

Legislative Updates & Considerations: 2024 (Election Year)

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Agenda

Introduction

Tax Cuts and Jobs Act Sunsetting

SECURE ACT 2.0

Other Issues Impacting Nonprofit Organizations

- Donor Advised Funds
- Employee Retention Credits
- Green Energy Credits

Lobbying and Political Activity

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Tax Cuts and Jobs Act (TCJA)

TCJA

Sunset Provisions



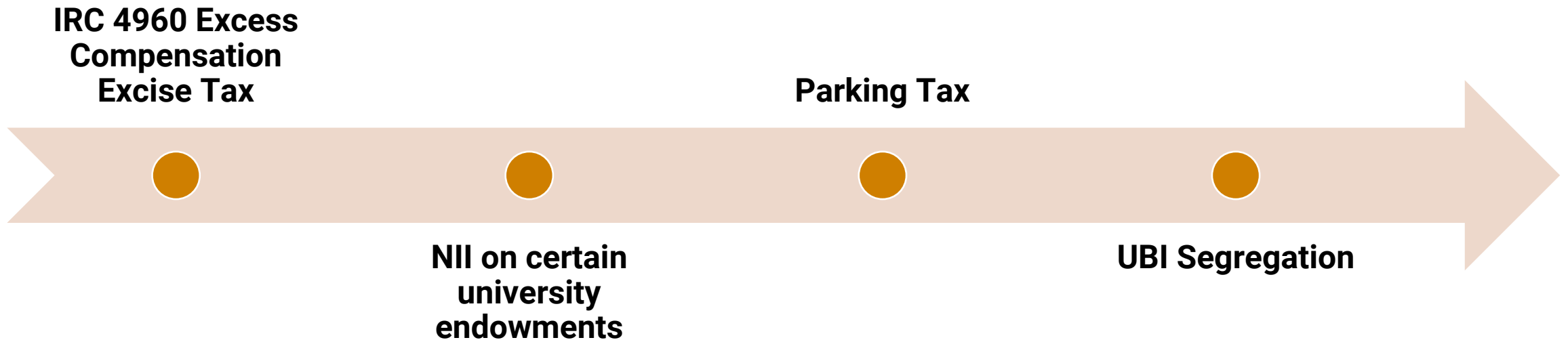
TCJA - Background

2017 significant changes to the Tax code

Key Provisions

- Changes to individuals tax rates and brackets
- Reduction in the Corporate Income Tax Rates
- Changes and limitations on certain deductions, credits, and phaseouts

