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Private Foundations and Many Charities Can Pull Out All the Stops to Protect the Charitable Contribution Deduction Using the “Self-Defense” Exception in the IRS Lobbying Rules

The debate in Congress over the “fiscal cliff” has the nonprofit sector worried for lots of reasons. A big one is the proposal to raise revenue by reducing, capping, or modifying the charitable contribution deduction, which is vital to most charities’ fundraising prospects.

Fortunately, federal tax law lets many charities and all private foundations pull out the stops to protect the deduction. A special, narrow rule called the “self-defense exception” allows most organizations exempt under Section 501(c)(3) to make unlimited expenditures on communications with lawmakers with respect to a matter that might affect, among other things, the deductibility of contributions to the organization.

The self-defense exception applies automatically to private foundation communications about the charitable contribution deduction. (See [Treas. Reg. sec. 53.4945-2\(d\)\(3\)](#).)

The exception is also available to those public charities that have “elected,” by filing [Form 5768](#), to use the 501(h) expenditure test to define, measure, and set limits on lobbying activity. (See [Treas. Reg. sec. 56.4911-2\(c\)\(4\)](#).)

The 501(h) election has many benefits, especially for small and medium-sized charities — and for large 501(c)(3) organizations that wish to spend up to \$1 million annually (the maximum allowed under 501(h)) on lobbying activities.

While most public charities can make the 501(h) election at any time (the election applies to the entire fiscal year in which it is filed, and to all subsequent years, so calendar-year organizations can still file for 2012), churches cannot benefit from it. Churches and other charities that have not made the election but that want to get involved in the charitable deduction debate, or any other legislative battle, should consult knowledgeable counsel to determine how much lobbying they can safely do without electing.

Intelligent use of the self-defense exception can unleash the influence of many charitable organizations facing the impact of legislative proposals to curtail the charitable contribution deduction.

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