# PRESENT LAW AND BACKGROUND RELATING TO THE FEDERAL TAX TREATMENT OF POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES OF TAX-EXEMPT ORGANIZATIONS

Scheduled for a Public Hearing
Before the
SUBCOMMITTEE ON TAXATION AND IRS OVERSIGHT
OF THE SENATE COMMITTEE ON FINANCE
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Prepared by the Staff
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# I. INTRODUCTION AND SUMMARY

The Subcommittee on Taxation and IRS Oversight of the Senate Committee on Finance has scheduled a public hearing on May 4, 2022, entitled "Laws and Enforcement Governing the Political Activities of Tax Exempt Entities." This document,[1] prepared by the staff of the Joint Committee on Taxation, contains an overview of present-law rules governing the political campaign and lobbying activities of tax-exempt organizations, a description of the present-law disclosure rules applicable to such organizations, and data relating to such organizations.

Although the tax laws prohibit a section[2] 501(c)(3) (generally, charitable) tax-exempt organization from engaging in political campaign activity, other types of section 501(c) tax-exempt organizations are not so prohibited, provided that the campaign activities are not the organization's primary activities. This includes section 501(c)(4) social welfare organizations, section 501(c)(5) labor organizations, and section 501(c)(6) trade associations and business leagues.

While labor organizations have a longer history of participating in political campaign activity, the involvement of section 501(c)(4) and (6) organizations in political campaign activity increased significantly in recent decades. One explanation for this increase might be the relative anonymity that is afforded to donors to such organizations, as compared with section 527 political organizations, which now must file periodic reports that detail contributions to the organization. Only certain section 527 organizations report to the Federal Election Commission ("FEC") under the Federal Election Campaign Act ("FECA"), and, prior to 2000, a section 527 organization only filed a return with the IRS if it had taxable income. In response to an increased awareness of these non-FEC regulated "stealth" political action committees ("PACs"), the Congress amended section 527[3] in July 2000 generally to require reporting either to the IRS, the FEC, or a State, including detailed periodic IRS reports of contributions and expenditures that are filed electronically and made available to the public (discussed in Part III).[4]

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[1] This document may be cited as follows: Joint Committee on Taxation, *Present Law and Background Relating to the Federal Tax Treatment of Political Campaign and Lobbying Activities of Tax-Exempt Organizations* (JCX-7-22), April 29, 2022. This document can be found on the website at www.jct.gov.

[2] All section references in this document are to the Internal Revenue Code of 1986, as amended (the "Code"), unless otherwise indicated.

[3] Pub. Law No. 106-230, July 1, 2000.

[4] Sec. 527(j) and (k). Public Law 106-230 also amended the Code to require certain section 527 organizations to provide notice to the IRS within 24 hours of formation (sec. 527(i) and (k)) and to file an annual information return (sec. 6033(g)). See also Erika K. Lunder, Congressional Research Service, *Political Organizations Under Section 527 of the Internal Revenue Code* (Report RS21716), January 28, 2008, p. 2 (discussing FEC reporting requirements prior to 2000).

Another likely reason for the increased use of section 501(c) organizations for political campaign activity is the Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*.[5] The decision generally permits (under the election laws) unlimited corporate and union spending from general treasury funds on independent expenditures and electioneering communications, including expenditures and communications made by section 501(c) tax-exempt organizations.[6] The *Citizens United* decision thus provides a clearer path under the election laws for section 501(c)(4), (5), and (6) organizations to engage in political campaign activity that was previously thought to be impermissible under such laws.

Part II of this document provides a description of present-law rules governing the political campaign and lobbying activities of tax-exempt organizations, including section 501(c) organizations and section 527 political organizations. Section 501(c)(3) charitable organizations may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office, sometimes referred to as the prohibition on political campaign intervention.[7] While much of the law concerning whether an activity is or is not political campaign intervention has developed in the section 501(c)(3) context, the same legal standards generally apply in determining whether an activity of a section 501(c)(4), (5), or (6) organization is political campaign intervention. However, unlike a section 501(c)(3) organization, these organizations are permitted to engage in political campaign intervention provided that the organization continues to be operated primarily for its tax-exempt purposes.

Section 501(c) organizations are permitted to engage in lobbying, although limits apply to the lobbying activities of a section 501(c)(3) organization. In general, a section 501(c)(3) organization does not qualify for tax exemption unless "no substantial part" of its activities constitutes "carrying on propaganda, or otherwise attempting, to influence legislation." Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.[8]

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[5] 558 U.S. 310 (2010).

[6] An organization generally makes an independent expenditure when it uses its treasury funds for political advertisements or to make related purchases explicitly calling for election or defeat of a Federal or State candidate. An organization generally makes an electioneering communication when it purchases advertisements that refer to those candidates during certain pre-election periods, but do not necessarily explicitly call for their election or defeat. See R. Sam Garrett, Congressional Research Service, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress* (Report R41542), updated February 23, 2021, p. 5.

[7] Not all election-related activities are prohibited activities for organizations described in section 501(c)(3). For instance, voter education activities generally do not constitute "participation or intervention" in a political campaign on behalf of or in opposition to a candidate and are, therefore, permissible activities under section 501(c)(3), provided that the activities are carried out in a nonpartisan manner.

[8] Sec. 4945(d)(1).

For purposes of determining whether lobbying activities are a substantial part of a public charity's overall functions, a public charity may choose between two standards, the "substantial part" test or the "expenditure" test.[9] The substantial part test derives from the statutory language quoted above and uses a facts-and-circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.[10]

Section 527 provides a limited tax-exempt status to "political organizations," meaning a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an "exempt function."[11] For purposes of section 527, the term "exempt function" means: "the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed."[12] Thus, by definition, the purpose of a section 527 organization is to accept contributions or make expenditures for political campaign (and similar) activities. Section 527 organizations are generally exempt from Federal income tax on contributions they receive, but they are subject to tax on their investment income and certain other income.[13]

Whereas a donor to a section 501(c)(3) organization generally is entitled to a charitable deduction for income, gift, and estate tax purposes,[14] contributions to most other tax-exempt organizations -- including section 501(c)(4), 501(c)(5), 501(c)(6), and 527 organizations -- generally are not deductible. Contributions to all such organizations are exempt from gift tax, however.[15]

Part III provides a general description of filing and disclosure requirements for tax-exempt organizations, including when an organization must apply for tax-exempt status or otherwise provide notice of its formation to the IRS, as well as annual filing requirements (such as the Form 990 annual information return that must be filed by most tax-exempt organizations). Part III then describes more specifically the disclosure requirements relating to the political

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[9] Secs. 501(c)(3), 501(h), and 4911.

[10] Secs. 501(h) and 4911.

[11] Sec. 527(e)(1).

[12] Sec. 527(e)(2). The exempt function of a section 527 organization thus generally would not include legislative lobbying on an issue unrelated to the appointment or selection of a public official.

[13] A section 501(c) organization might also be subject to tax under section 527(f) on certain political expenditures (generally limited to the investment income of the organization).

[14] Secs. 170, 2055, and 2522.

[15] See secs. 2501(a)(4), 2501(a)(6), and 2522.

campaign and lobbying activities of tax-exempt organizations. While this section focuses on tax-related disclosure requirements, it also includes a brief discussion of election law disclosure requirements under the FECA that might apply when a section 501(c) organization makes an independent expenditure or an electioneering communication.

Part IV includes selected data relating to the tax-exempt sector, returns filed by tax-exempt organizations, and political and lobbying expenditures of tax-exempt organizations.

## II. PRESENT-LAW FEDERAL TAX RULES GOVERNING POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES OF TAX-EXEMPT ORGANIZATIONS

### A. Political Campaign and Lobbying Activities of Section 501(c) Organizations

#### 1. In general

Section 501(c) describes 28 different categories of organizations that generally are exempt from Federal income tax.[16] Different rules apply to lobbying and political campaign activities of such organizations depending upon the category of section 501(c) under which an organization is described. The restrictions on an organization's lobbying and political campaign activities generally become more stringent as the Federal tax benefits potentially available to the organization or to the organization's donors increase.

Section 501(c)(3) provides tax-exempt status to certain nonprofit entities organized and operated exclusively for charitable, religious, educational, or certain other purposes, provided that no part of the net earnings of the organization inures to the benefit of any private shareholder or individual. Organizations described in section 501(c)(3), which generally are referred to as "charities," are classified as either public charities or private foundations.[17] In addition to the tax-exempt status conferred on organizations described in section 501(c)(3), charitable contributions to such organizations are tax-deductible to the donor for Federal income, estate, and gift tax purposes.[18] In addition, section 501(c)(3) organizations are eligible for certain tax-exempt financing benefits.[19]

Among the other types of organizations described in section 501(c) are social welfare organizations (sec. 501(c)(4)), labor organizations (sec. 501(c)(5)), and trade associations or civic leagues (sec. 501(c)(6)). These entities and other tax-exempt organizations that are not

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[16] Sec. 501(c)(1) through (19) and (21) through (29). These "tax-exempt organizations" generally are exempt from Federal income tax on income derived from activities substantially related to their exempt purposes and on their investment income. Such organizations generally are subject to tax (unrelated business income tax, or "UBIT") on any income derived from business activities that are regularly carried on and not substantially related to their exempt purposes. Secs. 511-514.