TCJA – Key Nonprofit Provisions



TCJA – Sunset Provisions – Individual

Tax Rates – Add chart

Standard Deductions

Itemized Deductions

- SALT Cap
- Mortgage Interest Deduction
- Miscellaneous Itemized

Other

- Child Tax Credit, Personal Exemptions, AMT Exemption and phaseout

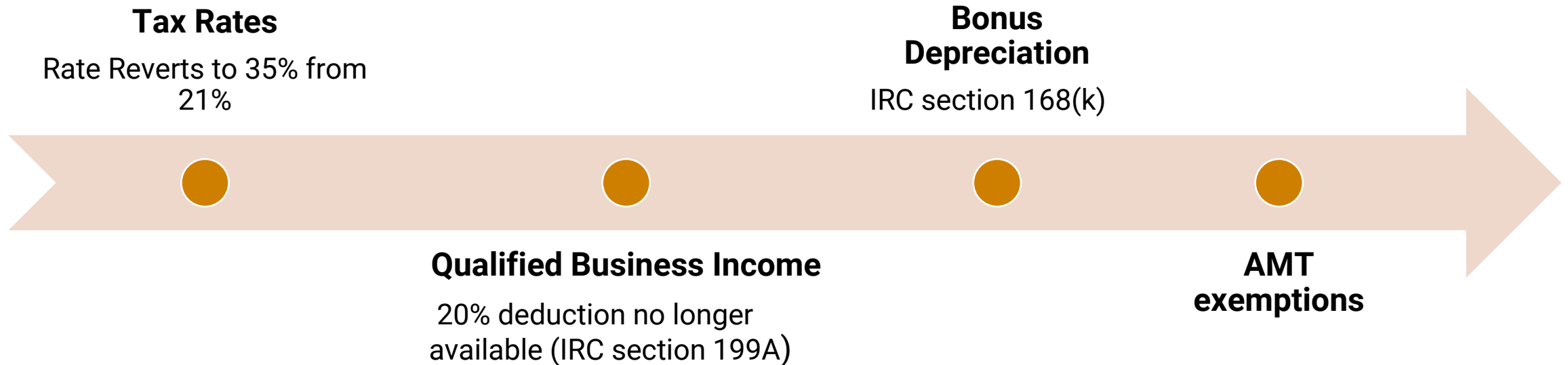
Individual Tax Rates



Prior Law	TCJA
10%	10%
15%	12%
25%	22%
28%	24%
33%	32%
35%	35%
39.6%	37%

These tax rates will sunset Dec. 31, 2025

TCJA – Sunset Provisions – Corporate



TCJA – Sunset Provisions – Other

Charitable Giving

- AGI limitation for cash contributions back to 50%
- Impact of changes in standard deduction

Estate and Gift Exemptions

	Individual	Married
2024	\$13.61M	\$27.22M
2026 (Projected)	\$7M	\$14M

SECURE Act 2.0



SECURE 2.0 Act of 2022–Signed 12/29/2022

- **Increase in RMD Age to 73** (in 2023), then to **75** (in 2033)
 - **Age 72** **Born 1950 or earlier**
 - **Age 73** **Born 1951 –1959**
 - **Age 75** **Born 1960 or later**
- **Reduced the RMD penalty** from **50%** to **25%**, and **10%** if timely corrected by making up the missed RMD within 2 years.
- **Increased catch-up contributions for plans** for taxpayers between the ages of **60-63**, effective **2025**
 - Catch-up in a workplace retirement plan is \$10,000 (adjusted for inflation) (standard catch up is \$7,500)
 - Catch-up IRA limit is 150% of 2025 regular catch-up amount (adjusted for inflation) (standard catch up is \$1,000)
- **\$1,000 IRA catch-up contribution amount** (for those age **50 or over**) will be indexed for inflation increases
 - *Beginning in 2024, in \$100 increments*



QCDs (qualified charitable distributions)

Beginning in 2024, the Annual \$100,000 will be increased for inflation



Eliminated Roth 401(k) RMDs

- Beginning in **2024**, Roth 401(k)s will ***no longer be subject to lifetime RMDs***. Roth IRAs were never subject to lifetime RMDs, and now employer plans will have that same benefit.
- **NOTE** – Roth designated beneficiaries are still subject to the 10-year distribution rule upon death of the IRA owner. But they will have no Required Minimum Distributions in years 1-9. They can wait until the end of the 10-year term to withdraw the entire balance in the inherited Roth account.



Rollovers from 529 plans to Roth IRAs –**limited to \$35,000** and must go to beneficiary's Roth IRA

- 529 must have been in existence for 15 years
- 529 contributions made in the last 5 years don't qualify
- Limited to annual IRA contribution amounts (cannot use the full \$35,000 in one year)

Inherited IRAs : Required Minimum Distributions

Recent changes in legislation for RMDs for inherited IRAs

- **Spouse can:**
 - Move the money into their own IRA.
 - Move the money into an inherited IRA.
- **Non-Spouse can:**
 - Move the money in an inherited IRA – where it must be distributed with 10 years following the death of the original owner.
 - There are exceptions for eligible designated beneficiaries such as minor child or disabled individuals.
- **No fix for the 10-year rule problem!**
 - This affects beneficiaries subject to the 10-year rule who must take RMDs for years 1-9 if they inherited from someone who had already begun taking lifetime RMDs (died after their required beginning date –RBD).

What's **NOT** in SECURE 2.0 Act of 2022?

No effect on “back-door” Roths : they are still ok to do

No income limitations for Roth conversions

No restrictions on IRA investments in start-ups or privately held stock

No change in QCD age : it is still age 70 ½ (even though RMD age increased to 73, and 75)

IRAs and Retirement Plans

401(k): For 2023, you can contribute up to \$22,500 (\$23K for 2024) to a 401(k) plan (\$30,000 if you're age 50 or older-\$30,500 for 2024).

