was allowed for charitable contribution. (8) Subsequent taxation acts passed until 1934 left intact the language of the 1913 act with regard to tax-exemption for charitable giving, with the exception of the 1921 act which added the term "literary" to the list of types of organizations eligible for "charitable" designation. (9) An individual could make a tax-exempt contribution to any organization deemed charitable, religious, literary or educational without the government questioning the motives of the individual making the contribution or the organization receiving it.
Language referring to the restriction of "political activity" by educational organizations first appeared in the Treasury Regulations of 1919. (10) As a result, several cases came before lower courts resulting in the denial of tax-exempt status to charitable organizations as directed by the Board of Tax Appeals. The wording in the law used to justify denial of exempt status referred to the "dissemination of controversial propaganda," which was viewed by the courts as political activity. (11)

In 1930 the case of Slee vs. the Commissioner (12) changed the way political activities were viewed in the courts. This case set precedents and influenced both courts and legislatures for the next three decades. The United States Board of Tax Appeals held that the petitioner to the court, Noah Slee, was not eligible to deduct gifts to the American Birth Control League, as the League was determined by the IRS to be involved in controversial political activity (the publication of research which refuted the basis of the prevailing laws limiting the availability of contraception). The IRS, in submitting evidence to support its case, offered Regulation 214(a)(11)(B)(42 Stat. 227) which "allowed deduction of gifts made to any corporation organized and operated exclusively for religious, charitable scientific, literary or educational purposes." In the view of the IRS the questionable activity in which the League was involved was included in its charter:
The League was incorporated and its declared objects were to collect and disseminate lawful information regarding political, social and economic facts of uncontrolled procreation, to enlist the support of others in effecting lawful repeal and amendment of statutes dealing with prevention of conception, and to publish a magazine containing reports and studies of relationship of controlled and uncontrolled procreation to national and world problems.(13)

Neither the Board of Appeals nor the American Birth Control League articulated what percentage of the organization's activity was aimed at repeal of the contraception laws, simply that the League's findings through scientific research concluded that population problems were a result of uncontrolled procreation. Circuit Judge Learned Hand, writing the opinion for the court, went as far as to admit the charitable nature of A.B.C.L. He also cited the League's publication of a magazine "in which shall be contained reports and studies of the relationship controlled and uncontrolled procreation to national and world problems,"(14) as well as referring to research conducted in their clinic in New York, staffed with a physician, which did medical examinations for married women. The services provided by the clinic were often free, supported by charitable donations and the results of some of the cases were published in medical journals. The judge went on to state: "That the League is organized for charitable purposes seems to us clear, and the Board did not find otherwise. A free clinic ... is a part of nearly every hospital, a recognized form of a charitable venture."(15)
Nonetheless, the judge called for revocation of the League's charitable status based on the publication of material which supported the repeal of the birth control laws (16), an activity which the judge described as "political agitation." Although it was only a small segment of the overall opinion (most of which offered only praise for the League's "charitable actions"), it nonetheless had a very powerful effect in limiting the speech of charitable organizations. Upholding the Board of Tax Appeal decision, Judge Hand asserted:

The Board did not throw any doubt upon the purposes as presented, or intimate that more was meant than met the ear, but it was thought that the declaration in the Charter of a purpose to "enlist the support ... of ... legislators to effect the lawful repeal" of existing laws, and the measures taken to bring this to pass, prevented the League from being exclusively charitable. Political agitation as such is outside the statute, however innocent the aim, though it adds nothing to dub it propaganda, a polemical word used to decry the publicity of the other side. Controversies of that sort must be conducted without public subvention, the Treasury stands aside from them. (17)

Lobbying legislatures to attain certain goals by charitable organizations was considered acceptable if these goals did not run counter to established governmental policy. This decision only reinforced the arbitrary decision-making process the IRS could impose upon charitable organizations regarding their tax-exempt status. (18) The decision did not clearly define what was "political agitation" and what was acceptable lobbying activity,
allowing subjective determinations to be made within the IRS.

Since the Slee decision did recognize the fact that the writings and research could be totally outside of the political spectrum, Congress then tried to clarify how much political activity was allowable, if any at all. The wording of the 1934 bill, stating "no substantial part of the activities of the organization be carrying on propaganda, or otherwise attempting to influence legislation,"(19) added more ambiguity to the law than the previous court decisions and legislation. By using this ambiguous wording the legislators created an atmosphere in which a more restrictive interpretation of charitable activities could be imposed. Due to the vagueness of the language a "substantial portion" could easily be interpreted as an "excess" of political activity when weighed against all other activities in which an organization participates. Since "excessive" was not defined, organizations drafting a charter or statement of purpose would have to take great care to omit any language which could imply that the organization's goals promoted a certain philosophy or adopted a stance that could be construed as political in nature. Any organization attempting to take an objective approach to social or educational research could find their hands tied when publishing findings or conclusions challenging established law or legislation.
Another landmark case which dealt with the political activity of charitable organizations was the case of Sharpe's Estate vs. the Commissioner. (20) In this case the IRS determined that The United Committee for the Taxation of Land Values was not entitled to a tax-exempt donation from the estate of John Sharpe. The IRS argued that the main goal of the United Committee was the repeal of the tax codes of the time (1945) and the enactment of a single tax. The IRS expected that taxes on the donation should be paid as the United Committee was distributing "political propaganda" espousing a certain philosophy. (21) The court ruled in favor of the IRS decision quoting the 1934 Regulation:

"The amount of all bequests, legacies, devices or transfer to or for the use of any corporation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or for the prevention of cruelty to animals or children, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation." (22)

The court went on to defend its position against allowing the tax deduction from the estate citing that the United Committee had been distributing propaganda in an attempt to influence legislation. The individual (Sharpe) noted in his will that the gift in trust was not, in fact, for use in propaganda, but did support the findings and general philosophy of the United Committee. The Court did not explain how it arrived at the conclusion that the "distribution of propaganda" exceeded the "substantial part"
test for denial of tax exemption. (23) The court's conclusion that the exemption should not be allowed noted "Slee vs. Commissioner" as one of the preceding cases denying exemption. (24) Further, though Sharpe had earmarked his donation for activities other than the dissemination of propaganda the exemption was denied because of the overall activities of the organization. (25) The question which arises in this case (and many subsequent and preceding cases) is that the controversial nature of the "propaganda" put forth was viewed by the courts and other governmental bodies as "not in the public interest."

Herman Reiling, an IRS attorney, addressed this issue of "public interest" in length in his article What is a Charitable Organization? (26) This article asserted that the public interest is served if an institution advanced education or religion while providing essential services that might otherwise be served by the government. (27) He continued by stating if any organization is religious in nature, but engages in public works of some kind, the religious or church affiliation will not be considered as "carrying on propaganda" to a "substantive degree." (28) Again, this brings into focus the question of whether an organization's charter and activities are in some way "controversial" (and could thus risk forfeiture of exempt status). In making such judgements, the IRS is determining not only if any organization is "primary educational" or
"primary religious" in its doctrine in relation to its eligibility, it is also determining if the religious philosophy or educational purpose of an organization is "socially acceptable." Although Reiling was by no means speaking strictly on behalf of the IRS, his position as a tax attorney with that department and the length of his tenure (he had been with the organization for 23 years) gave an insight into the decision-making process of the Bureau at that time.

Since the passage of the tax code of 1934, there was little change in the exemption clause right up through the revised code in 1954, which spelled out the specific amount for personal exemptions (29) and included additional types of organizations which were eligible for the exemption. (30) The critical tests to determine status remained unchanged in that an organization must be operated "exclusively" for religious, educational, literary, scientific or charitable purposes, and that the organization does not substantially participate in political activity of any kind. (31) The term "exclusively" thus became a point of interpretation for the IRS. If an organization did not draft its charter recognizing that its goals specified within could be construed to involved activities that were not "exclusively literary" or "exclusively educational." That left open the possibility that their findings or research may have political overtones and that they would be disqualified.
Another point of interpretation was definition of the phrase "purpose of an organization." Many organizations, particularly educational and scientific organizations, conduct research and publish their findings. One example of such an organization is the American Heart Association. Its publications on such matters as smoking and its relation to heart disease impacts future legislation regarding advertisement of tobacco products and labeling. Organizations of this nature were rarely questioned as to their motives or organizational intent because they were accepted as serving the public interest. Other organizations established with good intent were not as fortunate. An example would be that of the Fellowship of Reconciliation. (32)

The Fellowship of Reconciliation, a pacifist organization founded in 1915, described itself in its by-laws as "a movement of Christian protest against war and of faith in a better way than violence for the solution of all conflicts". (33) The F.O.R. operated under these guidelines as a charitable organization from 1926 until January of 1963, when its exempt status was revoked. (34) During this time the F.O.R., in accordance with its stated principles, distributed literature and conducted meetings which approached current issues from a specific pacifist position. The IRS, in making its determination to cancel the organization’s tax status, cited the F.O.R.‘s expressed goal
"attainment of international peace." This goal, the IRS contended, firmly placed the F.O.R. in the category of an action organization, which is to say that it will only attain its goals "through the legislative process" or "influence of any legislative bodies." (35)