[17] Sec. 509(a). Private foundations are defined under section 509(a) as all organizations described in section 501(c)(3) other than the organizations granted public charity status by reason of: (1) being a specific type of organization (*i.e.*, churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions from the general public; (3) providing support to another section 501(c)(3) entity that is not a private foundation (*i.e.*, being a "supporting organization"); or (4) being organized and operated exclusively for testing for public safety. In contrast to public charities, private foundations generally are funded from one or a limited number of sources (an individual, family, or corporation) and are subject to restrictions not applicable to public charities. In general, more generous charitable contribution deduction rules apply to gifts to public charities.

[18] See secs. 170, 642(c), 2055(a)(2), 2106(a)(2)(A)(ii), and 2522(a)(2). Organizations described in section 501(c)(3) generally are eligible for reduced postal rates and, depending on the applicable State and local laws, may also be eligible for State and local income, property, and sales tax benefits.

[19] See sec. 145.

described in section 501(c)(3) (*i.e.*, non-charities) generally are not eligible to receive contributions that are deductible as charitable contributions to the donor for Federal income or estate tax purposes, but they may receive contributions that are deductible under section 162 as a business expense.[20] Additionally, these entities generally are not eligible to receive contributions that are deductible as charitable contributions to the donor for Federal gift tax purposes;[21] however, the gift tax does not apply to a transfer to these organizations.[22]

The present-law Federal tax rules governing the lobbying and political campaign activities of tax-exempt organizations are described below. In general, although many advocacy activities are often viewed broadly as "political" in the sense that advocacy may be politically motivated or have political implications, the rules described below distinguish lobbying with respect to legislation from political campaign intervention. Moreover, as discussed below, there is no single definition of lobbying under the Internal Revenue Code, nor is there a bright-line definition of political campaign intervention.

**2. Political campaign activities**

**Section 501(c)(3) organizations**

Prohibition of political campaign intervention

Section 501(c)(3) expressly provides that tax-exempt organizations described in that section may not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office.[23] This statutory prohibition is absolute and applies to both types of section 501(c)(3) organizations -- that is, public charities and private foundations. In theory, no amount of political campaign activity is consistent with an organization retaining tax-exempt status under section 501(c)(3).[24]

[20] See secs. 170(c) (listing eligible organizations for purposes of the income tax deduction), and secs. 2055(a), and 2106(a)(2)(A)(iii) (listing eligible organizations for purposes of the estate tax deduction).

[21] See secs. 2522(a) (listing eligible organizations for purposes of the gift tax charitable deduction).

[22] Sec. 2501(a)(6).

[23] Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(iii) defines an organization that intervenes in any political campaign for or against a candidate for public office as an "action organization" not entitled to section 501(c)(3) status. Treasury regulations use the term "action organization" to describe organizations that intervene in political campaigns *and* organizations that engage in substantial lobbying activities.

[24] See *Association of the Bar of the City of New York v. Commissioner*, 858 F.2d 876, 881 (2d Cir. 1988). In practice, however, the IRS may exercise its discretion by not seeking revocation of the organization's tax-exempt status in cases in which the violation was unintentional, involved only a small amount, and the organization subsequently corrected the violation and adopted procedures to prevent future improper political campaign activities. See, *e.g.*, Priv. Ltr. Rul. 9609007, December 6, 1995 (imposing the section 4955 penalty for improper political campaign intervention but not revoking the organization's tax-exempt status).

Candidates for public office

Treasury regulations define the phrase "candidate for public office" as meaning "an individual who offers himself, or is proposed by others, as a contestant for an elective public office, whether such office be national, State, or local."[25] Attempts to influence appointments of persons to nonelective public offices do not constitute prohibited political campaign intervention for purposes of section 501(c)(3).[26] There is no bright-line test for determining the precise moment when an individual becomes a candidate for purposes of the section 501(c)(3) political campaign prohibition.

Participation or intervention in a political campaign

*In general*.–Section 501(c)(3) expressly provides that prohibited participation or intervention in a political campaign includes the publishing or distributing of statements on behalf of, or in opposition to, a candidate for public office. In addition, Treasury regulations provide that prohibited political campaign activity includes, but is not limited to, the making of oral statements on behalf of or in opposition to a candidate.[27] Organizations described in section 501(c)(3) are prohibited from "directly or indirectly" participating in political campaigns.[28]

Clear examples of prohibited political campaign intervention include making or soliciting campaign contributions, providing publicity or volunteer assistance, and paying expenses of a political campaign.[29] In situations where there is no explicit endorsement of, or direct provision of financial or other support to, a candidate for elective public office, prohibited political

[25] Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(iii).

[26] See, *e.g*., Notice 88-76, 1988-2 C.B. 392, December 31, 1988; Gen. Couns. Mem. 39694, Feb. 3, 1988 (concluding that section 501(c)(3) organizations may attempt to influence the Senate's confirmation vote on a nominee for a Federal judgeship, because a Federal judge is not ordinarily considered the holder of an elective public office).

[27] Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(iii).

[28] *Ibid.* See *Branch Ministries, Inc. v. Rossotti*, 40 F. Supp. 2d 15 (D.D.C. 1999) (holding that an organization engaged in prohibited political campaign intervention when it placed a newspaper advertisement that was critical of the moral character of a candidate four days before an election, and the advertisement indicated that it was sponsored by the organization and solicited contributions); Tech. Adv. Mem. 199907021, May 20, 1998 (concluding that particular communications that were critical of Congress but did not refer to specific candidates by name were not prohibited political campaign activities, while broadcasts that identified a person as a candidate and criticized that candidate by name within months of a primary election constituted improper political campaign intervention, despite educational content).

[29] The IRS takes the position that prohibited political campaign intervention may, depending on the facts and circumstances, arise when an organization engages in a business transaction with a candidate, such as the rental of mailing lists or the acceptance of paid political advertising. In such cases, not only must the fee charged for the good or service provided by the charity be set at a fair market rate, but the IRS will consider whether the charity has a track record of making available the same goods or services on the same terms to other candidates and noncandidates. See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1425 (Situations 17 and 18).

campaign intervention may be implicit, as determined by a consideration of all relevant facts and circumstances.[30]

*Voter education, voter registration, and get-out-the-vote drives*.–Not all election-related activities are prohibited activities for organizations described in section 501(c)(3). For instance, voter education activities generally do not constitute "participation or intervention" in a political campaign on behalf of or in opposition to a candidate and are, therefore, permissible activities under section 501(c)(3), provided that the activities are carried out in a nonpartisan manner.[31] Publishing a compilation of voting records or responses to candidate questionnaires generally does not constitute prohibited political campaign activity when a wide range of issues is addressed and the published results do not suggest a bias for or against any candidate.[32] However, an alleged neutral effort to educate voters may evidence a bias and, thus, constitute prohibited political campaign intervention. Under some circumstances, dissemination of otherwise educational materials may be viewed as improper political campaign intervention, such as when an organization widely distributes (during an election campaign) a compilation of voting records of candidates only on a narrow range of issues.[33] Under other circumstances, a charity may (consistent with section 501(c)(3) status) publish a newsletter containing voting records of incumbents on selected issues of interest to the organization, provided that the newsletter is distributed to the organization's normal readership (rather than being distributed to the general public or to any particular congressional district), is not timed to coincide with any particular election, and no comment is made on an individual's qualifications for public office.[34]

If a charity endorses, rates, or evaluates the qualifications of candidates for elective public office, then the political campaign intervention rule of section 501(c)(3) has been violated, even if the endorsements or ratings are allegedly based on neutral assessments of the candidates' professional, intellectual, or ethical qualifications, rather than partisan grounds.[35] Moreover, the

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[30] Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1421. Attempts to influence the outcome of voting by the public on referendums, initiatives, or constitutional amendments are not prohibited political campaign activities for public charities, but are considered "lobbying" activities and, thus, are subject to the limitation that such activities may not be "substantial" (see discussion below of lobbying rules). Treas. Reg. sec. 1.501(c)(3)-1(c)(3). Similarly, efforts to influence the issues addressed in the platform of a political party generally are not viewed as prohibited political campaign intervention. However, such expenditures made by private foundations to influence referendums or party platforms (even if not substantial) potentially may be subject to penalty excise taxes under section 4945.

[31] See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1422.

[32] See Rev. Rul. 78-248, 1978-1 C.B. 154 (charity may disseminate voting records or candidate questionnaires under certain fact patterns); Rev. Rul. 80-282, 1980-2 C.B. 178 (amplifying Rev. Rul. 78-248 regarding the timing and distribution of voter education materials).

[33] See Rev. Rul. 78-248, 1978-1 C.B. 154; Rev. Rul. 76-456, 1976-2 C.B. 151 (organization that asked candidates to sign a code of fair campaign practices and released names of candidates who signed or refused to sign, was intervening in political campaigns).

[34] See Rev. Rul. 80-282, 1980-2 C.B. 178.

[35] See *Association of the Bar of the City of New York v. Commissioner,* 858 F.2d 876 (2d Cir. 1988) (rating of judicial candidates against general standards of competence was prohibited activity); Rev. Rul. 67-71, 1967-1

IRS has concluded that, even if a charity itself and its employees do not formally endorse any candidate, prohibited political campaign activity may occur if the charity provides a platform for others to endorse candidates.[36]

Voter registration and get-out-the-vote drives are permissible activities for public charities, provided that the activities are nonpartisan and not specifically identified by the organization with any candidate or political party.[37] However, voter registration drives conducted by private foundations may be subject to penalty excise taxes unless specific statutory criteria are satisfied.

