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NEWSLETTER

A Focus on Non-Deductible Lobbying Calculations Can Lead to Lower Taxes

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As every for-profit corporation that engages in lobbying activity should be well-aware, under Internal Revenue Code Section 162(e) expenses for the following lobbying and political activities are not deductible as business expenses:

- 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.

This means that such lobbying and political costs hit the bottom line twice—first as regular expenses and then as expenses that cannot be deducted from the organization's taxes.

Trade associations (and other tax-exempt organizations) that lobby on behalf of their bottom-line-conscious corporate members and contributors are equally well-attuned to the requirements of Section 162(e), given that no deduction is allowed by their for-profit members for the portion of dues (or other contributions) that is allocable to lobbying or political expenditures.

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

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on their quarterly Lobbying Disclosure Act (LDA) reports, or the organization may calculate its LDA expenditures using the LDA definitions. Either way, periodic, comprehensive audits of your organization's policies and procedures for tracking lobbying expenses can be essential, not only to ensure compliance with the requirements of the LDA but also to ensure that the calculation of overall lobbying expenses is (for tax purposes) neither under inclusive nor (for organizational cost-control purposes) over-inclusive.

Issues that may—and often do—arise in reviewing how an organization calculates its lobbying expenses under the Internal Revenue Code include:

- For non-legislative lobbying of federal executive branch officials, has the appropriate scope for the category of "covered executive branch official" (narrower than under the LDA) been used?
- Have expenses for multi-purpose activities—that is, activities engaged in both with the purpose of making or supporting a lobbying communication and for some other non-lobbying purpose(s)—been allocated appropriately to the lobbying and non-lobbying purposes?
- Have expenses for activities having no lobbying purpose been excluded consistently from the calculation of lobbying expenses?

The attorneys in Wiley Rein's Election Law & Government Ethics Practice Group can assist your organization—as we have assisted many client organizations—in auditing your organizational lobbying compliance policies and practices, in understanding and applying the terms and definitions of Internal Revenue Code Section 162(e), and in achieving a careful calculation of non-deductible, organizational lobbying expenses. Like many of the major consulting firms, we can assist your organization in catching and fixing errors that either lead to tax problems or to substantial tax costs.