

§ 56.4911-3

26 CFR Ch. I (4-1-01 Edition)

(2) *Action.* The term “action” in paragraph (d)(1)(i) of this section is limited to the introduction, amendment, enactment, defeat or repeal of Acts, bills, resolutions, or similar items.

(3) *Legislative body.* “Legislative body” does not include executive, judicial, or administrative bodies.

(4) *Administrative bodies.* “Administrative bodies” includes school boards, housing authorities, sewer and water districts, zoning boards, and other similar Federal, State, or local special purpose bodies, whether elective or appointive. Thus, for example, for purposes of section 4911, the term “any attempt to influence any legislation” does not include attempts to persuade an executive body or department to form, support the formation of, or to acquire property to be used for the formation or expansion of, a public park or equivalent preserves (such as public recreation areas, game, or forest preserves, and soil demonstration areas) established or to be established by act of Congress, by executive action in accordance with an act of Congress, or by a State, municipality or other governmental unit described in section 170(c)(1), as compared with attempts to persuade a legislative body, a member thereof, or other governmental official or employee, to promote the appropriation of funds for such an acquisition or other legislative authorization of such an acquisition. Therefore, for example, an organization would not be influencing legislation for purposes of section 4911, if it proposed to a Park Authority that it purchase a particular tract of land for a new park, even though such an attempt would necessarily require the Park Authority eventually to seek appropriations to support a new park. However, in such a case, the organization would be influencing legislation, for purposes of section 4911, if it provided the Park Authority with a proposed budget to be submitted to a legislative body, unless such submission is described by one of the exceptions set forth in paragraph (c) of this section.

§ 56.4911-3 Expenditures for direct and/or grass roots lobbying communications.

(a) *Definition of term “expenditures for”*—(1) *In general.* This § 56.4911-3 contains allocation rules regarding what portion of a lobbying communication’s costs is a direct lobbying expenditure, what portion is a grass roots expenditure and what portion is, in certain cases, a nonlobbying expenditure. Except as otherwise indicated in this paragraph (a), all costs of preparing a direct or grass roots lobbying communication are included as expenditures for direct or grass roots lobbying. Expenditures for a direct or grass roots lobbying communication (“lobbying expenditures”) include amounts paid or incurred as current or deferred compensation for an employee’s services attributable to the direct or grass roots lobbying communication, and the allocable portion of administrative, overhead, and other general expenditures attributable to the direct or grass roots lobbying communication. For example, except as otherwise provided in this paragraph (a), all expenditures for researching, drafting, reviewing, copying, publishing and mailing a direct or grass roots lobbying communication, as well as an allocable share of overhead expenses, are included as expenditures for direct or grass roots lobbying.

(2) *Allocation of mixed purpose expenditures*—(i) *Nonmembership communications.* Except as provided in paragraph (a)(2)(ii) of this section, lobbying expenditures for a communication that also has a bona fide nonlobbying purpose must include all costs attributable to those parts of the communication that are on the same specific subject as the lobbying message. All costs attributable to those parts of the communication that are not on the same specific subject as the lobbying message are not included as lobbying expenditures for allocation purposes. Whether or not a portion of a communication is on the same specific subject as the lobbying message will depend on the surrounding facts and circumstances. In general, a portion of a

communication will be on the same specific subject as the lobbying message if that portion discusses an activity or specific issue that would be directly affected by the specific legislation that is the subject of the lobbying message. Moreover, discussion of the background or consequences of the specific legislation, or discussion of the background or consequences of an activity or specific issue affected by the specific legislation, is also considered to be on the same specific subject as the lobbying communication.

(ii) *Membership communications.* In the case of lobbying expenditures for a communication that also has a bona fide nonlobbying purpose and that is sent only or primarily to members, an electing public charity must make a reasonable allocation between the amount expended for the lobbying purpose and the amount expended for the nonlobbying purpose. An electing public charity that includes as a lobbying expenditure only the amount expended for the specific sentence or sentences that encourage the recipient to take action with respect to legislation has not made a reasonable allocation. For purposes of this paragraph, a communication is sent only or primarily to members if more than half of the recipients of the communication are members of the electing public charity making the communication within the meaning of § 56.4911-5. See § 56.4911-5 for separate rules on communications sent only or primarily to members. Nothing in this paragraph (a) shall change any allocation required by § 56.4911-5.

(3) *Allocation of mixed lobbying.* If a communication (to which § 56.4911-5 does not apply) is both a direct lobbying communication and a grass roots lobbying communication, the communication will be treated as a grass roots lobbying communication except to the extent that the electing public charity demonstrates that the communication was made primarily for direct lobbying purposes, in which case a reasonable allocation shall be made between the direct and the grass roots lobbying purposes served by the communication.