*Candidate appearances*.–Depending on the facts and circumstances, candidates may be invited to speak at an event of a section 501(c)(3) organization without violating the rule against political campaign intervention. Where candidates are invited to speak in their capacity as candidates, the forum must be operated in a manner that does not show a bias or preference for or against a particular candidate.[38] If a candidate is invited to speak in his or her individual capacity other than as a candidate (*e.g*., the candidate formerly held public office or is an expert in a public policy field), then equal access to all other candidates need not be provided. However, in such cases, the IRS looks to the facts and circumstances surrounding the event to ensure that the event is non-political.[39]

*Individual activity by organization leaders*.–The political campaign prohibition of section 501(c)(3) applies to activities conducted by *or on behalf of* a charitable organization. When an individual affiliated with a charity engages in political campaign activities (*e.g*., the individual makes a speech endorsing a particular candidate), the question arises whether the activity should be attributed to the charity. An examination of all the facts and circumstances is necessary to determine whether the individual is acting solely in his or her private capacity (even though the individual's official title with the charity may be used for identification purposes) or whether the individual's political campaign activity should be imputed to the charity (generally by using principles of agency).[40]

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C.B. 125 (rating of school board candidates was prohibited activity, even if process was objective and intended to inform public about candidates).

[36] See Tech. Adv. Mem. 9635003, April 19, 1996 (ruling that forums were composed of participants selected through a scientific method to reflect the democratic characteristics of a community, but publication of the participants' ratings of the candidates was improper political campaign intervention).

[37] See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1422 (Situations 1 and 2 and accompanying text).

[38] See *ibid*. p. 1423 (Situations 7-9 and accompanying text).

[39] See *ibid*. pp. 1423-1424 (Situations 10 through 13 and accompanying text, describing relevant facts and circumstances).

[40] See *ibid*. pp. 1422-1423 (Situations 3, 4, 5, and 6). Similar questions of attribution arise in cases where a section 501(c)(3) charity is affiliated with a section 501(c)(4) lobbying organization. In such cases, the independence of the organizations generally will be respected where, despite overlapping governing boards, the entities are separately incorporated, the records and finances show legally distinct entities, and there are

*Issue advocacy*.–Section 501(c)(3) organizations commonly take positions on issues of public policy. When the position relates to an issue that divides candidates for public office, however, the difficult question might arise whether the statement is permissible "issue advocacy" or impermissible political campaign intervention. Even if the organization does not expressly ask an audience to vote for or against a candidate, the statement might involve campaign intervention if the facts and circumstances show that the statement includes a message that favors or opposes a candidate.[41] Relevant facts and circumstances include: (1) whether the statement identifies one or more candidates for public office; (2) whether the statement expresses approval or disapproval of a candidate's positions and/or actions; (3) whether the statement is delivered close in time to an election; (4) whether the statement makes reference to voting or an election; (5) whether the issue addressed has been raised as an issue distinguishing candidates; (6) whether the organization has a history of making similar communications independent of the timing of any election; and (7) whether the timing of the communication and identification of the candidate are related to a non-electoral event.[42]

Penalty excise taxes

*Public charities*.–A public charity that engages in prohibited political campaign intervention may face revocation of its tax-exempt status under section 501(c)(3). This sanction, however, is sometimes viewed as an ineffective remedy, because revocation might be too severe in some cases, or irrelevant in other cases such as where the organization has ceased operations after its resources were improperly depleted. Section 4955 thus allows for imposition of a two-tiered penalty excise tax. Under section 4955, if any charitable organization described in section 501(c)(3), including a public charity, makes a political expenditure, the organization is subject to an excise tax equal to 10 percent of the amount of the expenditure.[43] Additional penalty taxes may be imposed if the violation is not corrected within a specified time period.[44] The penalty

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reimbursements meeting fair-market-value standards for any shared facilities or services. See *Regan v. Taxation with Representation of Washington*, 461 U.S. 540, 545 (1983); *FCC v. League of Women Voters of California*, 468 U.S. 364, 399-401 (1984). Moreover, directors of a charity may, in their individual/private capacities, establish a PAC (referred to as a "non-connected PAC"), so long as they do not use the charity's resources; but the charity itself may not establish a PAC to conduct or fund political campaign activities. See Treas. Reg. sec. 1.527-6(g).

[41] See Rev. Rul. 2007-41, 2007-25 I.R.B. 1421, p. 1424.

[42] See *ibid*. pp. 1424-1425 (Situations 14 through 16 and accompanying text).

[43] A 2.5-percent penalty excise tax may be imposed under section 4955(a)(2) on organization managers who knowingly agree to make improper political expenditures (not exceeding $5,000 per expenditure). The first-tier taxes may be abated in certain circumstances. Sec. 4962.

[44] In cases where the political expenditure is not corrected within a specified period, section 4955(b) provides that the organization is subject to a so-called "second tier" excise tax penalty equal to 100 percent of the amount of the political expenditure. Managers who refuse to agree to correction are subject to an excise tax penalty equal to 50 percent of the amount of such expenditure (not exceeding $10,000 per expenditure).

excise tax under section 4955 may be imposed in addition to revocation of tax-exempt status (and eligibility to receive tax-deductible contributions).[45]

*Private foundations*.–Private foundations, like public charities, are subject to revocation of their tax-exempt status under section 501(c)(3) if they engage in prohibited political campaign activity. Moreover, private foundations (and their managers) are subject to penalty excise taxes under section 4945 if the foundation makes a "taxable expenditure."[46] For this purpose, a "taxable expenditure" includes any amount paid to influence the outcome of a specific public election or to carry on (directly or indirectly) voter registration drives, unless the activities are nonpartisan, are not confined to one specific election period, are carried on in five or more States, and certain other conditions are satisfied.[47]

## Other 501(c) organizations (501(c)(4), 501(c)(5), 501(c)(6), etc.)

### In general

*"Primary" standard for permissible political campaign activity*.–Tax-exempt organizations other than those described in section 501(c)(3) generally are permitted to engage in political campaign activities. However, political campaign activities cannot be the primary activities of an organization described in section 501(c), such as a social welfare organization described in section 501(c)(4).[48] In defining political campaign activity for such organizations,

[45] See also sec. 6852 (authorizing the IRS to make an immediate determination and assessment of taxes in cases where there have been flagrant political campaign expenditures by a charity), sec. 7409 (providing that the IRS may seek an injunction from a Federal district court in such cases to prevent future improper expenditures), and sec. 504(a)(2)(B) (providing that an organization, other than a church, that ceases to qualify for tax-exempt status under section 501(c)(3) by reason of its political campaign activities cannot at any time thereafter qualify as a tax-exempt social welfare organization under sec. 501(c)(4)).

[46] Section 4945 imposes an excise tax penalty on private foundations equal to 20 percent of the amount of their taxable expenditures. Any foundation manager who, without reasonable cause, agrees to make an expenditure knowing that it is a taxable expenditure is subject to a penalty equal to 5 percent of the amount of the expenditure (not exceeding $10,000 per expenditure). Furthermore, if the taxable expenditure is not "corrected" (*i.e*., recovered to the extent possible within a specified time period and additional safeguards established to prevent future taxable expenditures), then an additional (so-called "second-tier") tax is imposed on the foundation equal to 100 percent of the amount of the expenditure, and an additional tax is imposed on any foundation manager who refuses to agree to correction equal to 50 percent of the amount of the expenditure (not exceeding $20,000 per expenditure). The first-tier taxes may be abated in certain circumstances. Sec. 4962.

[47] Sec. 4945(d)(2) and (f). In addition, under section 507(a)(2), willful repeated violations (or a willful and flagrant violation) of the private foundation rules giving rise to penalty excise taxes can lead to termination of private foundation status, and the organization can be required to pay a termination tax.

[48] Section 501(c)(4), for example, provides tax exemption for civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, or certain local associations of employees, provided that no part of the net earnings of the entity inures to the benefit of any private shareholder or individual. Under the regulations, an organization is operated *exclusively* for the promotion of social welfare if it is engaged *primarily* in promoting in some way the common good and general welfare of the people of a community. Treas. Reg. sec. 1.501(c)(4)-1(a)(2). The promotion of social welfare does not include direct or indirect participation in political campaigns on behalf of or in opposition to any candidate for public office. See Treas. Reg. sec. 1.501(c)(4)-1(a)(2)(ii)

the IRS generally considers the same facts and circumstances that it uses in evaluating the activities of a section 501(c)(3) organization, discussed above.[49] There is some uncertainty, however, concerning how one determines whether an activity is a "primary" activity (*e.g.*, based on a percentage of time expended, a percentage of financial expenditures, or some other method).[50]

Thus, whereas a section 501(c)(3) organization is altogether prohibited from engaging in political campaign activity, a section 501(c)(4) organization might, for example, choose to direct up to half of its expenditures during a year for activities that clearly are political campaign intervention for purposes of section 501(c) while dedicating the remainder of its time or expenditures to activities that qualify as exempt social welfare activities. The exempt activities might, for example, involve "issue advocacy" on issues that divide candidates, but the activities nevertheless could be structured to avoid treatment as campaign intervention under the facts-and-circumstances test applied by the IRS (discussed above). The organization might then take the position that it satisfies the "primary" standard, because less than half of its expenditures are for activities that clearly are political campaign intervention, and it is primarily engaged in social welfare activities (in this case, permissible issue advocacy).

*Proposed change to legal standard*.–On November 29, 2013, the IRS issued proposed regulations relating to political campaign activities of section 501(c)(4) organizations.[51] Asserting that the present-law legal standard for political campaign intervention is unclear, the proposed regulations would have replaced the present-law facts-and-circumstances analysis (solely for purposes of section 501(c)(4)) with a list of specific political activities that would be considered candidate-related activities that do not promote social welfare. In addition to activities that are treated as political campaign intervention under present law, the proposed regulations would have treated as candidate-related political activity certain activities that, because they occur close in time to an election or are election-related, have a greater potential to affect the outcome of an election. After receiving over 150,000 comments, in May 2014, the IRS announced that it would not pursue the regulations in the proposed form.

