



MEMORANDUM

TO: Dinah Welsh

FROM: Mary-Wommack Barton

DATE: November 8, 2011

RE: Lobbying by Section 501(c)(3) Tax-Exempt Organizations

Under Section 501(c)(3) of the Internal Revenue Code of 1986, as amended (the “IRC”), to maintain its federal tax exemption, “no substantial part of the activities” of a Section 501(c)(3) tax-exempt organization like the Texas EMS Trauma & Acute Care Foundation (“TETAF”) may constitute “carrying on propaganda, or otherwise attempting, to influence legislation.” Furthermore, the organization may not “participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.” Thus, although a 501(c)(3) tax-exempt organization may not support or oppose a political candidate, Treasury Regulations Section 1.501(c)(3)-1(c)(3)(ii)(b) provides that a Section 501(c)(3) organization “will not fail to meet the operational test [of 501(c)(3)] merely because it advocates, as an insubstantial part of its activities, the adoption or rejection of legislation.” An organization may meet this requirement either by satisfying the “no substantial part” test or by making a Section 501(h) “lobbying election,” which provides it with specific expenditure limitations for lobbying-related activities.

Our understanding is that TETAF has not made a Section 501(h) election, but plans to make the election soon. Therefore, in the past, it has operated under the “no substantial part” test for determining the amount of lobbying activities it may conduct while maintaining its federal tax-exempt status, and in the future, it may operate under the Section 501(h) election. Although there is not substantial guidance as to the amount of lobbying that a Section 501(c)(3) tax-exempt organization may conduct under the “no substantial part” test, it is clear that engaging in insubstantial lobbying activities does not, in of itself, cause a tax-exempt organization to violate Section 501(c)(3). Neither the courts, nor Congress, nor the IRS has set forth a bright line test for determining when lobbying activities become “substantial” in violation of Section 501(c)(3). However, case law indicates that to determine whether a charity’s lobbying activities are “substantial,” a court will examine the balance of the organization’s activities in relation to its objectives. If TETAF makes the Section 501(h) election, it will have specific limitations on its lobbying expenditures as set forth in Section 4911 of the IRC.

Both tax exempt organizations that follow the “no substantial part” test and those that make the Section 501(h) election must report their lobbying expenditures on their Form 990. Organizations that do not make the Section 501(h) election must attach a narrative description of

their lobbying activities in addition to reporting the amount of their lobbying expenditures. The disclosures on the Form 990 would assist the IRS in determining that the “no substantial part” or Section 501(h) requirements were satisfied in the event that the IRS elected to examine TETAF’s 990 more closely.