(b) *Examples.* The provisions of paragraph (a) of this section are illustrated by the following examples. Except where otherwise explicitly stated, the

expenditure test election under section 501(h) is assumed to be in effect for all organizations discussed in the examples in this paragraph (b). See § 56.4911-5 for special rules applying to the member communications described in some of the following examples.

Example (1). Organization R makes the services of E, one of its paid executives, available to S, an organization described in section 501(c)(4) of the Code. E works for several weeks to assist S in developing materials that urge voters to contact their congressional representatives to indicate their support for specific legislation. In performing this work, E uses office space and clerical assistance provided by R. R pays full salary and benefits to E during this period and receives no reimbursement from S for these payments or for the other facilities and assistance provided. All expenditures of R, including allocable office and overhead expenses, that are attributable to this assignment are grass roots expenditures because E was engaged in an attempt to influence legislation.

Example (2). An organization distributes primarily to nonmembers a pamphlet with two articles on unrelated subjects. The total cost of preparing, printing and mailing the pamphlet is \$11,000, \$1,000 for preparation and \$10,000 for printing and mailing. The cost of preparing one article, a nonlobbying communication, is \$600. The article is printed on three of the four pages in the pamphlet. The cost of preparing the second article, a grass-roots lobbying communication that addresses only one specific subject, is \$400. This article is printed on one page of the four page pamphlet. In this situation, \$400 of preparation costs and \$2,500 (25% of \$10,000) of printing and mailing costs are expenditures for a grass roots lobbying communication.

Example (3). Assume the same facts as in Example (2), except that the pamphlet is distributed only to members. In addition, assume the second article states that the recipient members should contact their congressional representatives. The organization allocates \$400 of preparation costs and \$2,500 of printing and mailing costs as expenditures for direct lobbying (see § 56.4911-5(c)). The allocation is reasonable for purposes of § 56.4911-3(a)(2)(ii).

Example (4). Organization J places a full-page advertisement in a newspaper. The advertisement urges passage of pending legislation to build three additional nuclear powered submarines, and states that readers should write their Congressional representatives in favor of the legislation. The advertisement also provides a general description of J's purposes and activities, invites readers to become members of J and asks readers to contribute money to J. Except for the cost of

the portion of the advertisement describing J's purposes and activities and the portion specifically seeking members and contributions, the entire cost of the advertisement is an expenditure for a grass roots lobbying communication, because the entire advertisement, except for the lines specifically describing J and specifically seeking members and contributions, is on the same specific subject as the grass roots lobbying message.

Example (5). Assume the same facts as in Example (4), except that J places in the newspaper two separate half-page advertisements instead of one full-page advertisement. One of the two advertisements discusses the need for three additional nuclear powered submarines and urges readers to write their Congressional representatives in favor of the pending legislation to build the three submarines. The other advertisement contains only the membership and fundraising appeals, along with a general description of J's purposes and activities. The half-page advertisement urging readers to write to Congress is a grass roots lobbying communication and all of J's expenditures for producing and placing that advertisement are expenditures for a grass roots lobbying communication. J's expenditures for the other half-page advertisement are not expenditures for a grass roots or direct lobbying communication.

Example (6). Assume the same facts as in Example (4), except that the communication by J is in a letter mailed only to members of J, rather than in newspaper advertisement, and the invitation to become a member of J is an invitation to join a new membership category. In addition, assume that the communication states that the member recipients should ask nonmembers to write their Congressional representatives. J allocates one-half of the cost of the mailing as an expenditure for a grass roots lobbying communication (see § 56.4911-5(d)). Because the communication had both bona fide nonlobbying (e.g., membership solicitation and fundraising) purposes as well as lobbying purposes, J's allocation of one-half of the cost of the communication to grass roots lobbying and one-half to nonlobbying is reasonable for purposes of § 56.4911-3(a)(2)(ii).

Example (7). A particular monthly issue of organization X's newsletter, which is distributed mainly to nonmembers of X, has three articles of equal length. The first article is a grass roots lobbying communication, the sole specific subject of which is pending legislation to help protect seals from being slaughtered in certain foreign countries. The second article discusses the rapid decline in the world's whale population, particularly because of the illegal hunting of whales by foreign countries. The third article deals with air pollution and the acid rain problem in North America. Because the first article is a grass roots lobbying communication, all of

the costs allocable to that article (e.g., one-third of the newsletter's printing and mailing costs) are lobbying expenditures. The second article is not a lobbying communication and the pending legislation relating to seals addressed in the first article does not affect the illegal whale hunting activities. Because the second and third articles are not lobbying communications and are also not on the same specific subject as the first article, no portion of the costs attributable to those articles is a grass roots lobbying expenditure.