*Tax under section 527(f)*.–As discussed in greater detail below, even though a 501(c) organization (other than a charity described in section 501(c)(3)) that engages in political campaign activities will generally retain its tax-exempt status so long as such activities are not the primary means of accomplishing its purposes, such activities nonetheless might result in the organization being subject to tax under section 527(f) on the lesser of its investment income or the amount expended on political activities.[52]

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[49] See Rev. Rul. 81-95, 1981-1 C.B. 332 (citing revenue rulings under section 501(c)(3) for examples of what constitutes participation or intervention in political campaigns for purposes of section 501(c)(4)).

[50] See Bruce R. Hopkins, *The Law of Tax-Exempt Organizations* (12th edition), Wiley, 2019, pp. 594-595.

[51] 71 F.R. 71535, November 29, 2013.

[52] See discussion of sec. 527 below. The purpose of section 527(f) is to prevent section 501(c) organizations from using their otherwise tax-free investment income to fund political campaign activities.

*Interaction with election law*.–The Supreme Court's 2010 decision in *Citizens United v. Federal Election Commission*[53] invalidated then-existing campaign finance law prohibitions on corporations and unions using their general treasury funds to make certain political campaign expenditures.[54] Most section 501(c) organizations are structured as corporations and thus were subject to the prohibitions.[55] The Court's decision now generally permits, under the election laws, unlimited corporate spending (including by a tax-exempt organization) on independent expenditures and electioneering communications,[56] provided that the organization reports such expenditures and communications to the FEC if certain dollar thresholds are met (discussed in greater detail in Part III below).[57] Because section 501(c) permits certain tax-exempt organizations, including section 501(c)(4), (5), and (6) organizations, to engage in political campaign activity, *Citizens United* makes it easier for such organizations to make independent expenditures and electioneering communications while remaining compliant with both tax-exemption requirements and campaign finance laws.

Furthermore, because donors to a section 501(c) organization (other than a section 501(c)(3) organization) need not be disclosed to the IRS nor be made public,[58] some argue that section 501(c)(4), (5), and (6) organizations may be used to influence elections in a way that permits less transparency with respect to the ultimate sources of the organization's financial support. A section 527 political organization, on the other hand, generally must disclose the contributions it receives to the IRS, the FEC, or a State.[59]

Associations that receive tax-deductible dues

Organizations described in sections 501(c)(4), (5), or (6) generally are required to provide annual information disclosure to members (sometimes referred to as "flow-through information disclosure") estimating the portion of their dues allocable to political campaign activities, as well as any lobbying activities as defined under section 162(e)(1). However, such disclosure is not required for an organization that (1) incurs only a *de minimis* amount (*i.e*., $2,000 or less) of in-

[53] 558 U.S. 310 (2010).

[54] See Congressional Research Service, *Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements* (Report RL 33377), updated September 24, 2010, summary page.

[55] Even those organizations that were not corporations could not at that time serve as conduits for corporate contributions.

[56] An organization generally makes an independent expenditure when it uses its treasury funds for political advertisements or to make related purchases explicitly calling for election or defeat of a Federal or State candidate. An organization generally makes an electioneering communication when it purchases advertisements that refer to those candidates during certain pre-election periods, but do not necessarily explicitly call for their election or defeat. See R. Sam Garrett, Congressional Research Service, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress* (Report R41542), updated February 23, 2021, p. 5.

[57] *Ibid*. p. 12.

[58] See Part III below.

[59] See Part III below.

house political campaign and lobbying expenditures during the taxable year; (2) elects to pay a proxy tax on its political campaign and lobbying expenditures incurred during the taxable year (at the highest corporate income tax rate); or (3) establishes pursuant to Treasury Department rules that substantially all of its dues monies are paid by members not entitled to deduct such dues in computing their taxable income.[60]

The purpose of this rule is to prevent taxpayers from avoiding section 162(e) (which disallows trade or business expense deductions for political campaign and lobbying expenditures) by paying otherwise deductible dues to a trade association or other tax-exempt entity which, in turn, makes political campaign or lobbying expenditures on behalf of its dues-paying members. Accordingly, section 162(e)(3) specifically provides that no trade or business expense deduction is allowed for the portion of dues paid to a tax-exempt organization which the organization notifies the taxpayer under section 6033(e) is allocable to political campaign or lobbying expenditures made by the organization.

### 3. Lobbying

#### Section 501(c)(3) organizations

In general

An organization does not qualify for tax-exempt status as a charitable organization unless "no substantial part" of its activities constitutes "carrying on propaganda, or otherwise attempting, to influence legislation" (commonly referred to as "lobbying").[61] Public charities may engage in limited lobbying activities, provided that such activities are not substantial, without losing their tax-exempt status and generally without being subject to tax. In contrast, private foundations are subject to a restriction that lobbying activities, even if insubstantial, may result in the foundation being subject to penalty excise taxes.[62]

For purposes of determining whether lobbying activities are a substantial part of a public charity's overall activities, a public charity may choose between two standards, the "substantial part" test or the "expenditure" test.[63] The substantial part test derives from the statutory language quoted above and uses a facts-and-circumstances approach to measure the permissible level of lobbying activities. The expenditure test sets specific dollar limits, calculated as a percentage of a charity's total exempt purpose expenditures, on the amount a charity may spend to influence legislation.[64] An organization that elects application of the "expenditure" test is sometimes referred to as an electing public charity; and organization that does not so elect (and

[60] Sec. 6033(e).

[61] Sec. 501(c)(3).

[62] Sec. 4945(d)(1).

[63] Secs. 501(c)(3), 501(h), and 4911. Churches and certain church-related entities may not choose the expenditure test. Sec. 501(h)(5).

[64] Secs. 501(h) and 4911.

thus remains subject to the "substantial part" test) is sometimes referred to as a nonelecting public charity.

The "substantial part" test

*No statutory definition*.–There is no statutory definition under section 501(c)(3) of "propaganda, or otherwise attempting, to influence legislation." However, Treasury regulations provide that an organization is an "action" organization not entitled to tax-exempt status under section 501(c)(3) due to its lobbying activities if a substantial part of the organization's activities is (1) contacting, or urging the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation; or (2) advocating the adoption or rejection of legislation.[65] Thus, attempts to influence legislation under section 501(c)(3) include directly contacting members of a legislative body (and their staffs) to propose, support, or oppose legislation (so-called "direct lobbying"), and also urging the public to contact legislative bodies, or otherwise attempting to influence public opinion, with respect to legislation (so-called "grass roots lobbying").

For purposes of section 501(c)(3), the term "legislation" includes action by the Congress, by any State legislature, by any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.[66] Contacting executive branch officials generally is not considered lobbying for purposes of section 501(c)(3), unless the charity requests that the executive branch official support or oppose legislation to be considered by a legislative body.[67] Thus, for this purpose, lobbying generally does not include contacting executive branch officials in an attempt to influence a regulatory decision or guidance.

Even when a communication refers to a specific legislative proposal (or the organization's primary objective may be attained only by passage or defeat of legislation), the dissemination of nonpartisan analysis or research with respect to a legislative proposal (or the organization's primary objective), without advocating legislative action, is not considered lobbying for purposes of section 501(c)(3).[68]

*Determining substantiality*.–In addition to the question of whether a communication constitutes "propaganda, or otherwise attempting, to influence legislation" for purposes of section 501(c)(3), there is a second issue of whether the level of an organization's lobbying activities is "substantial." Except for public charities that make the section 501(h) election (as discussed below), there is no bright-line, mechanical rule for determining whether lobbying

[65] Treas. Reg. sec. 1.501(c)(3)-1(c)(3)(ii).

[66] *Ibid.*

[67] See Rev. Rul. 67-293, 1967-2 C.B. 185.

[68] See, *e.g.*, Rev. Rul. 64-195, 1964-2 C.B. 138 (organization conducted nonpartisan analysis of a proposed constitutional amendment and disseminated materials to the public, but did not advocate approval or disapproval of the amendment); Rev. Rul. 70-79, 1970-1 C.B. 127 (some of the policies formulated by the organization could be carried out only through legislation, but the organization was entitled to section 501(c)(3) status due to the educational nature of its activities and because it did not make any specific legislative recommendations).

activities are substantial relative to the organization's other activities. Rather, the particular facts and circumstances surrounding all activities of the organization (including volunteer time) must be examined. An arithmetical percentage test (*e.g.*, looking at the percentage of the budget, or employees' time, spent on lobbying) while relevant, has been held not determinative.[69]

The "expenditure" test for electing public charities

Certain public charities may elect under section 501(h) to have the amount of permitted lobbying expenditures measured under the statutory, arithmetical tests set forth in sections 501(h) and 4911.[70] The arithmetical tests provide an alternative to the imprecise, facts-and-circumstances test that applies to nonelecting public charities. For a public charity making the section 501(h) election, the allowable amount of lobbying expenditures for any tax year is determined under a sliding-scale formula. Specifically, the allowable amount of all lobbying (*i.e.*, direct and grass roots lobbying combined) is limited to the sum of (1) 20 percent of the first $500,000 of the organization's exempt purpose expenditures[71] for the year, (2) 15 percent of the next $500,000 of such expenditures, (3) 10 percent of the third $500,000 of such expenditures, and (4) 5 percent of any additional such expenditures. In no event, however, can the allowable amount of lobbying expenditures of an organization making the section 501(h) election exceed $1 million for any year.[72] Grass roots lobbying is subject to an additional limitation, equal to 25 percent of the overall permissible lobbying amount.[73]

If the lobbying expenditures (for either all lobbying or grass roots lobbying in particular) of an organization making the section 501(h) election exceed the allowable amounts under section 4911, then an excise tax penalty is imposed on the organization equal to 25 percent of the excess lobbying expenditures.[74] If the electing organization's lobbying expenditures (for either all lobbying or grass roots lobbying in particular) normally are more than 150 percent of the

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[69] See, *e.g., Haswell v. United States*, 500 F.2d 1133 (Ct. Cl. 1974) (holding that an organization's lobbying activities were substantial when roughly 16 to 20 percent of its expenditures were for lobbying and the organization's lobbying activities were in other respects an important part of its mission); *Christian Echoes National Ministry, Inc. v. United States*, 470 F.2d 849 (10th Cir. 1972) (rejecting a percentage test in favor of weighing an organization's lobbying activities in light of the organization's overall purposes and activities); *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955) (deciding that lobbying that accounted for less than five percent of an organization's activities is not substantial).