The F.O.R. contested the decision. It submitted records of its activities to the IRS in which it stated that it did not maintain a lobbyist or representative in Washington D.C., and that none of its literature encouraged members to petition their representatives on behalf of any particular legislation. (36) In addition to those materials submitted in its defense, the F.O.R. also mentioned several organizations that maintained exempt status, and obviously participate in political activities. Included were the Anti-Defamation League of B’Nai B’rith, the Christian Anti-Communism Crusade, Christian Freedom Foundation, Inc., the Zionist Organization and the General Board of Christian Social Concerns of the Methodist Church. (37) Again, this demonstrates that the loss of an organization’s tax-exempt status was not entirely attributable to participating in any political activity, but to the viewpoint they espoused. In a democratic society, they argued, viewpoints from all segments of the population must be included in the free exchange or ideas in order to be truly representative, and thus alternative opinions regarding public policy should not be disallowed.
The 1955 case of Seasongood vs. the Commissioner also had a major impact on evaluating an organization's tax-exempt status.\(^{(38)}\) The case used a quantitative method to clarify the imprecise terminology "a substantial part," referring to the amount of political activity in which an organization is allowed to engage. In Seasongood, the court settled upon five percent \(^{(39)}\) as an acceptable level of political activity in regard to Hamilton County Good Government League's overall activities in the community. The "five percent formula" was a very positive decision for 501(c)(3) organizations in that they would now have a method of defense (with careful recordkeeping of all activities and expenditures) with which to challenge a denial of their status. A closer examination of the opinion given by Judge Simons in the case revealed the organization was judged not solely on the "five percent formula" but also on the character and public standing of the individual contributor and the noncontroversial nature of the Hamilton Good Government League itself.\(^{(40)}\)

Judge Simons began his opinion by describing in detail the professional background of Mr. Seasongood \(^{(41)}\) and his favorable standing in the community to demonstrate the contributor's interest in civic issues facing the community. Although the court frequently gives such histories of the contributor in the court opinion \(^{(42)}\) to help demonstrate their intent in determining if the person was giving purely
for selfish purpose or to "further a cause of political philosophy," this particular opinion went on at great length describing the individual as a cornerstone of the community. The judge's intent was to obviously give much weight to this individual's character. From there, the opinion went on to describe the League and its activities in a most favorable light. The League (by the judge's description) did indeed serve a very neutral educational role in the community. If the organization was judged by the IRS operating test as described by revenue attorney Reiling (43), it would certainly fit into the category of a "generally accepted" educational organization, not one that participates in educational research of a controversial nature. A valid argument could be made that the American Birth Control League's activities served an educational function in disseminating its findings regarding contraception. But since the conclusions based on the A.B.C.L.'s research were considered "socially unacceptable," the courts found the recommendations of the League outside the "public interest" and thus denied the tax-exempt status. (44) In taking the approach it did, the court was in effect judging the Seasongood case on grounds of character and motivation, rather than strictly on the quantitative "five percent" basis.

In trying to define such statutory language as "otherwise attempting to influence legislation" as it applied to the
Hamilton County Good Government League, the court offered a more tempered definition than was seen in previous cases. (45) "In one sense, nearly every effort made by individuals or organizations in the public interest and for the betterment of government, necessarily, has as an indirect result at least, some influence on legislation." (46) Had the previous courts weighed the ethical motivations of organizations judged unfit to receive the tax-deductible status (i.e.: the Fellowship of Reconciliation) in the same light as the H.C.G.G.L., far fewer organizations would have been denied the status. It is difficult to concede that an organization would have as one of its primary motivations "of faith in a better way than violence for the solution of all conflicts" (47) should be ruled against by either the IRS or the courts because it was not operating in the public interest.

A case having a tremendous impact on 501(c)(3) organizations because of the complications regarding free speech was Speiser vs. Randall (1958). (48) The Supreme Court of California upheld the validity of a statute that denied property tax exemptions to a group of veterans who refused to take an oath that they do not "advocate the overthrow of the Federal or State government by force, violence or other unlawful means." (49) The court placed the burden of responsibility on the individual to not partake of criminally intended activity or risk losing their tax-exempt
status. (50) Further explaining its position, the court described the allowance of a tax deduction as a privilege; the denial of such a privilege is "frankly aimed at the suppression of dangerous ideas." (51) The court's support of the statute demanding an oath of loyalty from the veterans was in fact a denial of free speech, as no unlawful conduct had actually occurred. In imposing the restrictive statute upon the veterans the court withheld from them the freedom to maintain any viewpoints contrary to those expressed in the statute. Similarly, any 501(c)(3) organizations having language in their statements of purpose which was construed to be "subversive in nature" were denied their tax-exempt privileges.

In the following year (1959) the case of Cammarrano vs. the United States (52) was to have a strong impact on grassroots lobbying, and resulted in the modification of the tax regulations regarding such activity. Cammarrano intended to obtain a tax deduction, as a business expense, a contribution to the Washington Beer Wholesaler Association, which was a business association that was conducting an effort to defeat a prohibition measure on the ballot. Since Cammarrano was a beer distributor, the court ruled that by giving a contribution to the W.B.W.A. he was in effect protecting his own business interest primarily since the W.B.W.A. was actively distributing information against prohibition. (53) Cammarrano cited the Speiser vs. Randall
case in his defense, stating that his first amendment rights to free speech were being violated by the restriction placed on him in receiving a tax-exempt donation. (54)

The court asserted that "Speiser has no relevance to the cases before us." Nondiscriminatory denial of deduction from gross income to sums expended to promote or defeat legislation is plainly not "aimed at the suppression of dangerous ideas" (an assertion which was made by Cammarrano). The court continued, "Rather, it appears to us to express a determination by Congress that since purchased publicity can influence the fate of legislation which will affect, directly or indirectly, all in the community, everyone in the community should stand on the same footing as regards its purchase so far as the Treasury of the United States is concerned." (55) The court’s decision to level the playing field with regard to tax-deductible contributions to non-profit organizations engaging in any kind of grass roots lobbying activity on a particular issue does at first glance appear fair-minded. However, if powerful corporate interests were waging a strong lobbying campaign to influence opinion on a legislative issue without using any tax-exempt contributions, a competing organization relying heavily on donations could be denied (or its contributors denied their deduction) simply because the opposing organizations were not relying on tax-exempt funding.
The Slee decision and the subsequent statutes erected in 1934 and 1954 were prominent in the decision disqualifying any "intent" to contribute to an organization for "political ends." (56) This effectively rolled back the liberalized interpretation of the statutes as applied in the Seasongood case, and went so far as to conform to the intent of the legislators (57) in devising a very conservative law in respect to the non-profit's activities. By disallowing any contribution to an organization that might influence public opinion regarding pending legislation the law restricts not only an individual's right to free expression but also an organization's ability to generate operating revenue.

In an attempt to give balance between individual and business contributions, the Senate Finance Committee proposed amending the tax laws to "permit deductions for lobbying expenses if the legislation is directly related to the business claiming the deduction, but not permitted in connection with any attempt to influence the general public with respect to legislative matters, elections or referendums." (58) During debate on the introduction of this clause to the Senate floor, Senator Douglas cited Cammarrano when opposing the amendment, (59) proposing that the wealthy already had sufficient lobbying power in the legislative branch, and that any interests of the private citizen would go ignored. Despite these objections to the proposal, it
was enacted and favor weighed in heavily on the side of business and its special interests.

Support of business interests over grass root citizen organizations was displayed to a greater degree in the 1966 Sierra Club Case. The case centered around an advertisement the Sierra Club took out in both the *New York Times* and the *Washington Post* (60) headlined "Now Only You Can Save Grand Canyon From Being Flooded ... For Profit." The ad went on to describe the potential impact of a bill being considered to build two hydroelectric dams on the Colorado River, asking the readership to urge their congressmen to defeat the bill, and also solicited funds to help defray the costs incurred in the campaign. (61) The IRS took note of both the request for funds and grass roots lobbying against the bill, and released an announcement to the press that the Sierra Club would no longer be eligible for tax-exempt deductions after June 13, 1966. (62) The news release made by the IRS cited that the violation of the tax code described in section 170(c) (63) did not disqualify individuals from receiving the tax deduction previous to the *New York Times* advertisement. However, the release went on to state that once the organization's disqualification is made public (which the news release did achieve), further contributions to the accused organization would not have exemption status. (64)
This had two effects. First, this discredited the Sierra Club because their activities had been publicly judged "extra-legal"; two, personal contributions to the organization decreased considerably.\(^{(65)}\) The issue of fairness arises in the action the IRS took in making the public announcement. The organization was deemed guilty before they could provide a necessary letter of explanation and defense of their action to the IRS office investigating the case (which was submitted later).\(^{(66)}\) The IRS action damaged the reputation of the Sierra Club, but failed to render that organization permanently ineffective, as it continues to play a major role in environmental protection to this day.

