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Benefits of Filing the 501(h) Election

For most charitable nonprofits, electing the expenditure test by filing [Form 5768](#) [1] will provide many benefits, including:

It's Easier

You get to use clear definitions that exclude certain activities

For nonprofits using the expenditure test, Congress created various exclusions so that the following activities are NOT included in the definition of “influencing legislation” under [26 US Code Section 4911](#) [2]:

1. Making available the results of nonpartisan analysis, study, or research;
2. Providing technical advice or assistance (where such advice would otherwise constitute the influencing of legislation) to a governmental body or to a committee or other subdivision thereof in response to written requests by such body...;
3. Appearing before, or communicating to, any legislative body with respect to a possible decision of such body which might affect the existence of the organization, its powers and duties, tax-exempt status, or the deduction of contributions to the organization [otherwise known as “self-defense communications”];
4. Communications between the organization and its bona fide members regarding legislation or proposed legislation of direct interest to the organization and such members [other than communications that “directly encourage” the members to engage in direct or grass roots lobbying]; and
5. Any communications with a government official or employee” that are not for the purpose of influencing legislation. ([See 26 USC Section 4911](#) [3])

You get to use a simpler reporting form

Form 990 requires all nonprofits to report their “total expenses paid or incurred in connection with ... lobbying activities.” But nonprofits that made an election under section 501(h) by filing [Form 5768](#) [1] get to complete [Schedule C's](#) [4] less detailed Part II-A, which allows them to simply report their lobbying expenditures in two broad categories: direct lobbying and grass roots lobbying. (See Form 990, Part IV, line 4: “Did the organization engage in lobbying activities, or have a section 501(h) election in effect during the tax year? *If “Yes,” complete Schedule C, Part II.*”) Non-electing nonprofits, on the other hand, must complete the more detailed Schedule C, Part II-B.

You don’t have to record, prepare, or file a detailed description of activities

Form 990 requires nonprofits using the “substantial part” test to invest time and resources both recording and describing their lobbying activities; nonprofits electing to use the “expenditure” test do not have that burden.

It's Safer

More precision/less guessing

The expenditure test, instead of looking subjectively at uncertain *activities*, objectively calculates the amount of permissible lobbying based on the nonprofit's *expenditures*. Moreover, the expenditure test's definitions of lobbying expenditures are generally more liberal than the definitions under the substantial part test. Therefore, a nonprofit taking the 501(h) election can compute its own limits without having to artificially depress its lobbying activity to avoid potentially violating the vague "substantial part" test.

Larger limits lead to more freedom

The "expenditure test generally permits higher limits for lobbying expenditures than allowed under the substantial part test." Plus, many nonprofits use volunteers to conduct lobbying activities, such as visiting with lawmakers in their statehouses during a "nonprofit lobby day." Since volunteer time is unpaid, there is no expenditure, so that time is not included in the "expenditure test" calculations.

Less likely to lose tax-exempt status

In the words of the IRS: "Under the substantial part test, an organization that conducts excessive lobbying in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, section 501(c)(3) organizations that lose their tax-exempt status due to excessive lobbying, other than churches and private foundations, are subject to an excise tax equal to five percent of their lobbying expenditures for the year in which they cease to qualify for exemption. Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in the loss of tax-exempt status." (See IRS website explanation of the [Substantial Part Test](#) [5].)

Protects a nonprofit's legislative lobbying strategies

Form 990's Schedule C requires charitable nonprofits not filing the 501(h) election to disclose their expenditures in far greater detail, thus laying bare a nonprofit's legislative lobbying strategies -- that the nonprofit may prefer to keep confidential.

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Links

[1] <http://www.irs.gov/pub/irs-pdf/f5768.pdf>

[2] <http://codes.lp.findlaw.com/uscode/26/D/41/4911>

[3] <http://www.law.cornell.edu/uscode/text/26/4911>

[4] <http://www.irs.gov/pub/irs-pdf/f990sc.pdf>

[5] <http://www.irs.gov/Charities-&-Non-Profits/Measuring-Lobbying:-Substantial-Part-Test>