



“Advocacy Considerations” of “Nonprofit Advocacy”

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Clients looking to form a non-profit, tax-exempt advocacy organization often have a lot of questions about what is the best and most appropriate type of organization. The answer depends of what the client wants to achieve and how the organization will conduct its activities. The starting point is often with questions about what is the purpose of the organization. Will it have a charitable purpose, an education mission or a social welfare purpose among other possible purposes and objectives? Will it be primarily an advocacy group focused on a single or broad array of issues, with a short term or long term plan? Will it be nonpartisan, grass roots focused or a more aggressive advocate that may conduct research, public education, lobbying and/or voter education? The permitted activities can really encompass a wide range of activities that can achieve a charitable purpose, but also educate the public and even influence public debate on social issue important to their community, their state and the nation. However, the permitted activities for each type of tax-exempt organization must be carefully considered to ensure the organization is legally compliant to preserve the tax-exempt status and avoid excise taxes on non-permitted activities. There are, of course, many types of tax-exempt organizations, which can include: 501(c)(3) religious, education, public charities and private foundations, 501(c)(4) civic leagues and social welfare organizations, 501(c)(5) labor, agricultural horticultural organizations, 501(c)(6) business league, and 501(c)(7) social and recreation clubs, to name some of the more common tax-exempt organizations under the Internal Revenue Code (“Code”). There are actually about 27 different tax-exempt organizations under Section 501(a) of the Code, not to mention the political organizations that may be tax-exempt under Section 527 of the Code that sometimes appear to overlap with some issue advocacy organizations.

Because the rules and regulations can be quite complex, it is not possible to cover too much in a short blog about these types of organizations. But a point that come ups often is the difference between nonprofit organizations that are a 501(c)(3) organized and operated as an educational organization that seeks to education the public of public issues and 501(c)(4) social welfare organizations that are also involved in public issues but seeking to bring about civic betterments by lobbying for legislation and maybe even some legal political activity on behalf of or in opposition to candidates for public office. This comparison often comes up because while both

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types of organizations are tax-exempt under the Code, only a 501(c)(3) has the additional benefit in fund raising of the deductibility of contributions as charitable contributions.

Two common questions are:

- As to lobbying (or attempting to influence legislation), a 501(c)(3) generally cannot lobby. However, it is not an absolute prohibition but any lobbying must be an insubstantial part of its activities or it risks being subject to excise taxes and loss of its tax-exempt status. A 501(c)(4), on the other hand, is not so limited and lobbying can actually be their primary activity.
- On political activity (or participating or intervening in any political campaign on behalf or opposition to a candidate), a 501(c)(3) cannot conduct any such partisan activity, while 501(c)(4)s may conduct some as long as it is not their primary purpose. Of course, there are gray areas in the law for determining whether a particular activity is lobbying or political activity or even instead an allowable 501(c)(3) educational activity. For example, voter education activities that are fair, unbiased, cover a broad range of topics, and apply equally to all candidates may not be political activity but instead a permitted tax-exempt activity.

Before we advise any advocacy client desiring to operate as a nonprofit, tax-exempt organization, a full discussion of the purpose, objectives and potential activities of the organization needs to be considered in selecting the proper organizational structure. Organizations that are found to improperly conduct excessive lobbying, non-permitted political activity or other non-tax-exempt activities could be subject to fines, penalties and excise taxes, as well as risk having their tax-exempt status revoked.

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