The IRS Commissioner, Sheldon Cohen, explained why the agency singled out the Sierra Club and took such deliberate action against that organization: "Because the IRS staff is limited in what it can do. It checks only about 15,000 of the 500,000 returns filed by charitable groups each year and spends little time observing the political operations of such groups as the NEA."\(^{(67)}\) In fact, organizations such as the National Education Association had been spending larger amounts on lobbying activity that the Sierra Club, but it was the type of action (the advertisement) with its pointed reference to a particular issue which prompted the IRS to overreact. This demonstrated the IRS's indiscriminate method used in investigating any charitable organization for
Code violation. Other environmental organizations were not subjected to the scrutiny the Sierra Club experienced. The indiscriminate investigation by the Service had a blanket effect on how other non-profit organizations might distribute information regarding pending legislation or public policy issues. Self-censorship by any organization only serves to limit discussion and debate of public policy issues. For non-profits a positive outcome of the IRS's action against the Sierra Club was the response of the press and the coverage it received. With major newspapers such as the New York Times and Washington Post editorializing on the unfair manner of the public chastisement of the Sierra Club, more public attention was directed to limits imposed on the non-profit sector.

It was not until the passage of the Conable Bill of 1976 that the non-profit sector was able to function in a less restricted fashion. Some representatives were aware of the government's failings in imposing so much restraint upon political expression by 501(c)(3) groups. Legal scholars also stressed that less interpretive language be added to the statutes to prevent unfairness in decisions affecting non-profit tax exemption status. Some have gone so far as to suggest administrative changes should also be applied in how the IRS was unable to perform a policy-making function, when its primary role is that of administrative operation.
It was the changes imposed through the legislative process that resulted in reform of the eligibility review process.\(^{(71)}\) Subsequent to the 1962 amendments, Congress added supplements to later tax reform acts \(^{(72)}\) in an attempt to clarify much of the ambiguity stemming from the 1934 and 1954 laws. Unfortunately, these regulations continued to be vague and encouraged continuing subjective and selective enforcement.\(^{(73)}\)
As the 1970's approached, pressure mounted in Congress for fundamental reform of the tax code regarding 501(c)(3) organizations to eliminate the ambiguities with regards to political activities. Although there had been some changes implemented since the original law dealing with political activities in 1934 (1) no formula was derived to give a fair and equitable allowance to all non-profit organizations, largely because the "substantial activity" clause was far too vague and interpretive, and there was never a precise definition of "carrying on propaganda" itself.(2)

In a 1969 report the American Bar Association criticized changes implemented in the 1962 tax law amendments allowing business to make deductible donations which would positively impact the businesses.(3) In the report, the ABA cited "that the former 'neutral posture of the tax law with respect to lobbying' has been upset in favor of the business interests as opposed to charitable organizations."(4) The report went on to suggest that the present laws should be changed. However, the recommendations introduced in Congress to develop the 1969 Tax Reform Act to correct the situation were not included in the final legislation.(5) In fact, the resulting legislation was more restrictive in that it required 501(c)(3) groups to file additional
informational returns in an attempt to help the IRS further scrutinize their activities. (6) It was later exposed during the Watergate Hearings that the Nixon Administration attempted to use the IRS to harass any political enemies by looking for ways to deny their tax-exempt status. (7) The principle method cited in testimony by John Dean was IRS audits, which would require the non-profit organization file extensive informational forms to explain any "questionable activities." (8)

In 1973, the Coalition of Concerned Charities was established with the primary goal of developing reformed legislation to allow political activity amongst 501(c)(3) organizations. (9) Representative Barber Conable (R. NY) began work with representatives from the Treasury Department, the Staff of the Joint Committee on Taxation and the Coalition of Concerned Charities in 1973 to arrive at a bill which would satisfy all the parties with respect to fairness and objectivity. The Coalition rejected as unfair to charities a provision developed by the House Ways and Means Committee which was to be added to the 1974 Tax revision plan addressing the inequities in the current lobbying laws. (10) Religious groups also voiced objections to the proposals in the 1974 bill, as they felt that the IRS did not have a right to review their activities due to the separation of church and state. The case most often cited regarding restrictions on religious organizations was that
of Christian Echoes National Ministry Inc. vs. U.S. (11) in which the tax-exempt status was removed because of the Ministry's advocacy of political causes. Due to the opposition raised by religious groups resulted in addition of language that left neutral any measure applied to churches and foundations, thus allowing church-related groups to express themselves on politically sensitive topics. It had been expressed by representatives of the National Council of Churches that many non-profit organizations with close religious affiliation had taken strong stances on both the civil rights movement and anti-war movement and had been subjected to politically motivated audits by the IRS. (12) As HR 13500 evolved through petitions and hearings in the legislature the resulting bill allowed for certain exceptions pertaining to church related foundations and organizations.

By 1975, the IRS estimated that there were more than 273,000 local, state and national organizations which filed under 501(c)(3). (13) With the ranks of non-profit organizations increasing and their political and organizational strength growing (with representation by the Coalition for Concerned Charities), these groups were able to assert a stronger, more directed posture in the decision-making policy governing their fate. Representative Conable realized the importance of their contribution to society and championed their cause, urging that they should receive more
equitable treatment from the IRS. Members of the Conable staff met frequently with representatives of the charities, who demonstrated that they were forced to take a conservative hands-off approach to any legislative issues for fear of audit by the IRS resulting in revocation of their tax-exempt status.

Throughout 1974-1976, extensive negotiations took place between the Treasury Department, the Coalition for Concerned Charities and such organizations as the American Bar Association’s Committee on Exempt Organizations. The purpose of these meetings was to consider revamping the tax laws. (14) Despite resistance from the House Ways and Means and Finance Committees the final outcome in HR 13500 was a landmark success. The general provision of the law contained in the Finance Committee Report was as follows:

This bill is designed to set relatively specific expenditure limits to replace the uncertain standards of present law to provide a more rational positioning between the sanctions and the violation of standards and to make it more practical to properly enforce the law. However, these new rules replace present law only as to charitable organizations which elect to come under the standards of the bill. The new rules presently do not apply to churches and organizations affiliated with churches, nor do they apply to private foundations; present law is to continue to apply to these organizations. (15) 

Dollar figures were established in a precise manner to define how 501(c)(3) organizations could operate. The new provision was explained as follows:

"the basic level of allowable lobbying expenditures by a public charity [is set] at twenty percent of the first $500,000 of the organization’s exempt purpose
expenditures for a given year, plus fifteen percent of the second $500,000, plus ten percent of the third $500,000 plus five percent of any additional expenditures."(16)

By setting exact dollar amounts, 501(c)(3) organizations maintaining accurate records of expenditures could elect to be judged by these "safe haven rules" which carefully spells out the limits set upon them. In addition to dollar figures cited above, an organization could not exceed one million dollars in total lobbying expenditures per year.

The provision included a restriction that grass-roots lobbying could comprise no more than twenty-five percent of total lobbying expenditures. Grass-roots lobbying was defined as "any attempt to influence legislation through an attempt to sway the opinion of the general public or any segment thereof."(17)

As well as presenting the information, the organization would also be requesting that the readership lobby their representative (through letter writing, phoning or otherwise making opinion known). To remain in the realm of "non-lobbying" an organization had to be careful to provide material that was non-partisan and educational. This meant that essential facts could not be omitted and the reader would have to develop an independent opinion on an issue, and that the information was available to the general public and not just targeting a specific section of the population.(18)
An organization could provide "educational presentations" to members of a legislative body, provide research or non-partisan studies to individual members or legislative bodies as a whole, but would have to be careful not to demonstrate any bias with regard to proposed legislation. The possibility still existed of a stricter interpretation by the IRS of the definition of lobbying (as discussed later in this paper).

Under the 1976 provisions, organizations could now elect to waive being judged under the financial formula described above. These groups would again be subject to the previous "substantial part" evaluation process. An organization that elected to be judged in this way found that since the new laws "liberalized" their ability to be involved in lobbying activities the courts would weigh in its favor. This "liberalization" included a formula that allowed for as high as twenty percent of initial budget to be spent on lobbying, as opposed to the five percent figure accepted by the court in Seasongood. The organization would not be required to keep as detailed a record system as organizations who did elect, and would be justification in exceeding the million dollar annual limit of expenditure that is imposed on an electing organization if it did not go beyond the "substantial part" regulation. (19)

Another reason a 501(c)(3) group would not elect to be tested under the new guidelines may relate to its activities
with affiliate organizations. The new regulations determined that an organization which elects will be carefully scrutinized for such activities in that the affiliated group's activities could be included in the overall formula for determining lobbying expenditures made. A non-electing organization may choose to "distance itself" from any affiliate that may be actively participating in lobbying activities as much as it had in the past. To avoid IRS investigation an organization would have to demonstrate that the affiliate operates under its own charter and is financially independent from the primary organization.

