

INTERNAL REVENUE SERVICE
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July 24, 2000

Dear Mr. *****:

This letter responds to your inquiry dated June 26, 2000, concerning the limitations, if any, on your organization's becoming involved in a school construction levy. Your organization is described in section 501(c)(3) of the Internal Revenue Code (the Code) and questions whether it can take a position regarding the levy, if the levy is properly presented and decided by the board. It is unclear whether this board is an administrative or a legislative board.

We regard your question as a request for information and respond with this information letter. An information letter is a statement that calls attention to well-established interpretation or principle of tax law, without applying it to a specific set of facts. An information letter is advisory only; accordingly, a taxpayer may not rely on any statement made in the information letter.

An organization is not described in section 501(c)(3) of the Code if it is an action organization. An action organization is one if a substantial part of its activities is attempting to influence legislation by propaganda or otherwise. The two terms, "legislation" and "substantial part", are vague and warrant some explanation.

The term "legislation" generally includes action by the United States Congress, any State legislature, any local council or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure. The term legislation does not include actions by an administrative body. The term administrative body includes: school board, housing authority, sewer and water district, zoning board, and other similar Federal, State, or local special purpose body, whether elective or appointive. Accordingly, an organization would not be influencing legislation, within the meaning of the Code, if it proposed to a Park Authority that it purchase a particular tract of land for a new park. It would not matter that such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park.

The term "substantial part" is not defined. However, Congress was concerned that the meaning of substantial part is vague and thereby tended to encourage subjective and selective enforcement. Consequently, Congress remedied the vague "substantial part" standard by setting specific permissible expenditure limitation for those organizations that make a so-called "section 501(h) election." Generally, any electing organization will, for any taxable year, have nontaxable lobbying amounts, and taxable lobbying amounts.

The Code regards nontaxable lobbying amounts as insubstantial lobbying amounts; thus, a charitable organization that expends nontaxable lobbying amounts incurs neither a tax nor revocation. However, there are, for any organization during a taxable year, a specific limitation on the nontaxable lobbying amounts; amounts spent exceeding the limitation are taxable lobbying amounts and are taxable under section 4911 of the Code. Additionally, if these excess lobbying expenditures normally exceed 150 percent of the nontaxable amounts over a four-year period, then the expenditures are taxed and the organization's exemption may be revoked.

We hope this has been of assistance. If you have any questions, you may contact ***** , Identification Number ***** , at (202) ***** .

Sincerely,

Joseph J. Urban
Acting Manager, Projects Branch
Exempt Organizations