IRA: For 2023, you can contribute up to up to \$6,500 (\$7K in 2024) to a traditional IRA or Roth IRA (\$7,500 if you're age 50 or older-\$8K for 2024).

SEP: Contribute the lesser of 25% of self-employment income or each eligible employee's salary or \$66,000 for 2023 (\$69K for 2024).

DEFINED BENEFIT PLAN Vs. Defined Contribution Plan.



ROTH Conversions

When you convert a traditional IRA to a Roth IRA, or a traditional 401(k) account to a Roth 401(k) account, the converted funds are generally subject to federal income tax in the year that you make the conversion (except to the extent that the funds represent nondeductible after-tax contributions).

If a Roth conversion does make sense, you'll want to give some thought to the timing of the conversion, considering current and future tax rates.

If you have NOLs available, they can offset the income generated by the Roth conversion

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Donor Advised Funds

Donor Advised Funds

ACE Act Proposal 2021

Proposed Regulations under IRC section 4966 – REG-142338-07

Comments to Proposed Regulations were due 2/15/2024

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Employee Retention Credit

Employee Retention Credit

What Now?

IRS Moratorium – September 14, 2023

Voluntary Disclosure through March 22, 2024

- Return 80% of funds to avoid penalty
- Employers who returned 100% prior to 12/21/2023 may be allowed to apply for the 20% relief.
- If no payment received yet, may still withdraw claims

Proposed Legislation – Tax Relief for American Families and Workers Act of 2024

Audit update and status

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Green Energy Credits

INFLATION REDUCTION ACT

BACKGROUND

Prior to the Inflation Reduction Act

- Nonprofits could only claim tax credits against UBIT
- Nonprofits could structure deals to give benefit to a for-profit entity (e.g., power purchase agreements)

Inflation Reduction Act (8/16/2022)

- Most credits starting 1/1/2023
- Introduced Direct Pay
- Expanded 179D Deduction

CURRENT GREEN ENERGY CREDIT

I. Alternative Refueling Property Credit (30C) – Electric Vehicle Charging Stations

Production Tax Credit (45) – Phasing out prior to 1/1/2025

Carbon Dioxide Sequestration Credit (45Q)

Zero-Emission Nuclear Power Production Credit (45U)

Clean Hydrogen Production Credit (45V)

II. Qualified Commercial Clean Vehicles Credit (45W) - \$7,500 to \$40,000

Advanced Manufacturing Production Credit (45X)

III. Clean Electricity Production Credit (45Y) – Selling Energy to grid

Qualifying Advanced Energy Project Credit (48C)

IV. Clean Electricity Investment Tax Credit (48E) - Solar, energy storage, etc.

GREEN ENERGY CREDIT

01 BONUS CREDITS

- 10% bonus for projects located in low-income communities (Requires allocation award)
- 10% bonus for projects that meet domestic manufacturing requirements
- 20% bonus for projects when the facility is part of a qualified low-income residential project
- 20% bonus for projects when the facility is part of a qualified low-income economic benefit project

02 COMMON PITFALLS

- Prevailing wage and apprenticeship requirements
- Must meet key prevailing wage requirement
- Apprenticeship – 12.5% labor hours before 1/1/2024 and 15% after 12/31/2023
- Certain credits, failure to meet reduces credit to 6%
- Dollar limits
- EV Chargers must be used in low-income tract areas

03 SECTION 179D EXPANDED

- Square footage deduction for “primary designer” which is usually architect
- Now, you can allocate back to the designer (previously just government agency)

GREEN ENERGY CREDIT

How Do I Apply for Direct Pay?

Step 1 : Identify the project and the credit you want to pursue.

Step 2 : Complete your project, place it into services, and determine the corresponding tax year.

Step 3 : Determine when your tax return will be due.

Step 4 : Complete pre-filing registration with the IRS before your tax return is due.

Step 5 : Once you receive a valid registration number, file your tax return by the due date, including extensions (Forms 990-T and 3800).

Step 6 : Receive your direct payment.