Another facet of the regulation was a new quantitative method of imposing any sanctions upon organizations exceeding monetary expenditure limits. An organization that would exceed its lobbying non-taxable amount would be subject to an excise tax of twenty-five percent of the amount the organization surpassed that limit. This was imposed in the case of both direct and indirect lobbying expenditures. (20) Although the penalty imposed was rather costly to an organization, it was much less damaging than being denied its tax-exempt status outright and losing the ability to obtain the primary source of revenue for operation. To lose the exemption under the 1976 code, an organization's lobbying expenditures over a four year period would have to exceed more than 150% of the sum of the non-taxable allowed amounts for the same four year period,
either for direct or grass-roots lobbying. (21) An organization could then file a claim with the Tax Court, Court of Claims or the U.S. District Court for the District of Columbia and still be entitled to receive individual deductible contribution up to $1000 while awaiting judicial review. (22) This would still allow an organization to obtain funding while proceeding through what could be a long and expensive process in the courts. This new approach by the IRS was entirely different than that imposed upon the Sierra Club (23) a decade before.

The Tax Reform Act of 1976 succeeded in breaking the restraints on the non-profit sector with regard to free speech and involvement in public policy. Organizations were able to conduct research and publish findings in a less restrictive manner and to engage in discussion of current public policy in a more open fashion. With the limits set in such a quantitative method, an organization could gauge to just what degree they were allowed to participate in any activity deemed "lobbying." It also spelled out more careful definitions of what is and what is not lobbying (24), giving the IRS a less subjective guideline to enforce the regulations. Such were the problems with language in the laws from 1934 to 1976, the vagaries which existed prompted the IRS to interpret statutes in an almost reactionary fashion.
The Treasury Department objected to initial plans to have a twenty percent allowable figure with regard to lobbying expenditures, stating that too much tax revenue would be lost, and that the larger charities could carry on uncontrolled lobbying efforts. Consequently the sliding scale and million dollar (per anum) figure was included in the final bill which was approved. (25) This was a result of the involvement of the Coalition of Concerned Charities, the American Bar Association’s Committee on Exempt Organizations and the National Council of Churches (26) in committee meetings leading up to the passage of the 1976 Reform Act. The conclusion of the House Ways and Means Committee Report was that the Treasury would not be impacted by any direct revenue loss as a result of the bill, an opinion to which Treasury agreed. (27)

This is not to say the bill was flawless; some gray areas still existed in the interpretation of language. One such area was "non-partisan analysis" which was defined as "an independent and objective exposition of a particular subject matter." (28) The bill went on to state that an organization’s research could take a position on a subject if it could be demonstrated that the subject had been sufficiently explored. (29) The research would have to present both pro and con viewpoints in a thorough manner. An organization would be wise to use less inflammatory language in its publications, and to avoid rhetoric over
fact. Published research or studies conducted would be subject to careful scrutiny to determine the intent. If it were found that the original intent of certain research was to prove a point regarding a legislative matter, the IRS would consider that "lobbying material."

The regulations were also vague when defining "technical advice."(30) An organization was allowed to give such advice if they themselves had not prompted the request for the material and that the entire governing body membership could avail itself of the material presented. One of the central problems in this sections is that the term "technical" is never clearly defined. The invitation to give technical advice must be specific from the legislative body or else the intent would be called into question. General testimony could be questioned as lobbying activity.

The regulations also allowed for two other exceptions which were not included in any legislation prior to 1976.(31) These were for "self-defense lobbying." This meant an organization could appear before a legislative body regarding any possible decision regarding any possible decision regarding the existence of the organization, or its tax-exempt status (32) and communication with its own membership regarding legislation or proposed legislation.(33) This too was a giant step forward. As in the past both the IRS and the courts deemed this type of activity as dissemination of propaganda. An organization
would still be encouraged to try to keep the communications strictly with the membership, although the IRS would recognize that some information would go past the membership. The intent of an organization's actions would be the issue examined if information were distributed beyond the membership.

Another positive result of the 1976 legislation was that non-profits were permitted to hold discussions to examine "broad social, economic and similar problems" (34) in public forums if the primary intent was to educate or inform the public. Organizations would be in violation of the regulation if pending legislation was a central topic of the forum. However discussion of the impact of current legislation and its enforcement was not seen as lobbying. (35) The agenda of the presentation would have to be spelled out carefully as the IRS would still have discriminatory decision-making powers in deciding "intent."

The 1976 Tax Reform Bill demonstrated a far greater flexibility toward the activities of non-profit organizations than prior legislation allowed. Prior to this legislation organizations risked losing exempt status by corresponding with membership. A greater freedom of expression could now be applied to publication and distribution of materials and public discussion of issues. Both the House Report and the Senate Conference Report (36) helped to clarify the purpose of the legislation in allowing
for a more open atmosphere for the non-profit sector to conduct its work. Both the legislative and executive branches of government were adopting a reformist stance in the wake of the Watergate scandal, and were more receptive to the non-profit sector's involvement in domestic policy issues such as poverty and the environment.
In the early 1980's rule revisions instituted by the Internal Revenue Service regarding regulation of 501(c)(3) further eroded the non-profit sector's ability to raise funds. Also, activities formerly considered non-taxable were now classified as taxable income. In 1982 an article appeared in a non-profit advocacy journal describing new regulations issued by the IRS designating the exchange of mailing lists as taxable income. The ruling stated that the exchange of mailing lists resulted in a reduction of costs and thus qualified as income. Organizations would have to exchange the same number of names between themselves in order not to be penalized under the new regulations.

The IRS continued in this fashion, reinterpreting the language in the present statute with a more stringent approach. In 1983 the IRS ruled that donations to private schools from the parents of a student at that school were non-deductible. The new ruling stated, "A contribution for tax purposes is a voluntary transfer of money or property that is made with no expectations of procuring a financial benefit commensurate with the amount of the transfer." Also, the IRS was attempting to deny non-profit organizations from receiving any donations for membership in an organization, even if the contribution
amount is determined by the contributing member. The IRS contended that there was pressure applied to individuals to donate both at the schools and in the case of individuals getting a membership in an organization from their contribution. The IRS maintained that substantial or unusual pressure to contribute, regardless of whether the pressure is economic or non-economic, may be a basis for disallowance of a charitable deduction. (4)

The IRS also began targeting special event fund raising because the expense incurred by the non-profit in organizing and presenting would prevent the fund raiser from being classified as an exempt function. Events operated by volunteers that were previously classified by the IRS as exempt were now being questioned as a "business function," adding more scrutiny to a non-profit's activities. (5)

The Treasury Department's proposals for the 1987 Internal Revenue Regulation contained language similar to that which existed prior to the 1976 Conable Bill. The regulations proposed would have a more restrictive effect on 501(c)(3) organizations than previous to the 1976 bill (6), forcing organizations to proceed with extreme caution in such activities as communication with members, conducting research or perception of grass-roots lobbying. In a newsletter to 501(c)(3) groups, the advocacy group Independent Sector outlined the effects the regulations would have on the non-profit sector. (7) One example they
cited is that the mere mention of legislation in a fund raising letter to prospective donors would deem the entire cost of the letter campaign as grass-roots lobbying. Any organization conducting a public seminar which openly discusses all sides of an issue would be considered as grass-roots lobbying if the audience expressed an opinion supporting legislation and that opinion would be shared with some of the organization's membership.

Independent Sector went on to outline the most stringent aspects in the proposed legislation:

1. "A broad and vague concept of content makes a statement count as lobbying." Lobbying would no longer be considered just the specific action taken regarding legislation, but would be expanded to any information which pertains to pending legislation, or implies an opinion or the possibility of passage of any legislation, or that research concluding that legislation would be desirable to amend a situation would all be considered lobbying.

2. "Materials and activities that aren't lobbying even by the proposed regulations' sweeping terms can become so if they run afoul of other rules about why they are prepared or how they are distributed." This again refers to the implied language of the regulations: if even a remote
possibility of certain research has the implied intent of favoring one side of a legislative issue it would be considered grass-roots lobbying.

3. "In several important cases, expenditures that are not grass-roots lobbying are treated as grass-roots lobbying (subject to the much lower ceilings) if they are associated with activity deemed to be grass-roots." Any communication made to the general public pertaining to pending legislation would be considered lobbying activity. Included in this definition is any publication which might infer an organization's position regarding legislation or public policy.

4. "Vague standard of 'affiliation.'" Organizations would be considered "affiliated" if one has voting control of the other. Any legislative action taken by one of the other organizations would then be considered as part of their own allowable lobbying expenditures.

5. "Severe inhibitions on foundation grants." Since foundations were considered (along with church organizations) to be restricted from using the percentage formula drawn up in the 1976 bill they could still be subject to the stricter standards of the "no substantial part" rules. Since the IRS was proposing to go even further than the pre-1976
measures in tightening the way it viewed lobbying activity, these organizations would be more vulnerable to loss of the exempt status or excise taxation. If a foundation contributed grant money to the operation of an organization, and only a fraction of the grant money used went to any lobbying expenditure, the entire grant would be considered as a lobbying expenditure, even if that was not the intent of the foundation when giving the gift. In effect, this would inhibit any foundation from giving grants to organizations if there was the slightest possibility of that money being used in what could be construed as lobbying activity.

