



TAX EXEMPT AND
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DIVISION

DEPARTMENT OF THE TREASURY
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U.I.L. Nos.

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Dear :

We have considered your request dated February 10, 2003 on behalf of a public charity involved in educating other charities about the role of lobbying as a means of achieving their philanthropic missions. You request information on lobbying and influencing public policy by private foundations. The public charity has compiled a list of recurring questions that, if answered by the IRS, would assist in correcting misconceptions in this area. The questions are addressed below.

1. May private foundations make general support grants, other than program-related investments, to "public charities" that lobby?

Yes, private foundations may make grants, other than program-related investments, to public charities (i.e., organizations described in sections 509(a)(1), (2), or (3) of the Internal Revenue Code) that lobby, with certain restrictions. The tax rules include explicit safe harbors for general support grants that meet the requirements of section 53.4945-2(a)(6)(i) of the Treasury Regulations. Provided that such grants are not earmarked in whole or part for lobbying, they will not be taxable expenditures.

2. Does the same answer apply whether or not the public charity has made the election under section 501(h) of the Code governing its own lobbying expenditures?

Yes.

3. What constitutes "earmarking" of a grant for lobbying?

"Earmarking" a grant for lobbying is making a grant with an oral or written agreement that the grant will be used for lobbying.

4. Absent any specific agreement to the contrary, will the recitation in a grant agreement that "there is no agreement, oral or written, that directs that the grant funds be used for lobbying activities" be sufficient to establish to the satisfaction of the IRS that there has been no earmarking for lobbying?

Yes, absent evidence of an agreement to the contrary.

5. Is a foundation required to include a specific provision in its grant agreements that no part of the grant funds may be used for lobbying?

A specific provision is required only if the grantee organization is not a public charity, or if the private foundation earmarks the grant for use by an organization that is not a public charity.

6. Under what circumstances can a foundation make a grant to a public charity for a specific project that includes lobbying?

A private foundation can make a grant to a public charity for a specific project that includes lobbying pursuant to sections 53.4945-2(a)(6)(ii) and (iii) of the regulations if (1) no part of the grant is earmarked for lobbying, (2) the private foundation obtains a proposed budget signed by an officer of the public charity showing that the amount of the grant, together with other grants by the same private foundation for the same project and year, does not exceed the amount budgeted, for the year of the grant, by the public charity for activities of the project that are not lobbying, and (3) the private foundation has no reason to doubt the accuracy of the budget.

7. In the response to the preceding question, does it matter that the public charity's proposal indicates that it will be seeking funds for the specific project from other private foundations without referring to other, additional sources of funds?'

No, the specific project grant rules in section 53.4945-2(a)(6)(ii) of the regulations do not require the private foundation to concern itself about the other sources of funding for the project in such situations.

8. What if, in the conduct of the project, the public charity actually makes lobbying expenditures in excess of its estimate in the grant proposal?

If the requirements of section 53.4945-2(a)(6)(ii) and (iii) of the regulations are met (no earmarking, budget shows non-lobbying equal to or greater than grant, and no reason to doubt accuracy of budget), then the private foundation will not have made a taxable expenditure under section 4945(d)(1) of the Code for that year, even if the public charity makes lobbying expenditures in excess of the budgeted amount. However, knowledge of the excess may provide a reason to doubt the accuracy of subsequent budgets submitted by the public charity.

Section 53.4945-2(a)(7)(ii) of the regulations, Example (13), illustrates the situation where a private foundation makes a second-year grant payment after the public charity exceeded its lobbying budgeted amount in the first year of the grant. In that case, although the private foundation did not have a taxable expenditure in the first year, it did have a taxable expenditure in the second year when the public charity again exceeded its lobbying budgeted amount. Similarly, if the public charity's exemption is revoked for excess lobbying after receiving the grant, there is no adverse consequence to the private foundation unless it directly or indirectly controls the public charity or has knowledge of the change in status before making the grant.

