

THE POWER OF BEING UNDERSTOOD



SCHEDULE C: POLITICAL AND LOBBYING ACTIVITIES



Lisa W. Heller
Senior Director, Exempt Organization Tax Services

December 12, 2022

Political vs Lobbying

Not the same thing!

- Political activity – influencing, or attempting to influence, the selection, nomination, election, or appointment of any individual to any Federal, state, or local public office
- Lobbying activity – generally, any attempt to influence legislation through communication with any member or employee of a legislative body, or with any government official or employee who may participate in the formulation of legislation
- Different types of organizations = different lobbying rules

Who Files Schedule C?

	501(c)(3)	501(c)(4), (c)(5), (c)(6)	Other 501(c)	527
Lobbying - charities	Yes	No	No	No
Lobbying - other	No	Yes	Maybe	No
Political activities	NO!	Yes	Yes	Yes *

* Only if Form 990 is required

Schedule C Trigger Questions

Form 990 (2021)

Page **3**

Part IV Checklist of Required Schedules

A
B
C

	Yes	No
1 Is the organization described in section 501(c)(3) or 4947(a)(1) (other than a private foundation)? <i>If "Yes," complete Schedule A</i>	1	
2 Is the organization required to complete <i>Schedule B, Schedule of Contributors</i> ? See instructions	2	
3 Did the organization engage in direct or indirect political campaign activities on behalf of or in opposition to candidates for public office? <i>If "Yes," complete Schedule C, Part I</i>	3	
4 Section 501(c)(3) organizations. Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? <i>If "Yes," complete Schedule C, Part II</i>	4	
5 Is the organization a section 501(c)(4), 501(c)(5), or 501(c)(6) organization that receives membership dues, assessments, or similar amounts as defined in Rev. Proc. 98-19? <i>If "Yes," complete Schedule C, Part III</i>	5	
6 Did the organization maintain any donor advised funds or any similar funds or accounts for which donors have the right to provide advice on the distribution or investment of amounts in such funds or accounts? <i>If</i>		

SCHEDULE C (Form 990)

Department of the Treasury
Internal Revenue Service

Political Campaign and Lobbying Activities

For Organizations Exempt From Income Tax Under section 501(c) and section 527
 ► Complete if the organization is described below. ► Attach to Form 990 or Form 990-EZ.
 ► Go to www.irs.gov/Form990 for instructions and the latest information.

OMB No. 1545-0047

2021

Open to Public Inspection

- A** If the organization answered "Yes," on Form 990, Part IV, line 3, or Form 990-EZ, Part V, line 46 (Political Campaign Activities), then
- Section 501(c)(3) organizations: Complete Parts I-A and B. Do not complete Part I-C.
 - Section 501(c) (other than section 501(c)(3)) organizations: Complete Parts I-A and C below. Do not complete Part I-B.
 - Section 527 organizations: Complete Part I-A only.
- B** If the organization answered "Yes," on Form 990, Part IV, line 4, or Form 990-EZ, Part VI, line 47 (Lobbying Activities), then
- Section 501(c)(3) organizations that have filed Form 5768 (election under section 501(h)): Complete Part II-A. Do not complete Part II-B.
 - Section 501(c)(3) organizations that have NOT filed Form 5768 (election under section 501(h)): Complete Part II-B. Do not complete Part II-A.
- C** If the organization answered "Yes," on Form 990, Part IV, line 5 (Proxy Tax) (See separate instructions) or Form 990-EZ, Part V, line 35c (Proxy Tax) (See separate instructions), then
- Section 501(c)(4), (5), or (6) organizations: Complete Part III.

Name of organization

Employer identification number

SCHEDULE C, PART I

Political Activities

Part I – Political Activity Reporting

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. See instructions for definition of "political campaign activities."
- 2 Political campaign activity expenditures. See instructions ▶ \$ _____
- 3 Volunteer hours for political campaign activities. See instructions

Part I-B Complete if the organization is exempt under section 501(c)(3).

- 1 Enter the amount of any excise tax incurred by the organization under section 4955 ▶ \$ _____
- 2 Enter the amount of any excise tax incurred by organization managers under section 4955 ▶ \$ _____
- 3 If the organization incurred a section 4955 tax, did it file Form 4720 for this year? Yes No
- 4a Was a correction made? Yes No
- b If "Yes," describe in Part IV.

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file **Form 1120-POL** for this year? Yes No
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-.	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-.
(1)	-----			

Part I-A: (ALMOST) Everyone

Part I-A Complete if the organization is exempt under section 501(c) or is a section 527 organization.

- 1 Provide a description of the organization's direct and indirect political campaign activities in Part IV. See instructions for definition of "political campaign activities."
 - 2 Political campaign activity expenditures. See instructions ▶ \$ _____
 - 3 Volunteer hours for political campaign activities. See instructions
-

Report both *direct and indirect* political campaign activities

- Line 1: requires a Part IV *narrative description* – even if only activity is through a connected PAC
- Line 2: Correctly-handled PAC contributions are NOT reported here; everything else is
- Line 3: Report volunteer hours for the organization's *own* political activities – *not* those of connected PAC

Part I-B: 501(c)(3)s Only

3 Volunteered hours for political campaign activities. See instructions

Part I-B Complete if the organization is exempt under section 501(c)(3).

1	Enter the amount of any excise tax incurred by the organization under section 4955	▶	\$	
2	Enter the amount of any excise tax incurred by organization managers under section 4955	▶	\$	
3	If the organization incurred a section 4955 tax, did it file Form 4720 for this year?			<input type="checkbox"/> Yes <input type="checkbox"/> No
4a	Was a correction made?			<input type="checkbox"/> Yes <input type="checkbox"/> No
b	If "Yes," describe in Part IV.			

- Part I-B asks about excise taxes imposed by §4955 in connection with political expenditures –
 - The term “political expenditure” means any amount paid or incurred by a section 501(c)(3) organization in participation in, or intervention in (including the publication of or distribution of statements), any political campaign on behalf of (or in opposition to) any candidate for public office – §4955(d)(1)
- 501(c)(3) also expressly prohibits political campaign activity
- Part I-B is never completed, unless a c3 did something it shouldn't have ...

Section 4955 Excise Taxes

Tax imposed on *political expenditures* of §501(c)(3) organizations

- Organization excise tax = 10% of the amount of expenditure
- Manager excise tax = 2.5% of the amount of the political expenditure
 - Imposed upon on any manager who knowingly agreed to expenditure (unless not willful, and due to reasonable cause)
 - *Joint and several* liability!
- Additional excise tax on the organization
 - 100% of *uncorrected* political expenditure
 - 50% of uncorrected expenditure upon any organization manager refusing to make correction

Correction

- Recovering the political expenditure (to the extent possible)
- Establishing safeguards to prevent future political expenditures
- Line 4 requires a description of steps taken to correct the activity that triggered the tax
- **Failure to correct can result in loss of tax-exempt status!**

Part I-C: Everyone BUT 501(c)(3)

Part I-C Complete if the organization is exempt under section 501(c), except section 501(c)(3).

- 1 Enter the amount directly expended by the filing organization for section 527 exempt function activities ▶ \$ _____
- 2 Enter the amount of the filing organization's funds contributed to other organizations for section 527 exempt function activities ▶ \$ _____
- 3 Total exempt function expenditures. Add lines 1 and 2. Enter here and on Form 1120-POL, line 17b ▶ \$ _____
- 4 Did the filing organization file **Form 1120-POL** for this year? **Yes** **No**
- 5 Enter the names, addresses and employer identification number (EIN) of all section 527 political organizations to which the filing organization made payments. For each organization listed, enter the amount paid from the filing organization's funds. Also enter the amount of political contributions received that were promptly and directly delivered to a separate political organization, such as a separate segregated fund or a political action committee (PAC). If additional space is needed, provide information in Part IV.

(a) Name	(b) Address	(c) EIN	(d) Amount paid from filing organization's funds. If none, enter -0-.	(e) Amount of political contributions received and promptly and directly delivered to a separate political organization. If none, enter -0-.
(1)				
(2)				
(3)				
(4)				
(5)				

Allowable Political Activity for Non-c3s

- Most non-c3s may make political expenditures, as long as they do so within the confines of Federal and state laws that otherwise govern political activity ...
 - §501(c)(1) federal instrumentalities cannot make any election expenditures (2 USC §441(b))
 - §501(c)(2) and (c)(25) title holding organizations likely cannot make political expenditures (or lobby, either)
- ... as long as it is not their *primary* activity!
- Federal Election Campaign Act imposes restrictions on some corporate direct political activity
 - Some states impose restrictions on political activity