These proposed regulations had the intended chilling effect that was described by non-profit committee members regarding the regulations preceding the 1976 Reform Act.(11) The Reagan Administration’s reduction of federal grants to the non-profit sector combined with fund raising constraints applied to 501(c)(3) organizations restricted their overall ability to function.

As a result, pressure mounted in Congress to conduct hearings in a bipartisan fashion, to hear testimony from both the non-profit community and the Treasury/IRS viewpoints. The chairman of the Subcommittee on Oversight for the Ways and Means Committee held hearing on March 12
and 13, 1987 to review the federal tax rules applying to lobbying and tax-exempt organizations. In his opening remarks, Chairman J.J. Pickle (D, TX) explained:

The Committee on Ways and Means has not conducted a full and comprehensive review of the tax rules applicable to the lobbying and political activities of tax-exempt organizations, even though some of these rules date back to 1934. Recent events have raised questions about the extent to which tax-exempt organizations are engaged in lobbying and political activities. In light of these developments and the concerns they raise, it is time for the subcommittee to take a hard look at exactly what tax-exempt organizations are doing and to determine what the current law allows. We will also be reviewing the extent to which IRS is enforcing these laws. Taxpayers have a right to be assured that organizations enjoying favorable tax treatment are operating for the public benefit. (12)

Although the chairman’s remarks had a somewhat accusatory tone, inferring that tax-exempt organizations were exploiting their exempt status, the hearings provided an open forum for representatives of both sides of the argument to express their views on what effect the new regulations would have. Treasury Department representative J. Roger Montz argued that "liberalizing" the rules relating to lobbying allowed by tax-exempt organizations would result in a great deal of lost revenue for Treasury. (13) This was a politically charged approach considering the ever increasing federal deficit. He recommended a stringent policy with regard to applying the excise tax on any organization exceeding the allowable amount for lobbying. He also said that revocation of an organization’s tax-exempt status was an ineffective sanction and that a monetary penalty on an
organization and its managers would be a more effective method of control on organizations.

IRS Commissioner Lawrence Gibbs also stressed the need for stronger sanctions against organizations that had exceeded the limits set on lobbying activity. He felt that the sanctions to organizations with little or no taxable income were "unreasonably light" and suggested that stricter enforcement standards be applied. He also went on to express that the IRS still lacked the precise language in the law to uniformly enforce the laws. Commissioner Gibbs affirmed that the laws in the 1976 Reform Act had a sound basis. However, he felt the IRS was left without a consistent measure with which to evaluate an acceptable level of political and lobbying activity. In addition, he recommended that the law prior to 1969 provided a more consistent method for evaluating the allowable level of an organization's lobbying activities. It should be pointed out here that previous IRS Commissioner Mortimer Caplan had observed that "revenue agents normally are experts in accounting, not ideology." However, Commissioner Gibbs' testimony exhibited a conservative agenda: that it was easier to merely restrict all 501(c)(3) organizations in order to have a uniform enforcement policy, rather than examining the myriad cases with an objective approach.

The concerns expressed by the administrative representatives were strongly countered by testimony from
the non-profit sector and their advocates. Various attorneys and advocates spoke to the need for repeal of the strict limitation on organizations with regard to political activity, and that public debate would be better served if the IRS was less restrictive on charitable and educational organizations. Most stressed that the basic foundations of the 1976 bill were sound policy (17), and that the laws in existence (prior to the proposed rules of the IRS) were fair enough to separate advocacy from partisan political meddling.

The hearings had a very positive effect in that they brought into focus an unresolved conflict of interest which still existed between the charitable sector and the administration's monitoring agencies (Treasury and the IRS). It also served to demonstrate to the public the role the philanthropic organizations served in advocating for causes that would otherwise have no voice, and the importance of allowing these organizations to voice their opinions. In the same light, it underscored the Reagan Administration's attempts to squelch any organized dissent to their social and environmental agenda through tax regulation and exemption denial.

Due to public outcry the proposed regulations were put on hold, and an Advisory Panel was established to again come up with another reform package. The Exempt Organization Advisory Group, whose meetings were first held in September,
1987, was established by the IRS to develop constructive dialogue on the more sensitive issues the Agency faced. On the top of that list was the proposed regulations, and how they might be changed to reach an agreeable compromise with the non-profit community.\(^{(10)}\) Other issues of importance were the administration of laws dealing with reporting unrelated income received by non-profits and revision of the tax laws with regard to churches and church affiliated organizations, which were discussed at the Ways and Means Hearings.\(^{(19)}\)
CHAPTER 4

1990 REFORMS

As discussed in the previous chapter, the 1976 Tax Reform Act still had aspects which were vague and difficult to enforce fairly. The number of non-profit organizations had grown considerably from its number of 273,000 in 1975 (1) as had the scope and diversity of these groups, reflecting the wide political, social, environmental and educational spectrum. Consensus had developed throughout the non-profit sector for new regulations that were both fair and enforceable. The stringent type of enforcement proposed by the IRS in 1987 was too one-sided regarding free speech, and would leave many organizations ineffective in proposing changes to address social ills. The 1987 IRS proposals had a positive impact in that it produced debate about the vagaries present in the 1976 law and started movement to further reform that law. The establishment of the Advisory committee did result in changes in the 1976 law that are more clear and workable for all parties involved.

In September of 1990 the IRS issued new regulations regarding lobbying by public charities. The reformed legislation avoided the stringent regulation imposed by its predecessor (the 1986 measures), although it does contain more complex recordkeeping requirements.(2) Both direct lobbying and grass-roots lobbying were more carefully...
defined and this alleviating the necessity for organizations to classify their actions as non-partisan analysis. (3) The new regulations diverted from the 1986 policy of classifying fund-raising communications as grass-roots lobbying activity, which removed a large obstacle for the non-profit sector.

The reforms enacted in 1990 were actually the result of an evolving process which began with the Tax Reform Act of 1976. The Tax Reform Act of 1976 left many vague guidelines for 501(c)(3) organizations to follow in using the "insubstantial part test" method, which states "no substantial part of a charity's activities ... be carrying on propaganda or otherwise attempting to influence legislation." This standard was subject to both qualitative and quantitative evaluation processes by the IRS.

An organization choosing to have its lobbying evaluated by the IRS according to the 1976 insubstantial part test required that "no substantial part of a charity's activities ... be carrying on propaganda or otherwise attempting to influence legislation." This vague standard offered no simple measuring rods for the IRS to evaluate whether an organization exceeded the allowable limits of lobbying activity. (4) Rather than just applying a monetary formula to specific activities permitted, the IRS could also factor in time spent by both volunteers and workers attempting to affect pending legislation. Also considered was the success
of an organization in achieving a certain legislative agenda.

If charities were found to be in excess of what the IRS deemed "substantial parts of their overall activities," the organization risked losing its exempt status and individual managers of the organization could be considered liable for the penalty taxes levied. (5) If a charitable organization selected for audit by the IRS filed under the "insubstantial part" rule, it stood a greater chance of exceeding its lobbying limits. (6)

Rather than focusing on the insubstantial part test, under which a majority of charitable organizations had previously filed, the reforms enacted in 1990 provided for relaxation of 501(h) expenditure test regulations. By electing to use the 501(h) expenditure test public charities have specific dollar limits to the amounts spent to influence legislation without losing their exempt status or incurring penalties. These monetary limits were calculated as a percentage of a charity's total exempt purpose expenditures. Charities must file an election with the IRS, otherwise they would be subject to the insubstantial part standard. The new regulations added language to the original 1976 expenditure test which gave organizations planning information to make it easier to determine the allowable amount spent on lobbying, and ways for organizations to use their funds more effectively. (7) The definitions set forth in the new
regulations carefully describe the various types of acceptable lobbying communications, enabling an organization to structure its activities to fall within definitions of allowable lobbying.

