

ADVOCACY

501 (c)(6) and (c)(3) Nonprofits

[Disclaimer: Because of the subject matter, the following “white paper” deals with legal questions and issues but does not constitute a legal opinion by any definition of the term.]

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Most of the state/regional golf associations, PGA Sections, and GCSAA Chapters in the nation are non-charitable, non-profit public benefit corporations that are tax exempt per Section **501(c)(6)** of the Internal Revenue Code (IRC). The same goes for most but not all of the various national organizations under which they are either directly or indirectly sanctioned, the exception being the USGA, which is tax exempt per the 501(c)(3) Section of the IRC governing charitable non-profit organizations. Many of these national, state and regional organizations/associations also have charitable adjuncts that are governed under that same **501(c)(3)** Section.

These tax statuses offer advantages to be sure, but they also impose restrictions on what these organizations can do in the realm of advocacy – restrictions that differ for the two categories of non-profit corporation.

The purpose of this document is to **generally** explain what 501 (c)(6) and (c)(3) corporations can and cannot do with respect to the many things that come under the umbrella of advocacy – lobbying, legislation, regulation, issues, referenda, political campaigns, candidates for office, etc. Heavy emphasis here on “**generally**.” The devil in the details of all matters legal in nature is the difficulty in discerning the general principle that applies to any specific action, circumstance or fact sequence. Only competent legal counsel can provide credible advice to the degree to which an inquiry rises to that level of necessity.

All the information used in this summary is taken directly from IRS General Counsel Memoranda and other internal IRS documents. While the primary source material is available in the IRC, court decisions, and legislative texts, this summary extracts and shares the information that is most relevant to golf’s normative non-profits as they seek to determine what they can and cannot do with respect to advocacy.

The information that follows is not meant to encourage nor discourage; it is meant only to enlighten and inform.

501(c)(6) Organizations

[The Internal Revenue Service is the only source upon which the following definitions are based]

Exemption

To qualify for exemption under **Internal Revenue Code 501(c)(6)** an organization must:

1. Be an association of persons having some common business interest and its purpose must be to promote this common business interest;
2. It must be a membership organization and have a meaningful extent of membership support;
3. It must not be organized for profit;

4. No part of its net earnings may inure to the benefit of any private shareholder or individual;
5. Its activities must be directed to the improvement of business conditions of one or more lines of business as distinguished from the performance of particular services for individual persons;
6. Its primary activity does not consist of performing particular services for individual persons;
7. Its purpose must not be to engage in a regular business of a kind ordinarily carried on for profit, even if the business is operated on a cooperative basis or produces only sufficient income to be self-sustaining.

Lobbying

IRC 501(c)(6) organizations may engage in an unlimited amount of lobbying provided that the lobbying is related to the organization's exempt purpose. The IRS defines **lobbying** as an attempt to influence **legislation**.

Legislation

Legislation includes an action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public referendum, ballot initiative, constitutional amendment, or similar procedure. Legislation does not include actions by executive, judicial, or administrative bodies. An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purposes of proposing, supporting, or opposing legislation.

Political Campaign Activity

IRC 501(c)(6) organizations may engage in **political campaign activities** on behalf of or in opposition to candidates for public office. Political campaign activities are those that influence or attempt to influence the selection, nomination, election or appointment of an individual to a federal, state, or local public office. In order to retain its tax-exempt status under section 501(c)(6), an organization must ensure that its political campaign activities do not constitute the organization's primary activity. The General Counsel Memoranda contrasts support of a candidate for office with lobbying activities. Because of this, the G.C.M. concluded that "this involvement transcends the narrower (exempt) interest" of the organization and could not be the primary activity of an organization.

When an organization's communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less.