Exempt Function Expenditures

- For Schedule C purposes, §527 definition of “exempt function expenditures” controls:
- §527(e)(2) exempt function
 - 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 a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed.
- §271(b)(3) expenditures
 - The term “expenditures” includes a payment, distribution, loan, advance, deposit, or gift, of money, or anything of value, and includes a contract, promise, or agreement to make an expenditure, whether or not legally enforceable

The Federal Election Campaign Act (FECA)

- Prior to *Citizens United (2010)*, FECA prohibited corporations (and labor groups) from using general treasury funds to make contributions or expenditures in connection with federal elections
- Under FECA, a political contribution is anything of value (money, goods and services, in-kind contributions), loans/guarantees, advances) given to a PAC's *hard money* account, to a candidate committee, or to a campaign committee
- The *Citizens United* decision has enabled corporations to make so-called “independent expenditures” *in connection with* Federal election campaigns, and to form “independent expenditure PACs”

SCHEDULE C, PART II

Lobbying Activities (Charities)

Lobbying Rules for 501(c)s

	501(c)(3)	501(c)(4), (c)(5), (c)(6)
How much lobbying	Limited – “no substantial part”	Unlimited (as long as related to exempt purpose)
Taxation/ Revocation	<ul style="list-style-type: none"> Excise taxes on excess Loss of exemption for excess lobbying 	21% proxy tax OR Nondeductible dues passthrough
Exceptions to lobbying	Some narrow exceptions	Some narrow (different) exceptions

501(c)(3) – What is lobbying?

- An attempt to influence (propose, support, or oppose) legislation, by propaganda or otherwise
 - Congressional, state, or local legislative action
 - Does not include executive branch action or agency regs
 - Public referenda, initiative or constitutional amendment
 - Formal and informal contacts with legislative members, staff, even executive branch (if regarding legislation)
- Both *direct* and *grassroots* lobbying
- Exceptions –
 - Written requests to present testimony on pending legislation
 - Nonpartisan, published research (that does not encourage enactment or defeat)
 - Indirect influence via pursuit of exempt purpose

How is lobbying activity measured?

- § 501(h) “Expenditure” test
 - Schedule C, Part II-A
 - Looks *only* at dollars spent
 - Requires a one-time election (revocable) on Form 5768
 - Provides clearer lobbying definitions
 - Measures both *direct* and *grassroots* lobbying
 - Churches, integrated auxiliaries (and related) CANNOT make the election
- “No Substantial Part” test (default)
 - Schedule C, Part II-B
 - Looks at expenditures, volunteer activities
 - Vague and subjective!

Section 501(h) election

- Spending limits based on total “exempt purpose” expenditures (lobbying + “other”)
- Lobbying/Grassroots Nontaxable Amounts
 - 20% of first \$500,000
 - 15% of next \$500,000
 - 10% of next \$500,000
 - 5% of remainder, up to ...
 - *Direct* spending limit of \$1 million
 - *Grassroots* spending limit of \$250,000
- Overall ceiling is 150% of a 4-year average
 - 25% tax on excess for any one year (Form 4720)
 - Exemption is revoked if 4-year ceiling is exceeded

Section 501(h) – Direct and Grassroots Lobbying

- Direct – attempt to affect legislation through direct contact with legislative bodies, or others involved in formulating legislation
- Grassroots – attempt to affect legislation by affecting public opinion
 - Contacts with members are considered direct lobbying
- Four significant exceptions –
 - Dispensing the results of nonpartisan analysis, study, research
 - Providing technical advice or assistance per legislative body’s written request
 - “Self-defense” exception (organization’s existence, powers, duties, exempt status, deductibility of contributions)
 - Communications with members that inform but do not directly encourage

Part II-A: 501(h) Election

Part II-A Complete if the organization is exempt under section 501(c)(3) and filed Form 5768 (election under section 501(h)).

A Check if the filing organization belongs to an affiliated group (and list in Part IV each affiliated group member's name, address, EIN, expenses, and share of excess lobbying expenditures).

B Check if the filing organization checked box A and "limited control" provisions apply.