Organizations electing to file under the expenditure test (electing organizations) can enjoy larger dollar limits for lobbying activity. Additionally, fewer items are calculated toward the exhaustion of those limits. Limitations placed upon electing organizations are based purely upon an expenditure formula, as opposed to the non-electing charities in which "activities" (both paid and unpaid) determine the extent of lobbying activity. This means an organization could exceed its lobbying limit under the insubstantial part standard by having used substantial volunteer lobbying activity, but did not spend enough money to exceed the expenditure test limits.(8)

Electing organizations have additional protection against losing their tax-exempt status than do non-electing organizations. The IRS considers an electing organization's lobbying and grass-roots expenditures as a moving average over a four year period and would revoke its exempt status only if it exceeds either limit by fifty percent. An organization choosing not to elect could lose its exemption within a single tax year if found to be in excess of allowable lobbying activities. If an electing organization does exceed its lobbying expenditure limits and must pay
penalty taxes, only the organization, not its individual managers, are held liable.\textsuperscript{(9)}

Electing organizations would not be subjected to any significant additional record-keeping. All 501(c)(3) organizations with receipts greater than $25,000 per year are already required to file a Form 990 and Schedule A. On the first page of this form organizations must list their total lobbying expenditures. Non-electing organizations must also attach a schedule of their overall expenditures and an extensive explanation of their legislative activities, which is not required of electing organizations. For non-electing groups with a great deal of volunteer lobbying activity the additional paperwork to document these activities can be significant.\textsuperscript{(10)}

Organizations choosing to be monitored under the expenditure test must file a Form 5768, "Election/Revocation of Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation." The election generally applies to the year it is filed and all subsequent tax years (unless the election is revoked). Revocation can be done by filing the same form, and only becomes effective prospectively, unlike the original form which is retroactive to the beginning of the tax year.\textsuperscript{(11)}

An organization filing an election will be subject to two lobbying expenditure limits. The first refers to the total amount of lobbying expenditures an organization may make.
The second controls a subset of these expenditures, known as
"grass-roots" lobbying expenditures. (12)

The key to determining dollar figures for lobbying
expenditure limits for an organization is to calculate the
"exempt purpose expenditures" for the year in question.
Exempt purpose expenditures include all the amounts an
organization pays or incurs in furtherance of its exempt
purposes, including lobbying expenditures, depreciation and
amortization on its assets, controlled grants (i.e. grants
that cannot be used for any lobbying purposes). Also
included would be costs of most in-house fund-raising that
is not conducted by a separate (affiliated) fund-raising
unit. Once an organization has determined a figure for its
exempt purposes expenditures, it can then apply the
following formulae to determine the two lobbying expenditure
limits: (13)

1. 20% of first $500,000 exempt purpose expenditure
   + 15% of next $500,000 exempt purpose expenditure
   + 10% of third $500,000 exempt purpose expenditure
   + 5% of remaining exempt purpose expenditure

Total Lobbying Expenditure Limit

The total lobbying expenditure limit in no instance
can be larger than one million dollars. (14)

2. Grass-Roots Lobbying Expenditures Limit for
electing groups would equal 25% of the total of #1
(listed above). An organization must limit its
grass-roots lobbying expenditures to 25% of the
exempt purpose lobbying, no matter what percentage is paid in direct lobbying. (15)

A 501(c)(3) organization is given much more leeway in protecting its non-profit status by electing to file under the expenditure test of the 1990 rules. Because the IRS only revokes electing organizations' status for exceeding the calculated lobbying limit by more than 50%, using a four year moving average, charity could exceed its limits one year, but refrain from lobbying for following years to protect its status. For organizations concerned with pending legislation in a particular election year, a lobbying effort may exceed the limit for that year. Since little or no lobbying activity would be necessary in the following non-election years the average would not be exceeded. (16)

The new regulations carefully define what is recognized as lobbying. Direct lobbying communication is communication of which the principle purpose is to influence legislation. That communication must be made to a legislator, an employee of a legislative body or a government employee directly participating in the formulation of legislation. (17) The communication must also express a view of a specific piece of legislation (either pro or con). Also considered direct lobbying is any attempt to influence the public on ballot initiatives or referenda. (18)
Grass-Roots Lobbying Communication and Grass-Roots Lobbying Call to Action are the other types of activity of concern to electing non-profit organizations. Grass-roots lobbying communications are any attempt to influence specific legislation by encouraging the public to contact legislators about that legislation. It must refer to specific legislation and reflect a view on that legislation. Grass-roots lobbying call to action refers to action taken by a non-profit in which an individual is encouraged to contact a legislator or relevant government employee for purposes of influencing pending legislation. The organization must provide specific information for contacting the legislator (i.e. address, phone number) or include a petition or postcard as means of making the contact. Also, the call to action must identify legislators, the individual’s legislative representative or committee members considering specific legislation. All the costs incurred by an organization in preparing such a communication (i.e. printing, mailing, research, copying and overhead expenses) are counted toward the lobbying expenditure limits. An organization must be prepared to develop an accurate recordkeeping system to document all expenditures in any lobbying effort undertaken.

Organizations making regular communications to both its membership and to the general public must be able to discern the difference between lobbying activity and non-partisan
analysis, study or research. The IRS has devised two tests to apply to any communication to determine whether lobbying is occurring: the "content test" and the distribution test."(21) In applying the "content test" lobbying is not occurring if any non-partisan analysis, study or research provides full and fair exposition of the underlying facts. These facts must be presented in order that the reader may form an independent opinion. The information communicated cannot encourage individuals to take action upon specific legislation. To qualify as non-partisan analysis it must contain more information than contained in a "fact sheet" or be a more complex discussion of a topic than offered in a newspaper, television or radio advertisement.(22)

To meet the distribution test to determine whether lobbying is absent, the communication must be made available to a segment of the general public as well as governmental bodies or employees. If it is distributed to any legislative bodies it cannot be directed strictly to persons interested in only one side of the issue.

Similarly, examinations and discussions of broad social, economic and similar problems are not included as lobbying communication. To fit in this category the communication must not contain specific reference to pending legislation or directly encourage the public or governmental body receiving the information to take any action concerning the subject matter. Any requests for technical advice or
assistance made by a legislative body, committee or subcommittee to an organization on a particular topic must be made in writing by the entire body in question. In order for information provided after such a request to be considered anything other than lobbying action the information must be distributed to all members of the committee. (23)

Another exception to the direct lobbying rule is any communication providing for self-defense of an organization. To qualify, the communication must be made with a legislative body regarding any action that body would take affecting the organization’s existence, tax-exempt status, duties or deductibility of contributions to the organization. The subject matter of the communication must be limited to the above specific areas. The organization could communicate with legislative bodies, individual members or staff and make expenditures to initiate legislation dealing with these specific topics. Coalitions comprised mainly of non-profit organizations and members of affiliated groups of charities can use this self-defense exception on behalf of their own members, affiliates or organizations. (24)

The 1990 rules for electing organizations provide more detail regarding the different kinds of communications a 501(c)(3) may engage in. In the case of membership organizations, certain types of communication between
members are viewed differently than those with non-members. Within organizations communications concerning specific types of legislation are viewed differently depending upon the content. For example, if a communication circulated to members, comprising more than fifty percent of an organization's membership, reflects a viewpoint on certain legislation but does not encourage any action it does not count toward the lobbying expenditure limit. However, if any communication is made to members primarily to encourage them to engage in direct lobbying on a specific piece of legislation it does count toward the expenditure limit. (25)

If an organization does not want to exceed its lobby expenditure limit it must be careful in wording certain communications to avoid encouraging its membership to take specific action. The same could be said of charities planning mass media advertising campaigns which address pending legislation. An organization would be considered to be engaging in grass-roots lobbying if the advertising it sponsors reflects a viewpoint on the subject under discussion and appears within two weeks of a vote on the legislation. (26)

The rules regarding the affiliation of electing organizations participating in lobbying activity is of particular concern to the IRS. Two 501(c)(3) organizations are considered to be affiliated if one of them controls the other's activity on legislative issues by interlocking
directors on their respective controlling boards or if specific provision(s) in the bylaws of one of the organizations requires the other to follow its directives on legislative matters.(27) To further complicate matters affiliation determination regulations may apply to two or more 501(c)(3)s that are affiliated but also to two distinctly separate organizations that are affiliated by a common 501(c)(4) organization.

Any affiliated organization is viewed as part of the main organization for purposes of evaluating the lobbying expenditure limits. Thus, if an affiliated organization incurs any tax liability for exceeding its expenditure limit, all the electing organizations considered affiliated are proportionally liable for the tax penalty. It is preferable for groups choosing to elect under the new rules to review their bylaws and board structures to disassociate themselves from affiliated organizations that could place them at risk of loss of exemption due to excessive lobbying activity.(28)

Any organization that transfers funding to a non-charitable organization that engages in lobbying activity must carefully document the transfer as a controlled grant to avoid having it considered a lobbying expenditure. The organization receiving the grant should provide written assurance that any of the funds received will not be used
for lobbying purposes. This will protect the contributing group from incurring additional lobbying expenditures. (29)

The 1990 regulations specify that accurate recordkeeping is necessary for organizations filing under the election system. Documentation of the total exempt purpose expenditures, total lobbying expenditures, total grass-roots lobbying expenditures, as well as any payments made to other organizations earmarked for lobbying must be kept for each taxable year. Electing organizations should review the necessity of conducting extensive direct mail campaigns or mass media expenditures in light of stricter rules applying for both grass-roots and direct lobbying messages. Both of these means of communication, if not carefully scripted, could potentially expend an organization's grass-roots lobbying limit. (30)
CONCLUSION

The 1990 IRS lobbying regulations reflect a vast improvement over previous regulations in that they dispel many of the uncertainties organizations faced when participating in issues of public debate. When the Code sections 501(h) and 4911 were written in 1976 congress intended that public organizations could lobby within limits without risking their exempt status. The 1990 regulations carry out congress' intent as well as correcting previous inconsistencies that existed. (1) For example, an organization can now advocate for certain legislation if research was conducted using objective methodology. This is a marked improvement over the previous regulations which required organizations to either take a neutral stand on an issue or merely present both sides of an issue without drawing a conclusion. In addition, an organization can now call for members to seek changes in existing legislation within a certain monetary expenditure limit. This was a reversal of the 1986 proposed regulations which restricted organizations from promoting a viewpoint to their members that may "ultimately" result in legislative action.