A 501(c)(6) organization may **take a position on public policy issues** that divides candidates in an election for public office. In this situation the organization needs to consider all the facts and circumstances of the communication in order to determine whether the expenditure is directed toward campaign intervention or is merely issue advocacy related to the organization's exempt

purpose. The IRS considers the following factors that tend to show an advocacy communication is political campaign activity when evaluating a communication on a public policy issue:

1. The communication identifies a candidate for public office;
2. The timing of the communication coincides with an electoral campaign;
3. The communication targets voters in a particular election;
4. The communication identifies the candidate's position on the public policy issue that is the subject of the communication;
5. The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in the other public communications;
6. The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

Factors that tend to show that an advocacy communication on a public policy issue is not political campaign activity include the following:

1. The absence of any one or more of the factors listed above;
2. The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
3. The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is subject of the communication);
4. The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation);
5. The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is subject of the communication.

Dues or contributions to 501(c)(6) may be **deductible as business expenses** under IRC 162, however **amounts paid for intervention or participation in any political campaign** may not be deducted as a business expense IRC 162(e)(2)(A). Therefore, a 501(c)(6) organization must notify anyone paying dues that any portion used for lobbying or political activities is not deductible as a business expense. Nondeductible lobbying and political expenditures include expenditures paid or incurred in connection with influencing legislation, participating or intervening in any political campaign on behalf of (or in opposition to) any candidate for public office, attempting to influence the general public with respect to elections, legislative matters, or referendums, and any direct communication with a covered executive branch official in an attempt to influence the person's official actions or positions.

501(c)(3) Organizations

Exemption

To be tax-exempt under section 501(c)(3) of the Internal Revenue Code, an organization must be organized and operated exclusively for exempt purposes set forth in section 501(c)(3), and

none of its earnings may inure to any private shareholder or individual. In addition, it may not be an **action organization**, i.e., it may not attempt to influence legislation as a substantial part of its activities and it may not participate in any campaign activity for or against political candidates. Organizations described in section 501(c)(3) are commonly referred to as charitable organizations and are eligible to receive **tax-deductible contributions** in accordance with Code section 170.

Lobbying

Section 501(c)(3) organizations are restricted in how much political and legislative lobbying activities they may conduct. In general, no organization may qualify for section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation. The IRS defines **lobbying** as an attempt to influence **legislation**.

Legislation

Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies. An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Issue Advocacy

Organizations may involve themselves in **issues of public policy** without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

Political Elections

501(c)(3) organizations are prohibited from participating in **elections for public office**. Violating this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise taxes. The regulations provide that activities that constitute participation or intervention in a political campaign include, but are not limited to, the publication or distribution of written or printed statements or the making of oral statements on behalf of or in opposition to a candidate for public office. Consequently, a written or oral endorsement of a candidate is strictly forbidden.

The **rating of candidates**, even on a non-partisan basis is also prohibited. Similarly, an IRC 501(c)(3) organization may not distribute partisan campaign literature, provide or solicit financial or other forms of support to or for candidates or political organizations, or establish political action committees. In situations where there is no explicit endorsement or partisan activity, there is no bright-line test for determining if the IRC 501(c)(3) organization participated or intervened in a political campaign. Instead, all the facts and circumstances must be considered.

Many charitable organizations conduct mass media advocacy on issues. If certain candidates become identified with positions on these issues during a campaign, must the organization alter

its advocacy in order to avoid the IRC 501(c)(3) electioneering prohibition? Can the charity use the opportunity of the campaign to gain greater attention from candidates and the public, to its issues?