<https://www.whitehouse.gov/cleanenergy/directpay/>

IRA/CHIPS Pre-Filing Registration Tool: [Register for elective payment or transfer of credits](#) | Internal Revenue Service ([irs.gov](https://www.irs.gov))

GREEN ENERGY CREDIT

Other Considerations

Elective payment election is irrevocable

Elective pay is only available after an applicable credit is earned and able to be claimed on the relevant annual tax return. In general, a tax credit is earned during the taxable year the applicable credit property is placed in service (investment tax credits) or eligible production occurs (production tax credits).

Can claim through various ownership (direct, SMLLC, tenancy-in-common, joint operating arrangement)

Partners of partnerships are not allowed to use elective pay. A partnership, even if all the partners are applicable entities, is not an applicable entity. However, a partnership can make the elective pay election if it qualifies as an electing taxpayer with respect to the section 45Q credit, the section 45V credit, or the section 45X credit.

GREEN ENERGY CREDIT

Proposed Regulations

November 17, 2023 – REG-132569-17

August 30, 2023 (withdrawn and re-proposed based on November Regs)

Treas Reg Sections

- 1.48-9
- 1.48-13
- 1.48-14
- 1.6418-5

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Form 990/990-EZ Schedule C

Influencing Legislation: Lobbying and Advocacy Undertaken by Tax-Exempt Organizations

Definitions

Political Campaign Activities

Lobbying Activities

Advocacy

Definitions

Political Campaign Activities

All activities that support or oppose **candidates** for elective federal, state, or local **public office**

- It **doesn't** matter whether the candidate is elected.
- It **doesn't** include any activity to encourage participation in the electoral process, such as voter registration or voter education, provided that the activity doesn't directly or indirectly support or oppose any candidate

Definitions

Lobbying Activities

All activities intended to influence foreign, national, state, or local **legislation**.

- Direct lobbying - influence the **legislators**
- Grassroots lobbying - influence the **general public** and encourages recipients to **take action** about the specific legislation.

■ **Specific legislation**

(is more than legislation that has been introduced)

- A bill (i.e., H.R. 7, S. 42)
- Proposed legislation (i.e., model bills) & draft amendments
- Specific legislative policy proposals
- Congressional resolutions & treaties requiring Senate ratification

■ **Not legislation**

- Administrative rules
- Court opinions & agency decisions

Direct
Lobbying
vs.
Grassroots
Lobbying

DIRECT LOBBYING	GRASSROOTS LOBBYING
Communication	Communication
Expressing a View	Expressing a View
Specific Legislation	Specific Legislation
Legislator	General Public
	Call to Action

Definitions

Direct Lobbying Expenditures

A direct lobbying communication is any attempt to influence any legislation through communication with:

- A member or employee of a **legislative or similar body**;
 - Federal – i.e., U.S. Senator
 - State/Local – i.e., State Assembly or City Council
 - Foreign National, Regional or Local
- A government official or employee (other than a member or employee of a legislative body) who may participate in the **formulation of the legislation**, but if the principal purpose of the communication is to influence legislation only; or
- The **general public** in a referendum, initiative, constitutional amendment, or similar procedure
 - Members of general public are “legislators” for purposes of all ballot measures

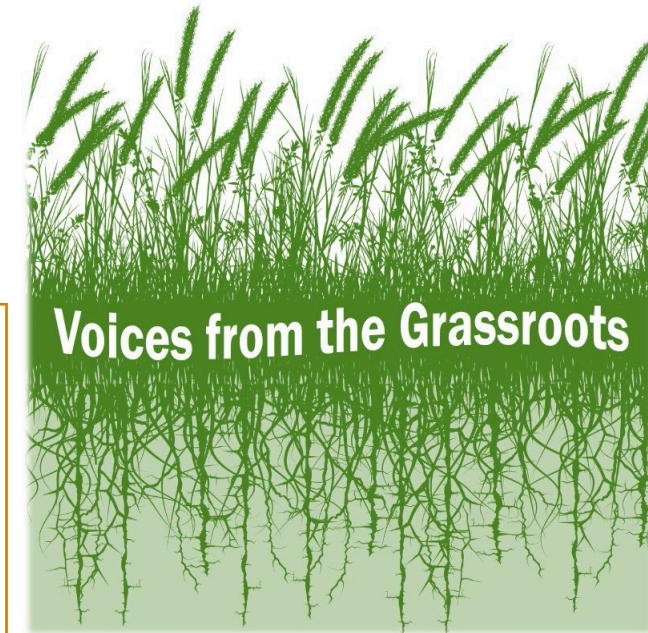


Definitions

Grassroots Lobbying Expenditures:

