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### ***Take the 501(h) Election***

*Reprinted from The Council of Nonprofits*

Whether you are sitting on the beach this summer or talking with elected officials at an Independence Day parade, you can get burned unless you use the right protection. For sunbathers, it's sunscreen; for nonprofit advocates, it is the administrative version of sunscreen; taking the 501(h) election.

There are two main reasons that reluctant nonprofit representatives often give for not engaging in advocacy on behalf of their missions. The most common reason is the mistaken belief that charities can't lobby. That is false in most cases. The other reason for not speaking up for one's mission is fear of crossing the hazy line into doing "too much" lobbying. Taking the 501(h) election removes this concern.

By filing one simple form, IRS Form 5768, a charitable nonprofit can protect itself from penalties for engaging in "too much" lobbying. The law says that charitable nonprofit can only spend an insubstantial amount of its activities on lobbying. But there is an ill-defined line between what "activities" are considered "substantial" and which are "insubstantial". Here's where the sunscreen comes in. By filing IRS Form 5768 (also referred to as "taking the 501(h) election") instead of being judged by the uncertain "substantial part" test that evaluates undefined "activities," your nonprofit will have the added protection of being evaluated with a more specific test called the "expenditure" test that offers a bright line based on how much money the nonprofit spends on its lobbying activities. If you don't take the 501(h) election, it's like guessing how long to stay in the sun before you get sunburn.

Taking the 501(h) election is so simple and effective that some nonprofit practitioners have called it the "cheapest and best insurance on the planet." Indeed, we wonder why most nonprofits don't use this easy process. Once a nonprofit files the 501(h) election by completing Form 5768, it simply reports annually how much money it spent during the year on lobbying activities on Form 990, Schedule C. As long as the nonprofit's expenditures are within the acceptable (and generous limits) established by law, the nonprofit is protected. However, if it does not file Form 5768, not only is the reporting to the IRS more detailed, but the IRS will decide, based on uncertain criteria, whether the charitable nonprofit's lobbying activities are "substantial" or not. Because the IRS has never defined how much is "too much," the results of the analysis are uncertain. Why not file the 501(h) election to be sure?

NOTE: Private foundations, churches and integrated auxiliaries of churches are not permitted to file the 501(h) election.

**If you have any questions on this topic, please contact us at 215-343-2727.**

Additional resources:

[www.councilofnonprofits.org](http://www.councilofnonprofits.org)

[www.pano.org](http://www.pano.org)