Example (8). Organization T, a nonmembership organization, prepares a three page document that is mailed to 3,000 persons on T's mailing list. The first two pages of the three page document, titled "The Need for Child Care," support the need for additional child care programs, and include statistics on the number of children living in homes where both parents work or in homes with a single parent. The two pages also make note of the inadequacy of the number of day care providers to meet the needs of these parents. The third page of the document, titled "H.R. 1," indicates T's support of H.R. 1, a bill pending in the U.S. House of Representatives. The document states that H.R. 1 will provide for \$10,000,000 in additional subsidies to child care providers, primarily for those providers caring for lower income children. The third page of the document also notes that H.R. 1 includes new federal standards regulating the quality of child care providers. The document ends with T's request that recipients contact their congressional representative in support of H.R. 1. The entire three page document is on the same specific subject, and, therefore, all expenditures of preparing and distributing the three page document are grass roots lobbying expenditures.

Example (9). Assume the same facts as in Example (8), except that the document has a fourth page. The fourth page does not refer to the general need for child care or the specific need for additional child care providers. Instead, the fourth page advocates that a particular federal agency commence, under its existing statutory authority, licensing of day care providers in order to promote safe and effective child care. The cost of the fourth page is not a lobbying expenditure.

Example (10). Assume the same facts as in Example (8), except that T is a membership organization, 75 percent of the recipients of the three page document are members of T, and 25 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911-5(f)(5). Assume also that the document states that readers should write to Congress, but does not state that the readers should urge nonmembers to write to Congress. T treats the document as having a bona fide nonlobbying purpose, the purpose of educating its members about the

need for child care. Accordingly, T allocates one-half of the cost of preparing and distributing the document as a lobbying expenditure (see § 56.4911-5(e)(2)(i)), of which 75 percent is a direct lobbying expenditure (see § 56.4911-5(e)(2)(iii)) and 25 percent is a grass roots lobbying expenditure (see § 56.4911-5(e)(2)(ii)). The remaining one-half is allocated as a nonlobbying expenditure. T's allocation is reasonable for purposes of § 56.4911-3(a)(2)(ii) and is correct for purposes of § 56.4911-5(e).

Example (11). Assume the same facts as in Example (10), except that T allocates one percent of the cost of preparing and distributing the document as a lobbying expenditure (for purposes of § 56.4911-5(e)(2)) and 99 percent as a nonlobbying expenditure. T's allocation is based upon the fact that out of 200 lines in the document, only two lines state that the recipient should contact legislators about the pending legislation. T's allocation is unreasonable for purposes of § 56.4911-3(a)(2)(ii).

Example (12). Organization F, a nonmembership organization, sends a one page letter to all persons on its mailing list. The only subject of the letter is the organization's opposition to a pending bill allowing private uses of certain national parks. The letter requests recipients to send letters opposing the bill to their congressional representatives. A second one page letter is sent in the same envelope. The second letter discusses the broad educational activities and publications of the organization in all areas of environmental protection and ends by requesting the recipient to make a financial contribution to organization F. Since the separate second letter is on a different subject from the lobbying letter, and the letters are of equal length, 50 percent of the mailing costs must be allocated as an expenditure for a grass roots lobbying communication.

Example (13). Assume the same facts as in Example (12), except that F is a membership organization and the letters in question are sent primarily (90 percent) to members. The other 10 percent of the recipients are nonmembers and are not subscribers within the meaning of § 56.4911-5(f)(5). Assume also that the first letter does not state that readers should urge nonmembers to write to legislators. F allocates one-half of the mailing costs as a lobbying expenditure, of which 90 percent is a direct lobbying expenditure and 10 percent is a grass roots lobbying expenditure (see § 56.4911-5(e)(2)). F's allocation is reasonable for purposes of § 56.4911-3(a)(2)(ii) and is correct for purposes of § 56.4911-5.

(c) *Certain transfers treated as lobbying expenditures—(1) Transfer earmarked for grass roots purposes.* A transfer is a grass roots expenditure to the extent that it is earmarked (as defined in

§ 56.4911-4(f)(4)) for grass roots lobbying purposes and is not described in § 56.4911-4(e).