[70] Public charities eligible to make the section 501(h) election include educational institutions, hospitals, and organizations receiving a certain proportion of support from the general public, but not churches and certain church-related entities. Sec. 501(h)(4)-(5).

[71] For this purpose, "exempt purpose expenditures" are defined as expenditures to accomplish the organization's exempt purposes, including properly allocable salary payments, overhead, an allowance for depreciation on a straight-line basis, and all lobbying expenditures, but not including fundraising costs and certain capital expenditures. Sec. 4911(e)(1); Treas. Reg. sec. 56.4911-4.

[72] Sec. 4911(c)(2). The dollar limitations are stated in nominal dollars and were enacted in 1976. See the Tax Reform Act of 1976, Pub. L. No. 94-455, sec. 1307(b), October 4, 1976.

[73] Sec. 4911(c)(4).

[74] Sec. 4911(a).

allowable amounts, then not only will the organization be subject to the excise tax penalties under section 4911, but the organization will lose its tax-exempt status.[75]

For purposes of the section 501(h) arithmetical test, lobbying expenditures are defined by statute as "expenditures for the purpose of influencing legislation (as defined in section 4911(d))." Section 4911(d) explicitly excepts certain expenditures from the definition.

Penalties

*Private foundations*.–For purposes of determining whether a private foundation should have its exemption revoked, the "substantial part" test under section 501(c)(3) continues to apply. As a separate issue, private foundations and their managers are potentially subject to excise taxes under section 4945 (as described above), if any expenditures are made for either direct or grass roots lobbying. Lobbying activities may be subject to tax under section 4945 even in cases where such activities are not substantial relative to the private foundation's other activities. For purposes of section 4945, lobbying is defined in a manner similar to the term "influencing legislation" under section 4911(d).

*Public charities*.–For public charities making the section 501(h) election, an excise tax penalty may be imposed in cases in which an organization exceeds the so-called "lobbying nontaxable amount" (or "grass roots nontaxable amount") but does not normally exceed the numeric limits by more than 150 percent.[76] In cases in which the electing public charity does not normally exceed the lobbying nontaxable amount by more than 150 percent, the charity's tax-exempt status may not be revoked due to the lobbying activity. In contrast, for nonelecting public charities, there is no excise tax penalty that can be imposed in lieu of revocation of the organization's tax-exempt status when a charity engages in substantial lobbying activities.[77]

A section 501(c)(3) organization also may be subject to tax under section 527(f) (discussed in greater detail below) if the organization engages in activity which is "exempt function" activity under section 527 -- broadly meaning attempts to influence the selection of any individual to public office -- even though such activity is not prohibited political campaign intervention under section 501(c)(3) (*e.g.*, attempts by section 501(c)(3) organizations to influence appointments to nonelected public office, such as Supreme Court appointments).

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[75] Sec. 501(h)(1) and (h)(2)(B). The determination of whether an organization's lobbying expenditures normally exceed 150 percent of the allowable amounts generally is made by comparing the sum of the organization's lobbying expenditures for the determination year and the three preceding years to the sum of the allowable lobbying amounts for those years. Treas. Reg. sec. 1.501(h)-3(b).

[76] Sec. 501(h)(1).

[77] Section 4912 provides for the imposition of penalty excise taxes due to improper lobbying expenditures made by a nonelecting public charity (other than a church). However, the section 4912 excise taxes may be imposed only if the charity ceases to qualify for tax-exempt status under section 501(c)(3) due to its substantial lobbying activities.

Limitation on charitable contribution deduction for lobbying

In general, the fact that a section 501(c)(3) charity engages in permissible lobbying activities does not affect the charitable contribution deductions of taxpayers making contributions to the charity. However, Treasury regulations provide that a contribution to a charity that is specifically earmarked for lobbying is not allowable as charitable contribution deduction.[78] In addition, section 170(f)(6) provides that no charitable contribution deduction is allowed for an out-of-pocket expenditure made by any person on behalf of a charity--other than a church--if the expenditure is made for the purpose of influencing legislation (within the meaning of section 501(c)(3)).

Furthermore, section 170(f)(9) is designed to prevent donors from using charities as a conduit to conduct legislative activities, the cost of which would not be deductible if conducted directly by the donor. No charitable contribution deduction is allowed for amounts contributed to a charity that conducts lobbying activities (as defined in section 162(e)(1)) if (1) the charity's lobbying activities regard matters of direct financial interest to the donor's trade or business, and (2) a principal purpose of the contribution is to avoid the general deduction disallowance rule under section 162 that would apply if the contributor directly had conducted such lobbying activities.[79] This anti-abuse rule is designed to prevent taxpayers from evading the rules under section 162(e), which do not contain an exception for nonpartisan analysis, by simply contributing funds to a charity that, in turn, conducts nonpartisan analysis of legislative proposals affecting the contributor's trade or business.

**Other section 501(c) organizations (501(c)(4), 501(c)(5), 501(c)(6), etc.)**

Section 501(c) organizations (other than charities described in section 501(c)(3)) are not subject to any specific provision that restricts their lobbying activities. In general, the only limit imposed by the Internal Revenue Code is that the lobbying activities must be germane to the accomplishment of the organization's exempt purposes.[80] For some organizations, such as social welfare organizations or business leagues, lobbying may be the organization's primary, or even sole, activity. It is not uncommon for organizations such as social welfare organizations, labor organizations, and business leagues to conduct substantial lobbying as their primary activity. However, as discussed below, some lobbying activities (*i.e.*, attempts to influence the selection of an individual to a non-elective public office) potentially could lead to the imposition of tax under section 527(f).

[78] See Treas. Reg. sec. 1.170A-1(j)(6).

[79] Sec. 170(f)(9).

[80] See Frances R. Hill and Douglas M. Mancino, *The Taxation of Exempt Organizations*, Thompson Reuters, 2019, p. 13-7.

## B. Section 527 Political Organizations

**In general**

Section 527 provides limited tax-exempt status to "political organizations," meaning a party, committee, association, fund, or other organization (whether or not incorporated) organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures (or both) for an "exempt function."[81] These organizations are generally exempt from Federal income tax on contributions they receive, but are subject to tax on their investment income and certain other income. Donors generally are exempt from gift tax on their contributions to such organizations;[82] however, the contributions are not eligible for an income tax or estate tax exclusion or charitable deduction. For purposes of section 527, the term "exempt function" means: "the function of influencing or attempting to influence the selection, nomination, election or appointment of any individual to any Federal, State, or local public office or office in political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed."[83] Thus, by definition, the purpose of a section 527 organization is to accept contributions or make expenditures for political campaign (and similar) activities.

The facts and circumstances of each case determine whether a particular Federal, State, or local office is a "public office" for purposes of section 527, although the focus usually is upon whether a significant part of the activities of the office consist of the independent performance of policy-making functions.[84] "Exempt function" activities for purposes of section 527 include not only attempts to influence voting with respect to elective public or political offices but also may include attempts to influence selections or appointments of individuals to non-elective public or political offices. Thus, the scope of "exempt function" activities under section 527 may be broader than the "political campaign" activities that are impermissible for a section 501(c)(3) organization (and which are not treated as exempt "social welfare" activities of a section 501(c)(4) organization).[85]

In determining whether a particular activity is an "exempt function" activity under section 527, the IRS examines all relevant facts and circumstances to determine the relationship (that is, whether there is a nexus) between the activity and the statutory definition of "influencing

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[81] Sec. 527(e)(1). A political organization for purposes of section 527 need not be formally organized as a separate legal entity. A separate bank account in which political campaign funds are deposited and disbursed for political campaign expenses can qualify as a political organization. See Rev. Rul. 79-11, 1979-1 C.B. 207.

[82] Sec. 2501(a)(4).

[83] Sec. 527(e)(2).

[84] See Treas. Reg. secs. 1.527-2(d) and 53.4946-1(g)(2).

[85] Treasury Regulation section 1.527-6(b)(4) suggests that attempts to influence appointments to nonelected public offices might be "exempt function" activities under section 527, by providing a specific exemption for an appearance by section 501(c) organization before a legislative body in response to a written request for the purpose of influencing the appointment or confirmation of an individual to a public office.

or attempting to influence" the election of an individual to a public or political office. Generally, expenditures incurred for any activity that supports an individual's campaign are treated as an "exempt function" expenditure under section 527,[86] regardless of whether the particular activity involves "express advocacy" as that term is defined for Federal election law purposes (generally, a communication that unmistakably urges the election or defeat of one or more identified candidates).