The number of organizations filing under the new election rules was minimal in 1991, but this reluctance seems to stem largely from misunderstanding. (2) Tax attorneys and advocacy organizations have published articles praising the

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new regulations and urging the non-profit sector to embrace them. (3) Overcoming the effects of historical efforts by the government to restrict certain organizations through selective denial of 501(c)(3) status will take time.

Addressing an American Bar Association meeting on taxation in May of 1991, IRS official Howard Shoenfeld stressed that the new rules could be viewed as "an insurance policy with a small premium." (4) Noting that many organization's reluctance to elect has arisen from a belief that groups engaging in considerable lobbying activity will be selected for audit. Shoenfeld assured the attorneys that there was no basis for this concern. (5) In fact, the IRS Tax Manual for auditors implies that non-electing organizations are more likely to be selected for audit than those electing to file under the expenditure test. (6)

Groups electing to file under the new rules should consult with a tax attorney before structuring their organization. This will help ensure a non-profit properly articulates its purpose and agenda, and carefully defines its relationship with affiliated organizations.

The test of time will reveal what aspects of the new regulations are workable and which still need improvement and clarification to prevent unfair exemption denial.

As stated by tax attorney and non-profit sector advocate Bruce Hopkins:

"These lobbying regulations are complex, but reasonable. They represent a vast improvement over
their 1986 forebears. Certainly, public and private outcry over the 1986 package had a major impact. Also, some new personnel at the IRS worked on the reproposed regulations and final regulations, and this fresh point of view helped the IRS to take more practical and reasonable approaches in this area."(7)

One can only surmise from that statement that the Bush Administration appointees to the IRS took a much less dogmatic approach than their predecessors.

The resolution of difficult questions regarding lobbying activity was achieved through constructive communication between the non-profit sector and regulating agencies. It has taken an entire century for the major obstacles between the regulatory agencies and the non-profit sector to be addressed outside the judicial and legislative arenas. Through the cooperation of the many diverse factions of the charitable sector and representatives of the regulating agencies new rules have been established whereby the effectiveness of organizations will hopefully not be seriously hampered.

Successful resolution of future conflicts relies on continued communication and cooperation in seeking reasonable solutions. The new regulations provide for a less restrictive atmosphere in which the charitable community can operate. These changes affect all aspects of our society, whether it helps a health advocacy organization to raise funds for research to cure disease, an educational non-profit promoting reform in primary schools or a public citizen group advocating a safer environment. Without an
effective non-profit sector providing divergent opinions on issues that face us as a society, finding solutions to the problems we face may not come in time. As funding for government programs is significantly diminished in times of budgetary restraint, the role of the charitable sector becomes increasingly important. The test of just how balanced the new regulations are in practice remains to be seen. The satisfaction expressed by those advising the charitable sector to the regulations suggests that a process of reconciliation with both the Treasury Department and IRS has begun. Maintaining a cooperative atmosphere between the IRS and the non-profit sector will help to alleviate any concerns either side has in enforcing the current regulations. One of the more important features of this current reconciliation between the charitable sector and the regulatory agencies is recognition by the IRS that charitable purposes and political activity are not inherently incompatible. Electing to use the new regulations rather than relying on the more interpretive formula, charities will be less likely to find themselves subjected to the more arbitrary decision making process the IRS had used in the past. This is particularly important for organizations which focus on more controversial advocacy issues, which in the past were viewed as purely political in their objectives. Hopefully, the door will remain open between these divergent groups to solve any future obstacles.
so that society as a whole can benefit from a vital philanthropic sector.

Despite this proactive approach to negotiating reasonable and workable regulations, the residual effects of a climate of distrust are evident. Although the option of filing under the new election rules provides clear benefits to many non-profits, only a minimal number of organizations chose to make the election in 1991. Administrators of non-profit organizations need to be aware of the history of the development of the 501(c)(3) statutes. Given the long-standing history of government attempts to restrict certain organizations through selective denial of 501(c)(3) status, the current conciliatory atmosphere is too recent a development to blindly trust the regulatory agencies. The question which only time can answer is whether future administrations will choose to use the granting or denial of 501(c)(3) status to control organizations.


4. Statute of Elizabeth (43 Eliz C4). "The relief of aged, impotent and poor people; the maintenance of sick and maimed soldiers and mariners, schools of learning and free schools and scholars of universities; the repair of bridges, ports, harbors, causeways, churches, sea banks and highways; the relief stock or maintenance of houses of correction; marriages of poor maids; supportation, aid and help of young tradesmen, handicraftsmen and persons decayed; the relief or redemption of prisoners or captives; the aid or ease of any poor inhabitants concerning payment of fifteens, setting out of soldiers and other taxes"


   Bader Realty & Ins. Co. vs. St. Louis Housing Authority. 358 Mo. 747, 752, 217. (S.W. 2nd 489, 492, 1949).

6. 28 Statute 556. (1894).


8. Section II (G)(a) Act of Oct. 3, 1913. 38 Statute 114. This act provided that income tax would not apply "to any corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any stockholder or individual."

10. Treasury Regulation 45, article 517, (1919). "But association formed to disseminate controversial or partisan propaganda are not educational within the meaning of the statute."


Sophie G. Loxe, 5 B.T.A. 261, (1926).

12. 42 Fed 2nd 184. 2nd Circuit Court (1930).


15. Ibid.


19. 48 Fed Statute 690. (1934). Charitable and other contributions in the case of an individual, contributions or gifts made within the taxable year to or for the use of:
   a: the United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;
   b: a corporation, or trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, or the prevention of cruelty to children or animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual. And no substantial part of the activities of which is participation in partisan politics or is carrying on propaganda, or otherwise attempting to influence legislation.
20. Sharpe’s Estate vs. Commissioner of Internal Revenue, 148 F.2d, 3rd Circuit Court of Appeals (1945).

21. Text from the opinion of the court read as follows: "The Donor wishing to continue the support he has long given the United Committee for the Taxation of Land Values, Ltd. and to assist it in maintaining its future activities directs that the payments herein above directed to be made to the said United Committee for the Taxation of Land Values, Ltd. for the distribution of literature advocating the justice and expediency of taxing land values and exempting from taxation the improvements, industries and the processes of exchange...which promote a wider knowledge and a greater appreciation of the moral basis and economic principle of what has come to be known as the Single Tax, as set forth by Henry George in his book entitled Progress and Poverty." Ibid.

22. Ibid.

23. The Tax Court concluded, although on evidence which it did not deem completely satisfactory, that the United Committee was an organization a substantial part of which was the carrying on of propaganda and influencing legislation.


25. Ibid.


27. Ibid.

28. "Because of the doctrine of separation of church and state, these same circumstances however, do not prevail in the case of that church or other organization which engages solely in activities that per se are religious or, if there are any other activities, they are incidental to activities per se religious, for there is no occasion for the burden of these activities to fall upon the government. Nonetheless, there is a presumption that the exemption of such an organization serves a public interest. It is a presumption which springs from the fact that the advancement of religion is generally recognized as fundamental to our way of life, for we are a people who do not agree with the agnostic view of Robert G. Ingersoll or with the teaching of Karl Marx, that a government that guarantees the right to religion and to religious freedom. These religious objectives are accomplished only by public institutions that are established and maintained otherwise by government. These institutions, when recognized
by law as religious are of a public character and therefore serve a public interest."

Specific Exemption. "In computing taxable gifts for the calendar year there shall be allowed a deduction in the case of a citizen or resident an exemption of $30,000, less the aggregate of the amounts claimed and allowed as specific exemption in the computation of gift taxes for the calendar year 1932 and all calendar years intervening between that calendar year and the calendar year for which the tax is being computed under the laws applicable to such years."

a. Citizens or Residents - In computing taxable gifts for the calendar year there shall be allowed as a deduction in the case of a citizen or resident the amount of all gifts made during such year to or for the use of:
   1. the United States, any state, territory or any political sub-division thereof or the District of Columbia, for exclusively public purposes;
   2. a corporation, or trust, or community chest, fund or foundation, organized and operated exclusively for religious, charitable, scientific, literary or educational purposes, including the encouragement of art and the prevention of cruelty to children and animals, no part of the net earnings of which inures to the benefit of any private shareholder or individual, an no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;
   3. a fraternal society, order or association, operating under the lodge system, but only if such gifts are to be used exclusively for religious, charitable, scientific, literary, or educational purposes including the encouragement of art and the prevention of cruelty to children and animals.

b. Nonresidents - In the case of a nonresident not a citizen of the United States there shall be allowed as a deduction the amount of all gifts made during such year to or for the use of:
1. the United States, any state, territory or any political subdivision thereof, or the District of Columbia, for exclusively public purposes;

2. a domestic corporation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals no part of the net earnings of which inures to the benefit of any private shareholder or individual and no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation;

3. a trust, or community chest, fund or foundation organized and operated exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children and animals, no substantial part of the activities of which is carrying on propaganda or otherwise attempting to influence legislation; but only if such gifts are to be used within the United States exclusively for such purposes;

4. a fraternal society, order, or association operating under the lodge system, but only if such gifts are to be used within the United States exclusively for religious, charitable, scientific, literary, or educational purposes, including the encouragement of art and the prevention of cruelty to children or animals;

5. posts or organizations of war veterans, or auxiliary units or societies of any such posts, or organizations, if such posts, organizations, units or societies are organized in the United States or any of its possessions, and if no part of their net earnings inures to the benefit of any private shareholder or individual.