A communication encourages a recipient to take action when it

- States that the recipient should contact legislators;
- States a legislator's address, phone number, or similar information;
- Provides a petition, tear-off postcard, or similar material for the recipient to send to a legislator;
- Specifically identifies one or more legislators who:
 - Will vote on legislation;
 - Opposes the communication's view on the legislation;
 - Is undecided about the legislation;
 - Is the recipient's representative in the legislature; or
 - Is a member of the legislative committee that will consider the legislation.



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Definitions

Advocacy Vs. Lobbying

ADVOCACY

Advocacy is educating and creating awareness among legislators and the general public on issues facing the community and the importance of aligning public policy to address the need.

Advocacy does not endorse or oppose specific legislation, but rather informs the community at large how public policy decisions impact service provision.

LOBBYING

Lobbying indicates an opinion about specific legislative change

While all lobbying is advocacy, not all advocacy is lobbying.

EXAMPLES

Advocacy Vs. Lobbying

NO ↓	YES ↓
General Advocacy	Lobbying
<ul style="list-style-type: none"> • Sharing best practices and success stories, including model legislation <ul style="list-style-type: none"> ○ Making available nonpartisan analysis, study or research ○ Examining or discussing broad, social, economic and similar problems • Updating an organization's members on the status of legislation, without a call to action • Providing technical assistance or public advice to legislative body in response to a written request (e.g., hearings) • Communication about matters affecting the existence of a tax-exempt organization (the "self-defense" exception) • Coalition building • Providing comments or research on administrative/agency rules or regulations 	<ul style="list-style-type: none"> • Attempting to influence specific legislation <ul style="list-style-type: none"> ○ Advocating for the adoption or rejection of legislation ○ Writing lobbying materials that support a position or specific recommendation ○ Preparing arguments in support of your position • Contacting legislative staff in support or opposition to specific legislation (i.e., direct lobbying) <ul style="list-style-type: none"> ○ Including time for preparing and planning • Urging the public to contact legislative staff in support or opposition to specific legislation (i.e., grassroots lobbying) • Strategy or coalition meetings that coordinate lobbying activities about specific legislation

Rules for 501(c)(3) and 501(c)(6)s

Prohibited and Allowed Activities

Tax Form and Rates

501(h) Election

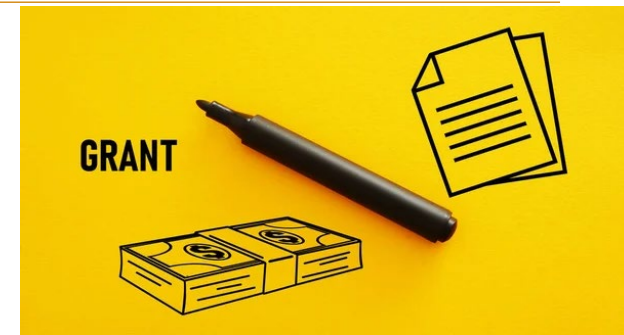
Tax Regulations

Types	501(c)(3) Private Foundation	501(c)(3) Public Charity	501(c)(4),(5),(6)
Political campaign allowed?	No (IRC 4955)	No (IRC 4955)	Yes, Limited
Lobbying allowed?	No (IRC 4945)	Yes, Insubstantial (IRC 4911, 4912)	Yes, Unlimited if lobbying is part of the exempt purpose
Donor/Member Notice of non-deductibility needed?	N/A	No	Yes (6033(e))
Tax consequence (more detail on next slide)	<ul style="list-style-type: none"> ▪ Excise tax (Form 4720) if non-compliance ▪ Loss of tax-exempt status if lobbying constitutes substantial part of its activities 	<ul style="list-style-type: none"> ▪ Excise tax (Form 4720) if non-compliance ▪ Loss of tax-exempt status if lobbying constitutes substantial part of its activities 	<ul style="list-style-type: none"> ▪ Net investment income tax (Form 1120-POL) if there is political expenditures ▪ Proxy Tax (Form 990-T) for failure to notify members nondeductible expenditures, or election to pay the tax at entity level