Limits on Lobbying Expenditures (The term "expenditures" means amounts paid or incurred.)		(a) Filing organization's totals	(b) Affiliated group totals												
1a	Total lobbying expenditures to influence public opinion (grassroots lobbying)														
b	Total lobbying expenditures to influence a legislative body (direct lobbying)														
c	Total lobbying expenditures (add lines 1a and 1b)														
d	Other exempt purpose expenditures														
e	Total exempt purpose expenditures (add lines 1c and 1d)														
f	Lobbying nontaxable amount. Enter the amount from the following table in both columns.														
<table border="1"> <thead> <tr> <th>If the amount on line 1e, column (a) or (b) is:</th> <th>The lobbying nontaxable amount is:</th> </tr> </thead> <tbody> <tr> <td>Not over \$500,000</td> <td>20% of the amount on line 1e.</td> </tr> <tr> <td>Over \$500,000 but not over \$1,000,000</td> <td>\$100,000 plus 15% of the excess over \$500,000.</td> </tr> <tr> <td>Over \$1,000,000 but not over \$1,500,000</td> <td>\$175,000 plus 10% of the excess over \$1,000,000.</td> </tr> <tr> <td>Over \$1,500,000 but not over \$17,000,000</td> <td>\$225,000 plus 5% of the excess over \$1,500,000.</td> </tr> <tr> <td>Over \$17,000,000</td> <td>\$1,000,000.</td> </tr> </tbody> </table>		If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:	Not over \$500,000	20% of the amount on line 1e.	Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.	Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.	Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.	Over \$17,000,000	\$1,000,000.		
If the amount on line 1e, column (a) or (b) is:	The lobbying nontaxable amount is:														
Not over \$500,000	20% of the amount on line 1e.														
Over \$500,000 but not over \$1,000,000	\$100,000 plus 15% of the excess over \$500,000.														
Over \$1,000,000 but not over \$1,500,000	\$175,000 plus 10% of the excess over \$1,000,000.														
Over \$1,500,000 but not over \$17,000,000	\$225,000 plus 5% of the excess over \$1,500,000.														
Over \$17,000,000	\$1,000,000.														
g	Grassroots nontaxable amount (enter 25% of line 1f)														
h	Subtract line 1g from line 1a. If zero or less, enter -0-														
i	Subtract line 1f from line 1c. If zero or less, enter -0-														
j	If there is an amount other than zero on either line 1h or line 1i, did the organization file Form 4720 reporting section 4911 tax for this year?	<input type="checkbox"/> Yes <input type="checkbox"/> No													

4-Year Averaging Period Under Section 501(h)
 (Some organizations that made a section 501(h) election do not have to complete all of the five columns below.
 See the separate instructions for lines 2a through 2f.)

Lobbying Expenditures During 4-Year Averaging Period					
Calendar year (or fiscal year beginning in)	(a) 2019	(b) 2020	(c) 2021	(d) 2022	(e) Total
2a Lobbying nontaxable amount					
b Lobbying ceiling amount (150% of line 2a, column (e))					
c Total lobbying expenditures					
d Grassroots nontaxable amount					
e Grassroots ceiling amount (150% of line 2d, column (e))					
f Grassroots lobbying expenditures					

When a c3 Fails the 4-Year Test

- It may NOT become a §501(c)(4) (even though it might otherwise qualify)
- Becomes a taxable company (usually a corporation)
- GCM 39813: tax treatment of –
 - Gross receipts of trade/business activities - taxable
 - Income from investment and other formerly “excluded” activities - taxable
 - “Good faith” contributions – generally nontaxable under §102
 - Donors may be subject to gift tax

Part II-B: No 501(h) election

Part II-B Complete if the organization is exempt under section 501(c)(3) and has NOT filed Form 5768 (election under section 501(h)).

For each "Yes" response on lines 1a through 1i below, provide in Part IV a detailed description of the lobbying activity.

	(a)		(b)
	Yes	No	Amount
1 During the year, did the filing organization attempt to influence foreign, national, state, or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of:			
a Volunteers?			
b Paid staff or management (include compensation in expenses reported on lines 1c through 1i)?			
c Media advertisements?			
d Mailings to members, legislators, or the public?			
e Publications, or published or broadcast statements?			
f Grants to other organizations for lobbying purposes?			
g Direct contact with legislators, their staffs, government officials, or a legislative body?			
h Rallies, demonstrations, seminars, conventions, speeches, lectures, or any similar means?			
i Other activities?			
j Total. Add lines 1c through 1i			
2a Did the activities in line 1 cause the organization to be not described in section 501(c)(3)?			
b If "Yes," enter the amount of any tax incurred under section 4912			
c If "Yes," enter the amount of any tax incurred by organization managers under section 4912			
d If the filing organization incurred a section 4912 tax, did it file Form 4720 for this year?			

Unlike Part II-A, Part II-B asks if lobbying causes the org to be disqualified as a c3!

