

# Public Charities Can Lobby in Texas

## How to Measure Your Lobbying Limits

501(c)(3) public charities — including houses of worship and public foundations — can boldly weigh in on legislation. In fact, the federal tax code specifically states that charities “may lobby freely” within generous specified limits.<sup>1</sup> Similarly, the state of Texas permits public charities to lobby elected officials, though in some instances they must register and report their lobbying efforts.<sup>2</sup>

### How Much Lobbying Can Your Public Charity Do?

Public charities will measure their lobbying under one of two tests: the [“501\(h\) expenditure” test](#) or the [“insubstantial part” test](#). The amount of permissible lobbying will depend on which test is used. In the state of Texas, there are no additional limits to how much lobbying is allowable, but state law may require organizations (or their staff) to register and disclose their lobbying efforts once certain thresholds are met.

This fact sheet focuses on how organizations can maximize their lobbying under the federal tax code standards.

Your public charity can choose between these two ways of measuring your lobbying limits:

- **The “insubstantial part” test** is the default measure for the amount of lobbying activities a public charity can legally engage in according to the Internal Revenue Code. It requires that “no substantial part of a charity’s activities . . . be carrying on propaganda or otherwise attempting to influence legislation.” *Due to the vagueness of this description, tax advisors recommend that public charities commit no more than 3-5% of their budget and other efforts (including volunteer time) towards lobbying activities if they are operating under this test.*
- **The 501(h) expenditure test** is an alternative, and *it provides more clarity for organizations.*<sup>3</sup> *This standard sets specific dollar limits, calculated as a percentage of an organization’s total exempt purpose expenditures, an organization can spend on lobbying. In addition, organizations do not have to count volunteer activities (or other cost-free actions) against their lobbying limits. They can also take advantage of clearer definitions of lobbying, including specific exceptions to what counts as lobbying. Organizations must choose (or “elect”) to use this test by filing IRS Form 5768 with the IRS.*

1 Lobbying by Public Charities; Lobbying by Private Foundations, 55 Fed. Reg. 35,579, 35,584 (Aug. 31, 1990). [Private foundations](#) are subject to a prohibitive tax on any lobbying expenditures they make.

2 While the tax code’s definitions for lobbying include only legislative activities, the state of Texas broadly defines lobbying to include both legislative and administrative advocacy. For additional information on Texas’s lobbying definitions and disclosure requirements, visit our resource on [Texas Lobbying Disclosure](#)

3 [Maximize your lobbying Limit: Elect to Measure Your Lobbying Using the 501\(h\) Expenditure Test](#)

Churches and other houses of worship cannot take advantage of the 501(h) election and will always be subject to the “insubstantial part” test.

## How to Calculate Your Lobbying Limit Using the 501(h) Expenditure Test

Under the 501(h) expenditure test, a public charity can easily calculate its lobbying limit based on the organization’s annual exempt purpose expenditures. Use the chart below or our [online calculator](#) to determine how much your organization may spend on lobbying each year if it chooses to make the 501(h) election.

Organization’s Annual Expenditures	Overall Lobbying Limit
\$500,000 or less	20%
\$500,000 to \$1 million	\$100,000 + 15% of excess over \$500,000
\$1 million to \$1.5 million	\$175,000 + 10% of excess over \$1 million
\$1.5 million to \$17 million	\$225,000 + 5% of excess over \$1.5 million
Over \$17 million	\$1,000,000

Once a public charity calculates its lobbying limit using the formulas above, it should then track all direct and grassroots lobbying expenditures.<sup>4</sup> Organizations making the 501(h) election may spend up to 25% of their overall lobbying limit on [grassroots lobbying](#) (such as urging the general public to communicate the organization’s position on legislation to legislators) or up to the entire amount on [direct lobbying](#) (such as telling legislators or their staff to support or oppose legislation, or urging the organization’s members to do so).

## Complete Form 5768 to Make the 501(h) Election: It’s Easy!

In order for your public charity to use the 501(h) expenditure test (commonly referred to as “making the 501(h) election”), you must [file Form 5768](#) with the IRS. It’s a very simple process and takes only a few minutes to complete. Just input a few basic details about your organization, and mail in the form. Your 501(h) election is effective immediately.

The form only needs to be filed once, regardless of whether your organization’s budget goes up or down. By completing the form, the election applies retroactively to the first day of your current tax year and will apply in all subsequent years without any additional action on your part.

<sup>4</sup> [What is Lobbying Under the 501\(h\) Election?](#)

If for some reason your public charity wants to revert back to using the “insubstantial part test”, simply refile form 5768 and check the “revocation” box. The revocation becomes effective in the next tax year. Make sure to keep a copy of your election or revocation for your records.

## Consider taking the 501(h) election today!

Most public charities will benefit from making the 501(h) election. Why?

- Under the 501(h) expenditure test, public charities can take advantage of clear and narrow definitions for lobbying, including [specific exceptions](#) to what counts as lobbying.
- It’s an expenditure based test! Public charities that choose to make the 501(h) election only need to account for the money spent on activities that meet the test’s narrow definitions for lobbying. If a public charity uses volunteers to advance its legislative goals, their unpaid time will not count against the organization’s lobbying limits.
- 501(h) electing public charities may allocate the costs of certain activities that have both lobbying and non-lobbying purposes. For example, if an executive director travels to Austin for a four-day trip, of which three days are spent at an educational conference while the fourth day is spent lobbying, it is usually appropriate to report only 25 percent of the amount the organization paid for travel as a lobbying expense.
- When filing the annual Form 990 with the IRS, public charities that have made the 501(h) election need only report their lobbying expenditures. Organizations operating under the “insubstantial part test” must provide a narrative description of their lobbying activities in addition to the dollar amount spent on those activities.



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