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Understanding Advocacy and Lobbying by 501(c)(3) Organizations

Advocacy is an essential tool for many nonprofit organizations seeking to advance their missions and promote social change. It can take many forms—from public education and awareness campaigns to direct interaction with policymakers. Yet, many nonprofits hesitate to engage in advocacy or lobbying due to fears of being perceived as “too political” or risking their tax-exempt status. These concerns, while understandable, are often overstated. A special part of advocacy is lobbying. 501(c)(3) tax-exempt organizations can lobby within limits, and when done properly, advocacy and lobbying can be strategic and powerful vehicles for achieving a nonprofit’s objectives.

In return for the advantages granted to tax-exempt organizations, 501(c)(3) organizations are not allowed to be involved in a campaign for the election of a person for office. However, under federal law, organizations exempt under Section 501(c)(3) of the Internal Revenue Code may engage in a limited amount of lobbying. The restriction is that “no substantial part” of their activities may consist of lobbying. While the Code does not define “substantial,” courts and the IRS consider factors such as time and expenditures devoted to lobbying, whether the lobbying is continuous or episodic, and whether paid lobbyists are used. In practice, many practitioners advise that lobbying be kept to roughly 3–15% of total activities, though this is not a formal rule.

What Constitutes Lobbying

Lobbying is generally defined as efforts to influence legislation. It comes in two primary forms:

- Direct lobbying, which includes communications with legislators, legislative staff, or other government officials involved in the formulation of legislation, that refer to specific legislation and express a view on that legislation.
- Grassroots lobbying, which consists of communications to the public that both refer to specific legislation, express a view, and urge the public to contact legislators. Examples include providing contact information for legislators, petitions, or materials calling for specific legislative action.

For these purposes, “specific legislation” includes bills, resolutions, and ballot measures that have been introduced in a legislative body (U.S. Congress, a state legislature or any local council or similar legislative body), as well as proposed legislative ideas. It does not include administrative actions or judicial decisions. Communications with executive or judicial branch, or administrative officials—such as a city’s police chief, environmental agency, or housing board—generally do not qualify as lobbying, as those bodies are not legislative.

The 501(h) Election

Because the “substantial part” test under 501(c)(3) is rather imprecise, Congress enacted Section 501(h) in 1976 to allow organizations to elect a more objective, expenditure-based test. By filing a simple election with the IRS via Form 5768, a 501(c)(3) can measure its lobbying activity based on money spent as a percentage of the total amount spent to perform the overall exempt activities, rather than on staff time or other qualitative factors under 501(c)(3).

The expenditure limits are:

Exempt Purpose Expenditures	Total Lobbying Nontaxable Amount	Grassroots Nontaxable Amount
Up to \$500,000	20% of exempt purpose expenditures	25% of total lobbying nontaxable amount

For further expenditure limits beyond \$500,000 in exempt purpose expenditure, consult the IRS’s chart [here](#).

Organizations that rely heavily on volunteers or have low lobbying expenditures often find the 501(h) election advantageous because volunteer time does not count toward the expenditure limits. Larger organizations, however, sometimes avoid the election to retain flexibility and to escape the statutory caps on grassroots spending.

What Is Not Considered Lobbying

Several activities are specifically excluded from the definition of lobbying:

1. Nonpartisan analysis, study, or research, provided it presents a full and fair exposition of facts enabling the public to form its own opinion, even if the communication takes a position on an issue.
2. Examination of broad social, economic, or policy problems, provided the discussion does not focus on specific legislation or urge legislative action.
3. Member communications, when directed primarily to members and not encouraging direct or grassroots lobbying.
4. Requests for executive or administrative action, such as meeting with agency officials to influence regulations or enforcement practices.

These exceptions allow nonprofits to educate the public, conduct policy research, and advocate for social change without engaging in lobbying as defined under the Code.

Action Organizations

An organization cannot qualify as a 501(c)(3) if a substantial part of its activities is directed toward influencing legislation or if achieving its mission inherently requires legislative change. Such entities are classified as “action organizations” and are ineligible for tax exemption under Section 501(c)(3). For example, a group whose central goal is to change policing laws or drug statutes would likely be an action organization unless its purpose is framed primarily as educational or charitable rather than legislative.

Protests and Demonstrations

Public demonstrations and protest marches organized by 501(c)(3) organizations generally do not constitute lobbying, unless they specifically call for legislative action by a legislative body on a particular bill or name specific legislators and urge contact. A rally protesting police violence, for instance, would not be lobbying unless it explicitly supported or opposed a pending bill and asked participants to pressure legislators.

Lobbying Registration Requirements

Separate from federal tax law, both federal and Michigan statutes regulate lobbying activities and may require registration.

- Under the federal Lobbying Disclosure Act, individuals or entities—including nonprofits—must register if they spend more than 20% of their time on lobbying or exceed certain expenditure thresholds (currently around \$13,000 per quarter).
- Under the Michigan Lobby Registration Act, any person or organization spending more than a specified amount in a 12-month period on lobbying, or more than a

specified amount to lobby a single official, must register. Michigan's definition of lobbying is broader than the IRS's and includes communications with executive officials for the purpose of influencing legislation or administrative action.

Conclusion

Nonprofit organizations should not shy away from advocacy out of fear of losing their tax-exempt status. Both the federal tax code and Michigan law recognize that limited lobbying is consistent with charitable purposes. By understanding the distinctions between advocacy and lobbying, carefully managing expenditures, and—where appropriate—making the 501(h) election, 501(c)(3) organizations can lawfully and effectively engage in shaping the policies that affect their missions and service communities.