No situation better illustrates the principle that all the facts and circumstances must be considered than the problem of when issue advocacy becomes participation or intervention in a political campaign. On the one hand, the IRS is not going to tell an IRC 501(c)(3) organization that it cannot talk about issues of morality or of social or economic problems at particular times of the year, simply because there is a campaign occurring. On the other hand, the IRS is aware that an IRC 501(c)(3) organization may avail itself of the opportunity to intervene in a political campaign in a rather surreptitious manner. The concern is that a 501(c)(3) organization may support or oppose a particular candidate in a political campaign without specifically naming the candidate by using code words to substitute for the candidate's name in its messages. When this occurs, it is quite evident what is happening – an intervention is taking place. Therefore, **the fundamental test that the IRS uses to decide whether a 501(c)(3) organization has engaged in political campaign intervention while advocating an issue is whether support for or opposition to a candidate is mentioned or indicated by a particular label used in a stand-in for a candidate.**

The most common question that arises in determining whether an IRC 501(c)(3) organization has violated the political campaign prohibition is whether the activities constitute **political intervention** or whether they are **educational**, one of the purposes for which a 501(c)(3) organization may be formed. Sometimes, however the answer is that the activity is both – it is educational, but it also constitutes intervention in a political campaign. **“Educational” is defined for IRC 501(c)(3) purposes as including instructions of the public on subjects useful to the individual and beneficial to the community.** While an educational organization may advocate a particular viewpoint, it is not educational if its principal function is the mere presentation of unsupported opinion. Examples of educational organizations include organizations whose activities consist of presenting public discussion groups, forums, panels, lectures, or other similar programs, which may be on radio or television.

An IRC 501(c)(3) organization may **invite a candidate to speak** at its events without being considered to have participated or intervened in a political campaign depending upon the facts and circumstances of the invitation. Candidates may be invited to speak at an event of a 501(c)(3) either in their capacity as a candidate or in their individual capacity other than as a candidate.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including presenting public forums and publishing voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not be prohibited political campaign activity if conducted in a non-partisan manner.

On the other hand, voter education or registration activities with evidence of bias that (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have

the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

One method in determining whether an activity of a 501(c)(3) organization constitutes prohibited political activity is a determination of whether it is, in fact, an educational activity, particularly when the IRC 501(c)(3) organization advocates a particular **viewpoint**. Several factors indicate that the method used is **not educational**:

1. Presentation of viewpoints unsupported by facts as a significant portion of the organization’s communications;
2. Distorted facts;
3. Substantial use of inflammatory and disparaging terms and conclusions based on strong emotional feelings rather than objective evaluations;
4. The approach used is not aimed at developing the audience’s understanding because it does not consider their background or training in the subject matter.

The presence or absence of any of these factors is not conclusive; rather, the determination of whether the method used is educational is based upon all the facts and circumstances of the situation.

Measuring “Lobbying Activity”

The two primary methods for measuring an organization’s lobbying activity are; (1) the **Expenditure Test**, and (2) the **Substantial Part Test**. The former allows an organization to participate in lobbying so long as the expenditures do not typically exceed a threshold amount specified by the IRS, and the latter ensures that lobbying constitutes less than a substantial part of the organization’s activities.

The Expenditure Test *(see chart)*

If the amount of exempt purpose expenditures is:	Lobbying nontaxable amount is:
≤ \$500,000	20% of the exempt purpose expenditures
>\$500,00 but ≤ \$1,000,000	\$100,000 plus 15% of the excess of exempt purpose expenditures over \$500,000
> \$1,000,000 but ≤ \$1,500,000	\$175,000 plus 10% of the excess of exempt purpose expenditures over \$1,000,000
>\$1,500,000 but ≤ \$17,000,000	\$225,000 plus 5% of the exempt purpose expenditures over \$1,500,000

<p>If the amount of exempt purpose expenditures is:</p>	<p>Lobbying nontaxable amount is:</p>
<p>>\$17,000,000</p>	<p>\$1,000,000</p>

The Substantial Part Test

Whether an organization’s attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial.

Conclusion

Knowledge is power. Ignorance is weakness. Whether acting alone or in concert as they do when aggregated in such organizations as the California Alliance for Golf (CAG) or the World Golf Foundation (WGF), the game’s normative leadership organizations need to proceed based upon thorough understandings of what they can do and what they cannot do under the terms of their corporate tax statuses – upon knowledge, not fear.

To the degree to which this summary provided some of that requisite “knowledge,” it hit its mark.