31. IRS Code of 1954, sec. 170(c)(2)(b) (1954). "Organizations, organized and operated exclusively for religious, charitable, scientific testing for public safety, literary or educational purposes...no substantial part of the activities of which is carrying on propaganda, or otherwise attempting to influence legislation and which does not
participate in or intervene in (including the publishing or distributing of statements) any political campaign on behalf of any candidate for public office."


33. Ibid.

34. Revocation of the F.O.R. 's 501(c)(3) status occurred in a letter in January of 1961 stating that it was denied tax-exempt status effective the beginning of F.O.R.'s fiscal year in May of 1962. Ibid.

35. The "action organization" test which the IRS applies to 501(c)(3) organizations requires that there is no substantial amount of dissemination of propaganda, or other attempts to influence legislation through other activities such as contacting legislators. In order to refute such a presumption by the IRS the organization must provide documentation of its activities and expenditures. Ibid.

36. Supplemental brief filed to the Internal Revenue Service's Exempt Organization's Branch in June, 1963 by the Fellowship of Reconciliation. Ibid.


39. Ibid.

40. Ibid.

41. From the opinion of Judge Simons regarding the petitioner, Murray Seasongood: "It is said of Seasongood that he had been a lawyer, in active practice, for more than fifty years, had for many years a deep interest in matters relating to good government with special reference to the government and his community, had taken an active part in civic matters pertaining to the health and general welfare of the people of Cincinnati and the efficient administration of the law in his county and state. He had been for two terms Mayor of Cincinnati, had a national reputation as an expert in municipal corporation law, was the author of a case book upon the subject widely used in law schools, and had lectured in many states on this subject and the subject of clean and efficient local government. He had served as a lecturer at
the Harvard Law School, as a Professor of Law at the University of Cincinnati Law School and as trustee, or in some other official capacity, in many organizations national in character and had engaged in charitable, educational and public welfare activity." Ibid.

42. Sharpe's Estate vs. Commissioner of Internal Revenue, 148; F.2d, 3rd Circuit Court of Appeals (1945).

43. From the opinion of Judge Simon regarding the organization in question (The Hamilton County Good Government League): "Of the League, it is said that it was organize in 1934 and incorporated in 1941 as a corporation not-for-profit. Seasongood was its president from 1934 to 1945. The Articles and Constitution of the League specify its object to be 'to provide an opportunity for discussion of matters of civic importance and to advance good government.' The activities of the League during the Tax years had been non-partisan in the sense that it had not contributed or affiliated itself with any political party. Its main activities were in operating the "Cincinnati Forum of the Air" to permit public discussion by individual citizens of matters affecting the citizen's welfare, the preparation and distribution, through schools and other organizations of literature explaining the danger to the public health by the spread of disease by rodents and the best methods for their control, and the education of citizens of the community to the importance of exercising their right to vote, irrespective of party or candidates. It had been the practice of the League in each year to prepare and mail to its members and to distribute to the voting public through employers and others notices of the times of approaching elections, calling attention to the necessity of registration and the dates for registration. It urged all voters to register and exercise the right to vote as something due to themselves and to their community. The income of the League was small, being derived from dues and occasional contributions. Its statement of income and disbursements for the taxable year 1948 is typical of its financial activities during the years in question. In that year, it received dues and contributions in the total amount of $2,112.00 and its expenditures were $2,534.90."


44. Of the "Operating Test," Reiling explains: "For an organization's activities to be charitable within the intention of the exemption, they too must meet the general requirements...This is to say, its activity cannot be regarded as charitable if the organization is not a valid public charity in the legal sense of the term. Nor may operations be treated as charitable within the intention of the exemption unless they are charitable within the generally accepted meaning of the term. And lastly, unless the activities are
strictly religious except for incidental secular operations, the organization must perform services which give rise to a legal presumption that the public interest is served, if the exemption properly may be allowed." Reiling, "What is a Charitable Organization?," p. 525-526.


46. Ibid.

47. E. Clark, "Revenue Code and a Charity's Politics."


49. Ibid.

50. "The California precedent places upon the taxpayer the burden of proving that he does not criminally advocate the overthrow of the Federal or State government by force, violence or other unlawful means or advocate the support of a foreign government against the United States in the event of hostilities." Ibid.

51. Ibid.


55. Ibid.

56. "As early as 1934 Congress amended the Code expressly to provide that no tax exemption should be given to organizations, otherwise qualifying, a substantial part of the activities of which 'is carrying on propaganda, or otherwise attempting to influence legislature and that deductibility should be denied to contributions by individuals in such organizations'...And a year thereafter, when the Code was for the first time amended to permit corporations to deduct certain contributions not qualifying as 'ordinary and necessary' business expenses, an identical limitation was imposed. These limitations carried over into the 1939 and 1954 Codes, made explicit the conclusion derived by Judge Learned Hand in 1930 that 'political agitation' as such is outside the statute...The regulations here contested appear to
us to be but a further expression of the same sharply defined policy."


57. "There is no reason in the world why a contribution... should be deductible as if it were a charitable contribution if it is a selfish one made to advance the interest of the giver of the money. That is what the committee was trying to reach."

78 Cong. Rec. 5959 (1934) (remarks of Senator Reed).


59. "Tax credits should not be given either to those who had a direct business interest or to those who oppose the direct business interest and fight for the general interest."


63. "As a substantial part of your activities you have been attempting to influence legislation by propaganda and otherwise, contrary to the prohibition respecting such activities contained in section 170(c)(2)(D) and 501(c)(3) of the Internal Revenue Code of 1954." The description of the Code violation included in a letter to the Sierra Club by the District Director of the Internal Revenue Service.


64. "This (the tax exemption) does not extend to persons who are aware of activities on the part of an organization which may result in disqualification..." Ibid.

65. Ibid.


69. Senator Paul Douglas of Illinois, in discussing passage of the Section 120(c)(2) clause giving business a tax deduction for contributions supporting their interests: "Let us consider the gas bill which Senator Kerr sponsored. To the gas and oil industry that bill meant $600 million a year. But to the 30 million householders who use gas to cook and heat it meant on the average only $20 a year. Very few people will become sufficiently interested in the subject, to study it, and then be able to afford to come to Washington to lobby against it when only $20 a year for each is involved. As a result, the powerful interests of the producing groups are strong and vigorous. The diffused general interest groups are weak."


73. An organization is an "action" organization if its main objective may be attained only by legislation and it "advocates or campaigns for" the attainment of such as distinguished from engaging in non-partisan analysis, study or research.

Internal Revenue Service, Regulations Sec. 1.501(c)(3)IV (1968).

2. This is referring to the clauses in the law prohibiting 501(c)(3) groups from devoting "substantial" political activity and "carrying on propaganda, or otherwise attempting to influence legislation." Internal Revenue Code, sec. 501(c)(3)-1 (1959).


13. Ibid.


20. Internal Revenue Code, Sec. 4911(a) and (b) (1976).


22. Internal Revenue Code, Sec. 7428 (1976).


26. Ibid.


30. Internal Revenue Code, Sec. 4911(d)(2)(B) (1976). "Any organization providing technical advice or assistance to a governmental body or to a commi

35. K. Liles, "Lobbying Activities by Public Charities with Emphasis on Recordkeeping Requirements."

FOOTNOTES CHAPTER 3


4. Bruce Hopkins, "A Disturbing New Wrinkle from IRS."


7. Ibid.

8. Ibid, Attachment #1.

9. Ibid.

10. Ibid.

11. Ibid.


15. Ibid.


17. Independent Sector, "Lobbying Rights Severely Threatened by Proposed Regulations."


3. Ibid., p. 35-43.


6. Ibid., p. 63.


8. Ibid.


12. Internal Revenue Code 4911 (c)(1)and (3).


15. Treasury Regulation 56.4911-2(b)(2).

16. Treasury Regulation 1.501(1)-3(b)(2).

18. Treasury Regulation 56.4911-5(b).


21. Ibid.

22. Ibid.

23. Ibid.

24. Ibid.


27. Ibid.


CONCLUSION


3. Ibid.

4. Ibid.

5. Ibid.

6. Ibid.

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