9. In determining whether a foundation grant has been earmarked for lobbying, do the definitions of lobbying in sections 56.4911-2 and 3 of the regulations govern?

Section 53.4945-2(a)(1) of the regulations provides that the definitions of section 56.4911-2 and section 56.4911-3 apply without regard to the exceptions contained in section 56.4911-2(b)(3) and section 56.4911-2(c). Instead, similar exceptions are provided in section 53.4945-2(d). Note that the special rules for membership communications under section 56.4911-5 do not apply to private foundations.

10. Private foundations are required to make "all reasonable efforts" under section 4945(h) of the Code to ensure that grant funds subject to expenditure responsibility (for example, a grant to a section 501(c)(4) organization) are not used for lobbying. Assuming grant records reflect that a grantee has been made aware of the applicable lobbying definitions and the grantee's report on the use of grant funds reflects activities that are legislation-related but, as reported, lack one or more of the elements of lobbying under sections 53.4911-2 and 3 of the regulations, is the foundation required to investigate further to discharge its responsibilities?

Section 53.4945-5(c)(1) of the regulations provides that a grantor private foundation is not required to conduct any independent verification of reports from grantees unless it has reason to doubt their accuracy or reliability.

11. May private foundations directly engage in any policy-related activities without incurring liability for private foundation excise taxes?

Yes. Private foundations may engage directly in a wide range of educational activities that influence the formation of public policy but are not lobbying so long as the foundation does not (1) reflect a view on specific legislation in communications with legislators, legislative staff, or executive branch personnel participating in the formulation of legislation, or (2) reflect a view on specific legislation and make a call to action in communications with the general public (and the rule for certain "mass media" communications does not apply). Some communications that may otherwise qualify as lobbying are excepted as nonpartisan analysis, technical advice to a legislative body, or self-defense.

12. What other policy-related activities may foundations fund?

Private foundations may fund discussions of broad social problems, as well as certain public charity membership communications that are not treated as lobbying communications. Further, the special restrictions on lobbying have no effect on contact with executive branch officials in order to influence the development of regulations (and other non-legislative policy positions). "Lobbying" is limited to attempting to influence action by a legislative body.

13. May community foundations engage in or fund lobbying activities?

Community foundations that are public charities may, if they have elected under section 501(h) of the Code, engage in or fund lobbying activities subject to the limitations of section 501(h) and section 4911 or, if they have not, to the extent that the lobbying activity does not constitute more than an insubstantial part of the community foundation's activities.

14. May community foundations make grants to other public charities that are earmarked for lobbying without adverse federal tax consequences?

Community foundations that are public charities may make grants to other public charities earmarked for lobbying so long as the amounts actually earmarked for lobbying are taken into account under the applicable limitation on lobbying expenditures by the community foundation noted in the response to Question 13.

15. May community foundations engage in nonpartisan election-related activities (activities that do not constitute political campaign intervention within the meaning of section 1.501(c)(3)-1(c)(3)(iii) of the regulations) including voter registration, "Get Out the Vote" drives, voter education projects and candidate forums?

Community foundations may engage in non-partisan election-related activities such as voter registration, "Get Out the Vote" drives, voter education projects and candidate forums, provided they do not constitute political campaign intervention under section 501(c)(3) of the Code. Regarding voter registration activities in particular, community foundations that are not private foundations are not required to meet the standards of section 4945(f).

16. In contrast to public charities, private foundations are subject to limitations under section 4945(d)(2) of the Code on funding nonpartisan “voter registration drives.” For purposes of the limitations, does the phrase “voter registration drive” include nonpartisan election-related activities other than registering voters, including “Get Out the Vote” activities, voter education projects and candidate forums?

No.

We believe this general information will be of assistance to you. This letter, however, is not a ruling and may not be relied on as such. If you have any questions, please feel free to contact the person whose name and telephone number are listed in the heading of this letter.

Sincerely,

Joseph J. Urban
Manager, Exempt Organizations
Technical Guidance & Quality Assurance

cc:

