

Tax Corner: Nondeductible Lobbying and Political Expenses under the Internal Revenue Code

May 2008

Q: What are nondeductible lobbying and political expenses?

A: Under Internal Revenue Code Section 162(e), for-profit companies are not permitted to deduct lobbying and political expenses related to the following activities:

- Influencing legislation at the federal and state level;
- Participating or intervening in a candidate's political campaign for public office at any level of government;
- Attempting to influence the public on elections, legislative matters or referendums (also known as "grassroots lobbying" at the federal, state, and local levels); or
- Direct communications with certain very high-level federal executive branch officials in an attempt to influence the officials' actions or positions.

In addition, no deduction is allowed for the portion of contributions or dues paid to a tax-exempt organization (such as a trade association) that is allocable to the above lobbying or political expenditures as notified by the tax-exempt organization.

Q: How are nondeductible lobbying activities calculated?

A: To determine the nondeductible amount of lobbying activities, a company must use a "reasonable" method to allocate those costs. Costs properly allocable to lobbying activities include (i) labor costs attributable to full-time, part-time, and contract employees, including all elements of compensation, such as basic compensation, payroll taxes and employee benefits, and (ii) general and administrative

Authors

D. Mark Renaud
Partner
202.719.7405
mrenaud@wiley.law

costs, including depreciation, rent, utilities, insurance, maintenance costs, security costs, and other administrative department costs. A cost allocation method is not reasonable unless it is applied consistently and is also consistent with certain special rules in the Treasury Regulations. The Treasury Regulations provide specific cost allocation methods that can be used that are based upon the ratio of lobbying labor hours to nonlobbying labor hours, or a gross-up of basic lobbying labor costs.

For-profit companies, as well as most trade associations, may use the calculations they employ to determine nondeductible lobbying expenses for tax purposes in order to report lobbying expenditures on their quarterly Lobbying Disclosure Act (LDA) reports.