Section 4912 – Disqualifying Lobbying Expenditures

- Paid by disqualified §501(c)(3)s
 - Does not apply to those with a 501h election
 - Nor to private foundations
 - Nor to organizations unable to make a 501h election
- 5% tax on disqualifying expenditures –
 - Paid by organization itself, *and*
 - Paid by any organization manager approving the expenditures knowing they were likely to disqualify the organization
 - Joint and several liability

SCHEDULE C, PART III

Lobbying Activities (Other)

Non-501(c)(3) Lobbying

- Not restricted as long as related to exempt purpose
- §162(e) denies a deduction for most lobbying and political expenditures
- Nondeductible expenditures relate to –
 - Influencing legislation
 - Participation in or intervention in any political campaign
 - Attempting to influence the general public w/respect to elections, legislative matters, referenda
 - Direct communications with a “covered executive branch official”
- Denial applies to dues paid to lobbying organizations
- Organizations may elect to pay a 21% “proxy” tax instead

Exceptions to Non-(c)(3) Lobbying

- De minimis exception – in-house (only!) expenditures of \$2,000 or less
- Political expenditures already taxed under §527 (Form 1120-POL)
- Organizations where “substantially all” (90% or more) dues were not deductible by members
- Local lobbying – not anymore

Lobbying Expenditure Calculation

- May use “any reasonable method” to calculate lobbying expenditures
 - You may switch methods from year to year
- IRS offers specific methods: 2 easy, 1 hard
 - Ratio method, gross-up method, §263A method
- Include 3rd party costs, PAC admin expenses, ballot measure activity
 - Outside lobbyists
 - Dues paid to other lobbying organizations
 - Travel/entertainment costs

Notification Requirements

- Notify members of nondeductible dues (invoice or acknowledgement)
- Calculation is always a rolling estimate – “true up” annually, revise percentage
- Overages may be rolled forward (“waiver”) or subjected to proxy tax
- May an “under-age” be rolled forward?
 - Discussion in IRS EO CPE article for FY 2003 says “yes” . . .
 - “... the legislative history clearly indicates that organizations that overstate the portion of dues that are not deductible may be able to take this excess into account. Until such time as guidance is issued, a reasonable method would be to treat an overstatement similarly to an understatement and take the excess amount into account in the following year by subtracting it from the estimate of lobbying and political campaign expenses for that year.”

Notification Requirements (Cont'd)

- Also notify members that **NONE** of the dues payments are deductible as charitable contributions
- Form 990, Part V, #6a-6b asks specifically about the contributions piece –

	6a Does the organization have annual gross receipts that are normally greater than \$100,000, and did the organization solicit any contributions that were not tax deductible as charitable contributions?		
	b If "Yes," did the organization include with every solicitation an express statement that such contributions or gifts were not tax deductible?		

Sample Dues Notification

“Dues payments, contributions or gifts to XYZ Association are not tax deductible as charitable contributions for federal income tax purposes. However, they may be deductible as ordinary and necessary business expenses subject to restrictions imposed as a result of XYZ's lobbying activities. XYZ estimates that the nondeductible portion of your 20XX dues -- the portion that is allocable to lobbying -- is ____%.”

QUESTIONS AND ANSWERS

THANK YOU FOR
YOUR TIME AND
ATTENTION

RSM US LLP

1250 H St NW
Washington, DC 20005
202 293 2200

+1 800 274 3978
rsmus.com

This document contains general information, may be based on authorities that are subject to change, and is not a substitute for professional advice or services. This document does not constitute audit, tax, consulting, business, financial, investment, legal or other professional advice, and you should consult a qualified professional advisor before taking any action based on the information herein. RSM US LLP, its affiliates and related entities are not responsible for any loss resulting from or relating to reliance on this document by any person. Internal Revenue Service rules require us to inform you that this communication may be deemed a solicitation to provide tax services. This communication is being sent to individuals who have subscribed to receive it or who we believe would have an interest in the topics discussed.

RSM US LLP is a limited liability partnership and the U.S. member firm of RSM International, a global network of independent audit, tax and consulting firms. The member firms of RSM International collaborate to provide services to global clients, but are separate and distinct legal entities that cannot obligate each other. Each member firm is responsible only for its own acts and omissions, and not those of any other party. Visit rsmus.com/aboutus for more information regarding RSM US LLP and RSM International.

RSM, the RSM logo and *the power of being understood* are registered trademarks of RSM International Association.

© 2022 RSM US LLP. All Rights Reserved.