Relation to Form 4720/990-T/1120POL Filing

Code Section and Forms	Apply to	Tax on Filing Org	Tax on Foundation Manager	Correction Needed?
4945 - Taxable expenditure (4720 Sch E)	PF - Lobbying	20%	5%, up to \$10,000	Yes
4955 - Political expenditure (4720 Sch F)	PF/PC – Political Exp	10%	2.5%, up to \$5,000	Yes
4911 - Excess Lobbying Expenditures (4720 Sch G)	PC - 501(h) election	25%	No	No
4912- Disqualifying lobbying expenditures (4720 Sch H)	PC - Non 501(h) election	5%	5%, no limit	No
6033 – Proxy Tax (990-T)	501(c)(4),(5),(6)	21%		
527 – Income Tax (1120-POL)	501(c)(4),(5),(6)	21%		

Grant Expenditure and Lobbying



Private Foundation

- PF may support public charities that lobby
- But the grant may not be earmarked for lobbying, otherwise it is taxable expenditures

Public Charity

- A grantee may seek a grant from a public charity for lobbying activity, but not for partisan political activity.
- A public charity should provide a budget which includes a breakdown of expected lobbying and non-lobbying expenses.
- A public charity making a lobbying grant must count the grant amount toward its own annual

501(c)(3) Lobbying Compliance Options

- The Tax Code provides 501(c)(3) organizations with two options for measuring compliance with restrictions on lobbying activities:
 - “Substantial part” test
 - 501(h) expenditure test



501(c)(3) Lobbying Compliance Options

SUBJECTIVE

- Substantial Part test
- **Vague** facts and circumstances test
- Record, prepare, or file a detailed **description** of activities
- **No separation** of grassroots vs. direct lobbying restriction
- Strict sanctions
 - Revocation of exempt status
 - 5% Excise tax on organization **for entire lobbying exp,** and
 - 5% Excise tax on foundation managers

OBJECTIVE

- 501(h) Expenditure test
- **Clear** definitions & exclusions
- Measured solely by the lobbying **amount**
 - Lobbying will not be considered “substantial” if less than expenditure cap
- **Separation** of grassroots vs. direct lobbying restriction
- Flexible sanctions
 - 25% tax on amount **exceeding the annual cap**
 - No tax imposed on organization managers
 - Revocation of exempt status results only if the organization exceeds 150% of the cap over a 4-year consecutive averaging period

All About 501(h) Election



How to make the election?

- Who is qualified?
- Any section 501(c)(3) organization that is
 - Sch A line 2 - 12 organizations, except line 1 and line 6
- Disqualified organizations
 - Churches and affiliates
 - Private foundations

Benefits of the election?

- Eliminate uncertainty
- Simple filing
- Just file once
- File 5768 At any time during the tax year for which it is to be effective.
- The election remains in effect for succeeding years unless it is revoked by the organization by filing another form 5678
- Revocation of the election is effective beginning with the year following the year in which the revocation is filed.

Schedule C – Part III Concepts

6033(e) Notice

- Section 6033(e) requires certain section 501(c)(4), (5), and (6) organizations to tell their members what portion of their membership dues were allocable to the political or lobbying activities of the organization (non-deductible).
- 6033(e) Notice provides information for nondeductible business expense, not charitable expense.
- If 6033(e) Notice is not given, the organization is subject to a proxy tax for lobbying expense.
 - Either the member pay income tax by not taking business deduction, or
 - The NFP pay proxy tax directly via 990-T
- The amount on 6033(e) Notice is a reasonable estimation.
- Send dues notices to its members at the time of assessment or payment of dues

Schedule C – Part III Concepts

Proxy Tax

IF...



THEN...

Actual lobbying and political expenses > estimated in its notices

The organization is liable for a proxy tax on the excess. However, see (*) below.

The organization:

- (a) Elects to pay the proxy tax, and
- (b) Chooses not to give its members a notice



All the members' dues remain eligible for a section 162 trade or business expense deduction.