**Limited tax exemption under section 527**

Section 527 exempts from taxation certain "exempt function income" (*i.e.*, contributions, dues, proceeds from political fundraisers or the sale of campaign materials, and proceeds from bingo games) but only to the extent such income is segregated for use for an "exempt function" of a political organization.[87] Thus, no entity-level income tax is imposed on contributions (and certain other "exempt function" income) received by a political organization that are used for electioneering or other "exempt function" activities (as defined in section 527). However, a political organization's investment income and any other non-exempt function income (*e.g.*, income from events that are not political in nature), minus expenses directly connected with the production of such income, is subject to tax at the highest corporate income tax rate (currently 21 percent).

**Application of section 527(f) to section 501(c) organizations**

Section 527(f) provides that if any tax-exempt organization described in section 501(c) makes expenditures for an "exempt function" activity (within the meaning of sec. 527(e)(2)), then the organization's net investment income, up to the amount of the "exempt function" expenditures, will be subject to tax at the highest corporate income tax rate. For purposes of section 527(f), a separate segregated fund (meeting certain criteria) maintained by a section 501(c) organization is treated as a separate organization.[88]

The provisions of subsection 527(f) operate to ensure that tax-free investment income of a section 501(c) tax-exempt organization is not used to pay for "exempt function" activities within the meaning of section 527. In this way, section 527 political organizations and section 501(c) organizations receive similar treatment with respect to their electioneering activities. The section 527(f) tax applies regardless of whether there is any direct tracing of the section 501(c) organization's investment income to "exempt function" expenditures within the meaning of

[86] See Tech. Adv. Mem. 9130008, April 16, 1991 (ruling that distributing campaign material promoting a statewide referendum, which displayed a candidate's name and picture and identified him as a leader on the issue but did not specifically mention his candidacy since he was not an announced candidate at the time, was "exempt function" activity under sec. 527).

[87] See secs. 527(c)(1)(A) and 527(c)(3); Treas. Reg. sec. 1.527-3 (providing examples of exempt function income).

[88] Sec. 527(f)(3).

section 527.[89] As a result, section 527 "exempt function" activities cannot be directly or indirectly subsidized with tax-free investment income.

**Use of separate segregated funds**

Subsection 527(f)(3) provides that certain separate segregated funds, such as a PAC, established by tax-exempt organizations will be treated as separate organizations. In essence, the separate segregated fund is taxed as if it were a separate political organization.[90] An organization may establish a separate segregated fund only if this is consistent with its tax-exempt status.[91] Thus, a section 501(c)(3) charity may not establish a PAC or other separate fund to engage in political campaign intervention, but may establish a separate fund to attempt to influence nominations to non-elected public offices (provided that this activity and other lobbying activities are not substantial).

The separate-fund rule provided by subsection 527(f)(3) does not reduce the section 527(f) tax to a mere formality which can be avoided by an organization described in section 501(c) simply establishing a separate fund and transferring monies at any time (perhaps including investment income) to that separate fund. The section 527(f) tax applies if an organization either directly expends amounts for an exempt function activity or does so indirectly "through another organization."[92] However, consistent with the legislative history to section 527,[93] transfers of political contributions by a section 501(c) organization to a separate segregated fund are not treated as "exempt function" expenditures by the transferor organization if the transfer is made "promptly and directly" (under procedures permitted by Federal or State campaign laws) after the contributions are received by the transferor organization from third-party contributors.[94] In such cases, the section 501(c) organization is treated as a mere conduit for the transfer of political contributions from a third party to the separate segregated fund, and the subsequent expenditures of the separate segregated fund will not be attributed to the affiliated section 501(c) organization.[95]

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[89] Any investment income of a section 501(c) organization that already is subject to unrelated business income tax is disregarded so that it is not subject to double taxation. Sec. 527(f)(2).

[90] In enacting section 527, Congress expected that, to avoid taxation on investment income not used for "exempt function" activities within the meaning of section 527, section 501(c) organizations would establish separate funds that would operate primarily as political organizations and directly receive and disburse funds for section 527 activities. See S. Rep. No. 93-1357, 1974, p. 29.

[91] Treas. reg. sec. 1.527-6(f).

[92] Sec. 527(f)(1).

[93] See Conf. Rpt. No. 93-1642, 1974, p. 30.

[94] See Treas. Reg. sec. 1.527-6(e).

[95] See Frances R. Hill and Douglas M. Mancino, *The Taxation of Exempt Organizations*, Thompson Reuters, 2019, pp. 18-43 through 18-45.

## III. PRESENT-LAW DISCLOSURE RULES RELATING TO POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES OF TAX-EXEMPT ORGANIZATIONS

### A. Overview of Filing Requirements and Disclosure Rules

#### 1. Recognition of tax-exempt status or notice of formation

**Section 501(c)(3) organizations**

Section 501(c)(3) organizations (with certain exceptions) are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023).[96] In response to the application, the IRS issues a determination letter or ruling either recognizing the applicant as tax-exempt or not. Certain organizations are not required to apply for recognition of tax-exempt status to qualify as tax-exempt under section 501(c)(3) but may do so. These organizations include churches, certain church-related organizations, organizations (other than private foundations) the gross receipts of which in each taxable year are normally not more than $5,000, and organizations (other than private foundations) subordinate to another tax-exempt organization that are covered by a group exemption letter.

**Other tax-exempt organizations (501(c)(4), 501(c)(5), 501(c)(6), 527, etc.)**

*Section 501(c) organizations, in general*.–Section 501(c) organizations (other than section 501(c)(3) organizations) generally are not required to apply for recognition of tax-exempt status. Rather, such organizations are exempt if they satisfy the requirements applicable to the organization. However, to obtain certain benefits such as public recognition of tax-exempt status, exemption from certain State taxes, and nonprofit mailing privileges, such organizations voluntarily may request formal recognition of tax-exempt status by filing Form 1024 (for most section 501(c) organizations) or Form 1024-A (for section 501(c)(4) organizations).

*Section 501(c)(4) notice requirement*.–Effective for organizations organized after December 18, 2015, an organization described in section 501(c)(4) must provide to the Secretary notice of its formation and intent to operate under section 501(c)(4), using Form 8976 (Notice of Intent to Operate Under Section 501(c)(4)).[97] The notice must be provided no later than 60 days following the organization's establishment and must include the following information: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the State under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. A section 501(c)(4) organization that desires additional certainty regarding its qualification as an organization described in section 501(c)(4) may file a request for a determination of its tax-exempt status using Form 1024-A. Such a request is in addition to, not in lieu of, filing the notice of formation.

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[96] See sec. 508(a).

[97] Sec. 506.

*Section 527 political organizations*.–To qualify for tax-exempt status, a political organization generally must electronically file Form 8871 within 24 hours of its formation to notify the IRS that it is to be treated as a tax-exempt section 527 political organization.[98] The Form 8871 in made available to the public[99] in a searchable database that may be accessed via the IRS website. Certain exceptions to this filing requirement apply, including where the organization: (1) reasonably expects that its annual gross receipts will always be less than $25,000; (2) is a political committee required to report to the FEC under the FECA; (3) is a political committee of a State or local candidate; or (4) is a State or local committee of a political party. An organization must file an amended Form 8871 within 30 days of any material change (including termination).

**2. Annual filing requirements**

**Section 501(c) organizations**

In general

A tax-exempt organization generally is required to file an annual information return with the IRS. An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a formal determination.

In general, organizations described in section 501(c) and exempt from taxation under section 501(a) are required to file an annual return (Form 990 series), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.[100] An organization that is required to file an information return, but that has gross receipts of less than $200,000 during its taxable year, and total assets of less than $500,000 at the end of its taxable year, may file Form 990-EZ. Section 501(c)(3) private foundations are required to file Form 990-PF rather than Form 990. Any organization that is subject to UBIT and that has $1,000 or more of gross unrelated business taxable income must also file Form 990-T (Exempt Organization Business Income Tax Return).[101]

On the applicable annual information return, organizations are required to report their gross income, information on their finances, functional expenses, compensation, activities, and other information required by the IRS to permit a review of the organization's activities and operations during the previous taxable year and to allow for review of whether the organization continues to meet the statutory requirements for exemption.

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[98] Sec. 527(i).

[99] Sec. 527(k).

[100] Sec. 6033(a).

[101] Tax-exempt organizations also generally must file reports and returns applicable to taxable entities with respect to Social Security taxes and, in certain instances, Federal unemployment taxes.

The requirement that an exempt organization file an annual information return (Form 990 or Form 990-EZ) does not apply to certain tax-exempt organizations, including organizations (other than private foundations) the gross receipts of which in each taxable year normally are not more than $50,000. Organizations that are excused from filing an information return by reason of normally having gross receipts below such amount must furnish to the Secretary an annual notice (Form 990-N), in electronic form, containing certain basic information about the organization.[102]

Other organizations exempt from the annual information return requirement include: churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.[103]

Donor information

An organization that files Form 990, Form 990-EZ, or Form 990-PF and receives during the year $5,000 or more (in money or property) from any one contributor generally must report such contributions on Schedule B ("Schedule of Contributors").[104] The Schedule B is open to public inspection only for a section 501(c)(3) private foundation or a section 527 political organization.

In May 2020, the IRS published final regulations under section 6033 under which most organizations (other than section 501(c)(3) and section 527 organizations) are no longer required to report to the IRS on Schedule B the *names and addresses* of substantial contributors to the organization (*i.e.*, donor-identifying information).[105] Such an organization, including a section 501(c)(4), (5), or (6) organization, must still report on Schedule B the *amounts* of substantial contributions and maintain other information about the contributions in the organization's books and records.[106]

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[102] Sec. 6033(i).

