

Random State & Local Audits: A Reminder to Retain Records of Lobbying Activity

September 2017

Recent months have seen an uptick in the number of stories about high-profile organizations penalized either for failing to register as lobbyists in a state or locality, or for inaccurately reporting lobbying expenditures. While inaccurate reporting is sometimes discovered because someone files a complaint, a number of jurisdictions also conduct random audits of lobbying registrations and reports. Here are just a few examples of states and localities that may audit your organization's lobby filings:

New York State

The New York State Joint Commission on Public Ethics (JCOPE) conducts statutory random audits of filings. The agency contracts with an outside consulting firm to randomly select lobbyists and clients for auditing; last year it conducted 400 audits.

If an organization is selected for an audit, JCOPE will require the registered lobbyist or client to produce records and materials to substantiate the information in the filings being audited. Under New York law, lobbyists and lobbyist employers must keep records for three years, including copies of checks and receipts. A lobbyist must be able to document any expense exceeding \$50 with a receipt or cancelled check.

New York City

The Lobbying Bureau of the New York City Clerk's office conducts audits pursuant to its Random Audit Program and, based on its findings, may make referrals to the Office of Administrative Trials and Hearings (OATH) for possible assessment of civil penalties. When conducting an audit, the Bureau requires lobbyists to produce

Authors

Carol A. Laham
Partner
202.719.7301
claham@wiley.law

Practice Areas

Election Law & Government Ethics

witnesses and records relevant to the preparation of the statements being audited. According to the Bureau's annual report for 2016, it audited the 2015 filings of 43 lobbyists last year. The City's lobbying law requires lobbyists and clients to keep "detailed and exact" records of compensation and expenditures for at least five years.

Separately, note that New York City's lobbying law overlaps with New York state law, and both jurisdictions require registration and reporting for persons lobbying New York City officials. The City's Lobbying Bureau actively reviews registrations filed with the state commission (JCOPE) to scout out entities that have listed City lobbying targets on their state registrations but have failed to separately register with the City.

Pennsylvania

Each year the Pennsylvania Department of State randomly selects three percent of all registrants for auditing. The Department contracts with an independent auditing firm, which contacts registrants directly to request any records necessary to conduct the audit. Registrants are required to keep records for four years from the date of each report.

California

California's Franchise Tax Board conducts mandatory audits of lobbying reports for each biennial period. 25 percent of registered lobbying firms and lobbyist employers are selected for audit via public drawing in February of each odd-numbered year. When a lobbying firm or lobbyist employer is selected for audit, the individual lobbyists employed by that organization are also subject to the audit. California registrants are required to retain records and substantiating documents for five years from the date of the final report filed for the calendar year.

We often assist clients selected for audit with preparing and reviewing their audit materials. Of course, organizations can prevent any anxiety about an audit by ensuring their lobby filings are accurate at the outset. We regularly prepare and file lobbying reports in states and localities across the country and are available to consult about any questions your organization may have.