The organization:

- (a) Makes a reasonable estimate of dues allocable to nondeductible lobbying and political activities, and
- (a) Agrees to adjust its estimate in the following year (*)



The IRS may permit a waiver of the proxy tax.

Other Non-Tax Reporting Requirements

State Form

527 Orgs and PACs

Recipients of Federal Funds

FTB Form 3509

- **Do not forget California Form 3509**
- **Form 3509 basically mirrors Schedule C but requires the organization to separately list grassroots lobbying and direct lobbying regardless of whether 501(h) election is filed or not.**

Part I - Political Activities

Complete if the organization supported or opposed a candidate for public office. See instructions.

1 Has the organization participated or intervened in any political campaign on behalf of any elective public office candidate? 1 Yes No

If "Yes," describe the activities. Provide a summary of any published material relating to the activities.

2 Has the organization contributed funds to support or oppose any individual public office candidate, or any organizations formed to support or oppose a public office candidate? 2 Yes No

If "Yes," describe the activities. Include the name of the individual or organization the organization contributed to, the amount paid, and date of contribution.

J If exempt under R&TC Section 23701d, has the organization engaged in political activities? See instructions. Yes No



527 Political Organizations

WHAT IS 527?

A non-profit organization formed under Section 527 of the Internal Revenue Code, which grants tax-exempt status to political committees at the national, state and local level.

BENEFITS OF 527

- Raise unlimited funds from individuals, corporations or labor unions
- No tax on funds raised

WHY START 527?

Formed and operated primarily to receive and make contributions for the purpose of influencing the selection, nomination, election or appointment of any individual to federal, state or local public office.

527 Political Organizations

EXEMPTION REQUIREMENT

Organized and operated for the primary purpose of carrying on exempt function activities

Other activities may not be primary activities

Exempt function: influence or attempt to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office or office in a political organization

FILING REQUIREMENT

An initial Notice (Form 8871)**

Periodic reports on contributions and expenditures (Form 8872)**

Annual income tax returns (1120-POL), and

Annual information return (990)

** **Political committees** are not required to file notices and reports

527 Orgs vs. Political Committee

527 ORGANIZATIONS OTHER THAN PAC

- They do not "expressly advocate" for the election or defeat of a candidate or party
- Not regulated under state or federal campaign finance laws
- Used to raise money to spend on issue advocacy and voter mobilization

POLITICAL COMMITTEE

- Pools campaign contributions from members and donates those funds to campaigns for or against candidates, ballot initiatives, or legislation
- Receives or spends more than \$1,000 for the purpose of influencing a federal election
- Registers with the Federal Election Commission

All political committees are 527 organizations, but not all 527s are federally registered political committees.

527(f) Tax - Form 1120-POL

- Exempt Function:** all activities that are related to and support the process of influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any federal, state, or local public office...

Who must file Form 1120-POL	A political organization with any political organization taxable income.	A non-political exempt organization if it expends any amount during the taxable year for an <u>exempt function</u> (501(c)(4),(5)(6))
What is Taxable Income?	The excess of (a) gross income for the tax year (excluding exempt function income), over (b) deductions directly connected with the earning of gross income	The lesser of: (a) The net investment income of the organization for the tax year, or (b) The aggregate amount spent for an exempt function during the tax year either directly or indirectly through another organization.

Non-Tax Lobbying Restriction

- Lobbying Restriction on Federal Grant Recipients
 - OMB Circular A-122
 - Federal Acquisition Regulations
 - Byrd Amendment
 - Appropriations Acts, the Affordable Care Act, and the Uniform Guidance

As a general matter, these lobbying restrictions preclude recipients from:

- Spending federal funds to influence an officer or employee of any agency or Congressional member/staff **regarding certain federal awards**;
- Failing to submit required **certification and disclosure forms** (i.e., SF-LLL);
 - Non-federal funds are used
- Using grants funds provided to nonprofit organizations or institutions of higher education to **influence** an election, contribute to a partisan organization, or influence enactment or modification of any pending federal or state legislation; or
- Expending federal funds to **influence federal, state, or local officials or legislation**.

THANK YOU
Questions?

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