[103] Sec. 6033(a)(2)(A); Treas. Reg. secs. 1.6033-2(a)(2)(i) and (g)(1).

[104] Certain section 501(c)(3) organizations that meet a 33-1/3-percent public support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) generally must report contributions totaling $5,000 or more from a single contributor only to the extent that such contributions exceed two percent of the organization's total contributions. Additional special reporting rules apply to organizations described in sections 501(c)(7), (8), or (10).

[105] Because donor-identifying information reported to these organizations had previously been shielded from public inspection (see sec. 6104(b)), the new regulations change only what is required to be reported to the IRS, not what is made available to the public.

[106] Labor organizations with annual receipts of $250,000 or more, however, are required to submit detailed information regarding receipts, including certain contributions, with the Office of Labor Management Standards of the U.S. Department of Labor on Form LM-2. Certain smaller labor organizations may submit a less detailed Form

**Filing requirement for section 527 organizations**

Section 527 political organizations are required to file Form 990, with certain exceptions. Form 990 generally is not required for a political organization that is not required to file Form 8871 (notifying the IRS of its intent to be treated as tax-exempt under section 527) or for a caucus or association of State or local officials. As discussed below, a section 527 political organization might also file with the IRS Form 1120-POL to report taxable income, as well as periodic reports of contributions and expenditures.

### 3. Public disclosure of applications for exemption and certain returns and other forms

An application for exemption filed by a section 501(c) tax-exempt organization or a notice of exempt status filed by a section 527 political organization generally must be made available by the IRS for public inspection.[107] Similarly, an annual information return (generally, a Form 990-series return) filed by such an organization must be made available for public inspection, except that the name or address of any contributor to such organization generally is not made available to the public.[108] This public disclosure exception for donor-identifying information does not apply to a section 501(c)(3) private foundation or a section 527 political organization.[109]

In addition, a section 501(c) tax-exempt organization or section 527 political organization generally must make available for public inspection, at the organization's principal office, its application for exemption (if any), notice of exempt status (for a section 527 organization), annual information returns for the last three years (with the exception of certain information about contributors, as described above), and section 527 reports of contributions of expenditures filed on Form 8872, if applicable (discussed in subsection B.3, below).[110]

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LM-3 or LM-4. See Form LM-2 (Labor Organization Annual Report), Schedule 14 (Other Receipts); 29 U.S.C. sec. 431(b)(2); Instructions for Form LM-2 (revised January 2022), p. 1. Schedule 14 of Form LM-2 requires a labor organization to list the name and business address of an individual or entity from which the organization received $5,000 or more in "other receipts" during a reporting period, as well as certain other information about the receipts. See *ibid*. pp. 23-24. Form LM-2 generally must be electronically filed and is made available to the public. *Ibid*. pp. 1-2.

[107] See sec. 6104(a).

[108] See sec. 6104(b).

[109] *Ibid*.

[110] See sec. 6104(d).

## B. Reporting and Disclosure of Lobbying and Political Activities

### 1. Form 990 information reporting of lobbying and political activities

Section 501(c) organizations and section 527 political organizations that are required to file Form 990 must disclose their lobbying and political campaign activities on Schedule C.

*Political campaign activity*.–Any such organization that engaged in direct or indirect political campaign activities must complete Part I-A of Schedule C and provide additional information about the activities and associated expenditures. A section 501(c)(3) organization that engaged in such activities must also complete Part I-B to provide information relating to its potential excise tax liability under section 4955. A section 501(c) organization (other than a section 501(c)(3) organization) that engaged in such activities must also complete Part I-C to provide information relating to its potential liability for tax under section 527(f) on its section 527 exempt function expenditures.

*Lobbying*.–A section 501(c)(3) organization that engaged in lobbying activities during the year must complete Part II-A or II-B of Schedule C. Part II-A applies to organizations that elected application of the "expenditure" test under section 501(h). Part II-B applies to nonelecting public charities that remain subject to the section 501(c)(3) "substantial part" test.[111]

*Flow-through information disclosure*.–A section 501(c)(4), (5), or (6) organization that receives membership dues, assessments, or similar amounts must complete Part III of Schedule C. As discussed above, with certain exceptions, such organizations are required to provide annual information disclosure to members (sometimes referred to as "flow-through information disclosure") estimating the portion of such members' dues allocable to political campaign activities or lobbying activities.[112]

*Private foundations*.–Under Part VI-A of Form 990-PF, a private foundation must provide information about any lobbying or political activities and about any section 4955 excise tax liability incurred by the foundation for engaging in political campaign activity. Part VI-B generally requires a private foundation to state whether it made any expenditures that are taxable expenditures of a private foundation within the meaning of section 4945, including expenditures for lobbying or political campaign activities.

### 2. Income and excise tax reporting relating to lobbying and political campaign activities

A political organization with taxable income in excess of the $100 specific deduction allowed under section 527 must file an annual income tax return using Form 1120-POL. In addition, to report any tax owed under section 527(f), an organization described in section 501(c) must file Form 1120-POL (U.S. Income Tax Return for Certain Political Organizations) for any year in which it has net investment income and expends any amount for a section 527 exempt

[111] A tax-exempt organization may also be required to register with the Secretary of the Senate and the Clerk of the House of Representatives and file periodic reports under the Lobbying Disclosure Act.

[112] Sec. 6033(e).

function (*i.e*., to influence the selection, nomination, election, or appointment of any individual to office), unless either the amount of such expenditures or the organization's net investment income does not exceed $100 for the taxable year.

Form 4720 (Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code) is used to report the following excise taxes, among others: (1) the section 4945 tax on taxable expenditures of a private foundation (including expenditures for certain lobbying activities); (2) the section 4955 excise tax on political campaign expenditures of a section 501(c)(3) public charity or private foundation; and (3) the section 4911 tax on a public charity that makes the section 501(h) lobbying election and makes excess lobbying expenditures.

### 3. Section 527 reporting of contributions and expenditures

A section 527 political organization that must file Form 8871 (notifying the IRS of its intent to be treated as tax-exempt under section 527) generally also must file Form 8872 to disclose (1) expenditures that aggregate $500 or more per person per calendar year and (2) contributions that aggregate $200 or more per person per calendar year.[113] Due dates vary depending on whether the reporting period falls during an even (election) or odd (non-election) year. The organization may choose to file Form 8872 monthly or instead file either quarterly for even-numbered years or semi-annually for odd-numbered years, but it must file on the same basis for the entire calendar year. For even-numbered years, pre-election and post-general election reports may also be required. Form 8872 is electronically filed and is made available to the public[114] in a searchable database that may be accessed via the IRS website.

### 4. Disclosure of independent expenditures and electioneering communications under Federal election laws

Section 501(c) organizations generally are not political committees as defined in the FECA and thus generally do not fall under FECA or FEC requirements unless they make "independent expenditures" or "electioneering communications."[115] An organization generally makes an independent expenditure when it uses its treasury funds for political advertisements or to make related purchases explicitly calling for election or defeat of Federal or State candidates. An organization generally makes an electioneering communication when it purchases advertisements that refer to those candidates during certain pre-election periods, whether or not those advertisements explicitly call for their election or defeat.[116]

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[113] Sec. 527(j).

[114] Sec. 527(k).

[115] R. Sam Garrett, Congressional Research Service, *The State of Campaign Finance Policy: Recent Developments and Issues for Congress* (Report R41542), updated February 23, 2021, p. 20.

[116] *Ibid*. p. 5. Although *Citizens United* generally permits unlimited corporate and union spending on independent expenditures and electioneering communications, such entities generally are still prohibited from directly making contributions in Federal elections. *Ibid*. p. 9 (citing 52 U.S.C. sec. 30118). Most section 501(c) organizations are formed as corporations and thus are subject to this prohibition.

Although *Citizens United* generally permits unlimited spending from corporate and union general treasury funds on independent expenditures and electioneering communications, section 501(c) and 527 organizations generally must report certain such expenditures and communications to the FEC. Independent expenditures aggregating at least $10,000 must be reported to the FEC within 48 hours (24-hour reports for independent expenditures of at least $1,000 are required during periods immediately preceding an election). Electioneering communications must be reported within 24 hours for communications aggregating at least $10,000. Donor information must be included for those who designated at least $200 toward an independent expenditure or $1,000 toward an electioneering communication.[117]

[117] *Ibid*. p. 12.

# IV. DATA RELATING TO TAX-EXEMPT ORGANIZATIONS

## A. Tax-Exempt Organization Data

As of fiscal year 2020, there were more than 1.9 million tax-exempt organizations described in section 501(c) or (d) or classified as political organizations described in section 527. Of these organizations, nearly 1.8 million were exempt under section 501(c) of the Code, and 1.4 million were religious and charitable organizations exempt under section 501(c)(3).[118] These 1.4 million religious and charitable organizations were the largest category of tax-exempt organization, totaling greater than 73 percent of all tax-exempt organizations, nonexempt charitable trusts, and split-interest trusts. These data include only those organizations that received recognition of tax-exempt status from the IRS and therefore do not include organizations, such as churches, that are not required to, and choose not to, seek recognition of tax-exempt status from the IRS.

Table 1, below, shows further detail on the number of organizations described in 501(c), along with recognized section 501(d) religious and apostolic associations, section 527 political organizations, and nonexempt charitable trusts and split-interest trusts.

[118] Internal Revenue Service, *IRS Data Book 2020*, Publication 55-B (Rev. 6-2021), Table 14.

