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COMMUNITY BASED HEALTH CARE

Lewis & Kappes provides complete and comprehensive legal services to community based health care organizations, boards of directors, and medical and service providers.

LOBBYING AND NON-PROFIT ORGANIZATIONS

Contrary to popular belief, non-profit organizations are permitted, under certain circumstances, to engage in lobbying. The Internal Revenue Service (IRS) has issued two sets of rules to control lobbying and other political activities by non-profit organizations. Those rules are the “no substantial part” test, also known as the default rule, and the expenditure test, commonly referred to as the 501(h) election.

Unfortunately, unless an organization specifically elects to be treated under the expenditure test, the organization, by default, will have to comply with the “no substantial part” test. The “no substantial part” test essentially states that a non-profit organization may not spend more than an insubstantial amount of its annual expenditures on lobbying. The IRS has left organizations in the dark by refusing to define how much money is considered to be insubstantial. Additionally, the penalty for violating the “no substantial part” test is the loss of the organizations tax-exempt status.

The 501(h) election, unlike the “no substantial part” test, provides security and clear guidelines and definitions. Using a permitted expenditure formula, the 501(h) election determines an annual dollar amount an organization is permitted to spend on lobbying activities. Unlike the “no substantial part” test, for the 501(h) election the IRS has specifically defined what constitutes lobbying, both direct and grassroots. The definition of direct lobbying is lengthy and includes much more than communication with a legislator. Grassroots lobbying is attempting to influence legislation by affecting the opinion of the public and encouraging public action. An organization generally will lose its tax-exempt status under the 501(h) election only if the organization exceeds its permitted spending over a four-year period. Additionally, the IRS has identified several policy-related activities organizations can engage in which do not constitute lobbying.

The majority of non-profit organizations do not take advantage of the 501(h) election and remain subject to the “no substantial part test”. To make a 501(h) election an organization must file an IRS Form 5768 – Election by an Eligible 501(c)(3) Organization to Make Expenditures to Influence Legislation.

If we can provide you or your organization with additional information or assistance, please contact one of our community based health care attorneys directly at:

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