## Table 1.–Number of Tax-Exempt Organizations by Category, as of Fiscal Year 2020

| Category of Organization | Number of Organizations |
|---|---|
| **Tax-exempt organizations, nonexempt charitable trusts, and split-interest trusts, total** | **1,907,711** |
| **Recognized section 501(c) by subsection, total[1]** | **1,753,824** |
| Corporations organized under an Act of Congress (sec. 501(c)(1)) | 677 |
| Title-holding corporations (sec. 501(c)(2)) | 4,380 |
| Religious, charitable, and similar organizations[2] (sec. 501(c)(3)) | 1,404,170 |
| Social welfare organizations (sec. 501(c)(4)) | 79,050 |
| Labor and agriculture organizations (sec. 501(c)(5)) | 45,694 |
| Business leagues (sec. 501(c)(6)) | 62,480 |
| Social and recreation clubs (sec. 501(c)(7)) | 49,003 |
| Fraternal beneficiary societies (sec. 501(c)(8)) | 40,615 |
| Voluntary employees' beneficiary associations (sec. 501(c)(9)) | 5,976 |
| Domestic fraternal beneficiary societies (sec. 501(c)(10)) | 15,726 |
| Benevolent life insurance associations, etc. (sec. 501(c)(12)) | 5,421 |
| Cemetery companies (sec. 501(c)(13)) | 9,525 |
| State-chartered credit unions (sec. 501(c)(14)) | 1,646 |
| Mutual insurance companies (sec. 501(c)(15)) | 647 |
| Supplemental unemployment compensation trusts (sec. 501(c)(17)) | 87 |
| Veterans' organizations (sec. 501(c)(19)) | 28,029 |
| Holding companies for pensions and other entities (sec. 501(c)(25)) | 633 |
| Other 501(c) subsections[3] | 65 |
| **Recognized section 501(d) Religious and apostolic associations** | **215** |
| **Section 527 Political organizations** | **41,170** |
| **Nonexempt charitable trusts and split-interest trusts** | **112,502** |

Source: IRS Data Book 2020, Publication 55-B (Rev. 6-2021), Table 14.

Notes: [1]The total includes organizations that applied for and received recognition of tax-exempt status, or that are exempt by virtue of a tax treaty.

[2]Includes private foundations and organizations that are recognized as tax-exempt under section 501(c)(3) without filing and application because they are included in a group exemption letter given to an affiliated parent organization.

[3]Includes teachers' retirement funds (sec. 501(c)(11)); corporations organized to finance crop operations (sec. 501(c)(16)); employee-funded pension trusts (sec. 501(c)(18)); black lung benefit trusts (sec. 501(c)(21)); veterans' associations founded prior to 1880 (sec. 501(c)(23)); trusts described in section 4049 of the Employee Retirement Income Security Act of 1974 (ERISA)(sec. 501(c)(24)); State sponsored high-risk health insurance organizations (sec. 501(c)(26)); State sponsored workers' compensation reinsurance organizations (sec. 501(c)(27)); and qualified nonprofit health insurance issuers (sec. 501(c)(29)). Tax-exempt status for legal services organizations (sec. 501(c)(20)) was revoked effective June 20, 1992.

## B. Annual Filing Requirements for Tax-Exempt Organizations

As described in more detail in Part III, most tax-exempt organizations file an annual information return or notice with the IRS using the Form 990 series. An organization that is required to file an information return, but that has gross receipts of less than $200,000 during its taxable year, and total assets of less than $500,000 at the end of its taxable year, may file Form 990-EZ. In addition, the Code was amended in 2000 to require certain section 527 political organizations to file Form 990.[119] The Form 990 requires disclosure of information about the organization's finances and activities, including certain information about political campaign and lobbying activities, as described in Part III. Section 501(c)(3) private foundations are required to file Form 990-PF rather than Form 990.

Certain smaller organizations (other than private foundations) the gross receipts of which in each taxable year normally are not more than $50,000, are not required to file an information return, but instead furnish to the Secretary a notice on Form 990-N, which includes certain basic information about the organization. Other organizations exempt from the annual information return requirement include: churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.

An organization described in section 501(c) or section 527 must file Form 1120-POL for any year in which it has net investment income and expends any amount to influence the selection, nomination, election, or appointment of any individual to office, for which the combined total expenditure for the taxable year is $100 or greater.

Table 2, below, provides the total number of returns and other forms for fiscal years 2017 to 2020, including Forms 990, 990-EZ, 990-N, 990-PF, and 990-T, 4720 (excise tax return of charities and other persons), 5227 (split-interest trust information return), and 8872 (political organization report of contributions and expenditures). The total number of returns filed ranged from 1.53 million to 1.6 million in fiscal years 2017, 2018, and 2019, and dropped to approximately 1.36 million in 2020.

[119] Form 990 generally is not required for a political organization that is not required to file Form 8871 (notifying the IRS of its intent to be treated as tax-exempt under section 527) or for a caucus or association of State or local officials.

**Table 2.–Returns and Other Forms Filed for Tax-Exempt Organizations, Fiscal Years 2017 to 2020**

| Fiscal Year | Number of Returns and Other Forms |
|---|---|
| 2020 | 1,360,719 |
| 2019 | 1,590,421 |
| 2018 | 1,603,499 |
| 2017 | 1,528,487 |

Source: IRS Data Book 2020, Publication 55-B (Rev. 6-2021), Table 2; IRS Data Book 2018, Publication 55-B (Rev. 5-2019)

Note: Total number of returns filed includes forms 990, 990-EZ, 990-N, 990-PF, and 990-T. Also includes forms 4720 (excise tax return of charities and other persons), 5227 (split-interest trust information return), and 8872 (political organization report of contributions and expenditures).

Table 3, below, reports the number of section 501(c)(3) public charities that reported political campaign expenditures on Forms 990 or 990-EZ in 2017 and 2018 and the aggregate expenditure of all organizations that reported. Table 3 also shows the number of public charities that reported lobbying expenditures as well as the aggregate reported amount of lobbying expenditures, with the number of organizations and dollar amounts being broken out between charities that elected the expenditure test under section 501(h) and nonelecting public charities.

**Table 3.–Political and Lobbying Expenses Reported by 501(c)(3) Public Charities on Forms 990 or 990-EZ, 2017 and 2018**

| | 2017 | | 2018 | |
|---|---|---|---|---|
| | Number of returns | Aggregate dollar expenditures reported on all returns | Number of returns | Aggregate dollar expenditures reported on all returns |
| Political Campaign Expenditures (line 2, Part I-A Schedule C, Form 990 or 990 EZ) | 91 | 6,216,749 | 134 | 2,355,274 |
| Lobbying Expenditures Incurred by Section 501(h)-Electing Public Charities (line 1c, Part II-A Schedule C, Form 990 or 990EZ) | 3,204 | 215,000,468 | 3,448 | 229,142,754 |
| Lobbying Expenditures Incurred by Nonelecting Public Charities (line 1j, Part II-B Schedule C, Form 990 or 990EZ) | 6,160 | 462,310,368 | 6,070 | 462,080,983 |

Source: Internal Revenue Service, Statistics of Income Division and Joint Committee on Taxation staff calculations.

Table 4, below, reports the political expenditures reported on Forms 990 or 990-EZ for organizations that are tax-exempt under Code sections 501(c)(4), 501(c)(5), 501(c)(6), 501(c)(7), 501(c)(8), or 501(c)(9). In addition, Table 4 reports the number of such organizations that reported filing a Form 1120-POL.[120]

**Table 4.–Reported Political Expenditures of 501(c)(4)-501(c)(9) Tax-Exempt Organizations Reported on Forms 990, 990-EZ and Form 1120-POL, 2017 and 2018**

| | 2017 | | 2018 | |
|---|---|---|---|---|
| | Number of returns | Aggregate dollar expenditures reported on all returns | Number of returns | Aggregate dollar expenditures reported on all returns |
| Political Expenditures (line 2, Part I-A Schedule C, Form 990 or 990 EZ) | 1,617 | 281,404,548 | 1,826 | 596,160,302 |
| Filed Form 1120-POL | 298 | 118,050,978 | 302 | 282,013,936 |

Source: Internal Revenue Service, Statistics of Income Division and Joint Committee on Taxation staff calculations.

The IRS conducts examinations annually of selected returns filed by tax-exempt organizations. Table 5, below, provides the number of tax-exempt organization return examinations of Forms 990, 990-EZ, 990-N, 990-PF, 1041-A,[121] 1120-POL, and 5227 completed in fiscal years 2017 through 2020.

**Table 5.–Number of Return Examinations Closed**

| Form | FY 2020 | FY 2019 | FY 2018 | FY 2017 |
|---|---|---|---|---|
| Forms 990, 990-EZ, 990-N | 1,417 | 1,335 | 2,004 | 2,375 |
| Forms 990-PF, 1041-A, 1120-POL, and 5227 | 178 | 302 | 263 | 302 |

Source: IRS Data Book 2020, Publication 55-B (Rev. 6-2021), Table 21; IRS Data Book 2019, Publication 55-B (Rev. 6-2020), Table 21; IRS Data Book 2018, Publication 55-B (Rev. 5-2019), Table 13; IRS Data Book 2017, Publication 55-B (Rev. 5-2018), Table 13.

[120] As mentioned above, an organization described in section 501(c) or section 527 must file Form 1120-POL for any year in which it has net investment income and expends any amount to influence the selection, nomination, election, or appointment of any individual to office, for which the combined total expenditure for the taxable year is $100 or greater.

[121] Form 1041-A is the U.S. Information Return for Trust Accumulation of Charitable Amounts.