(2) *Transfer earmarked for direct and grass roots lobbying.* A transfer that is earmarked for direct lobbying purposes or for direct lobbying and grass roots lobbying purposes is treated as a grass roots expenditure in full except to the extent the transferor demonstrates that all or part of the amounts transferred were expended for direct lobbying purposes, in which case that part of the amounts transferred is a direct lobbying expenditure by the transferor. This paragraph (c)(2) shall not apply to any expenditure described in § 56.4911-4(e).

(3) *Certain transfers to noncharities that lobby—(i) Limited application of paragraph (c)(3)—(A) In general.* This paragraph (c)(3) applies only to transfers for less than fair market value from an electing public charity to any noncharity that makes lobbying expenditures. A noncharity is any entity that is not described in section 501(c)(3). In order for this paragraph to apply, the electing public charity must transfer to a noncharity more in value than it receives in return. For example, this paragraph does not apply to an electing public charity's fair market value payment of rent to a landlord. However, this paragraph does apply where an electing public charity and a noncharity share office space and the electing public charity pays more than fair market value rent to the noncharity. Similarly, this paragraph applies where an electing public charity sells goods or services to a noncharity for less than fair market value. See paragraphs (c)(3)(i)(B), (C) and (D) of this section for exceptions where non-fair market value transfers are not covered by this paragraph (c)(3). See paragraph (c)(3)(i)(E) of this section to determine the amount of any non-fair market value transfer covered by this paragraph (c)(3). See paragraph (c)(3)(ii) of this section for the rules that apply to transfers governed by this paragraph (c)(3).

(B) *Exception for controlled grants.* Notwithstanding paragraph (c)(3)(i)(A) of this section, this paragraph (c)(3) does not apply where an electing public charity makes a grant to a noncharity

that is a controlled grant (as defined in §56.4911-4(f)(3)).

(C) *Exception for transfers that artificially inflate exempt purpose expenditures.* Notwithstanding paragraph (c)(3)(i)(A) of this section, this paragraph (c)(3) does not apply where an electing public charity makes a grant to a noncharity that is an expenditure described in §56.4911-4(e) (relating to grants that artificially inflate exempt purpose expenditures).

(D) *Exception for substantially related activity.* Notwithstanding paragraph (c)(3)(i)(A) of this section, this paragraph (c)(3) does not apply where an electing public charity, in the course of an activity that is substantially related to the accomplishment of the electing public charity's exempt purposes, makes goods or services widely available for less than fair market value to individual members of the general public and those goods or services are actually purchased (or consumed for no charge) by a substantial number of wholly unrelated individual members of the general public for less than fair market value. For purposes of the preceding sentence, the term "individual member of the general public" does not include any person or entity directly or indirectly affiliated with the electing public charity in question. The following example illustrates this paragraph (c)(3)(i)(D):

Example. Organization P is an educational organization dedicated to preserving the environment. One of P's activities is educating the public about the benefits of installing cost-effective passive solar energy systems, thereby helping to preserve the environment. P charges for its extensive literature and advice, but the charges are less than the fair market value of the literature and advice. P makes its literature and advice widely available to individual members of the general public by advertising in various media and by pamphlets distributed in various areas. P annually provides its literature and advice for less than fair market value to 500 wholly unrelated families, businesses, and tax-exempt organizations. Several of the businesses and tax-exempt organizations make lobbying expenditures within the meaning of section 4911. P's provision of its goods and services to these entities is not covered by this paragraph (c)(3) (and thus does not give rise to a lobbying expenditure by P under paragraph (c)(3)(ii)).

(E) *Determination of amount of transfer governed by paragraph (c)(3).* Where an electing public charity receives nothing of value in return for its transfer, the amount of the transfer governed by this paragraph (c)(3) is the greater of the fair market value or the cost of the goods or services transferred to the noncharity. Where the noncharity transfers something of value to the electing public charity in return for the charity's transfer, but that payment is less than the fair market value of the charity's transfer to the noncharity, the amount of the transfer governed by this paragraph (c)(3) is the excess of: first, the greater of the fair market value or cost of the goods or services transferred to the noncharity over, second, the value of the amount transferred to the charity. For example, if an electing public charity transfers \$10,000 of goods and services to a noncharity that makes lobbying expenditures in return for payment by the noncharity of \$2,000, the amount of the transfer governed by this paragraph (c)(3) is \$8,000.

(ii) *Rules governing transfers to which paragraph (c)(3) applies.* A transfer to which this paragraph (c)(3) applies is treated in whole or in part as a grass roots and/or direct lobbying expenditure by the transferor in accordance with paragraphs (c)(3)(ii) (A), (B) and (C) of this section. In applying those paragraphs, the expenditures of the transferee will be determined as if the regulations under section 4911 applied to the transferee. This paragraph (c)(3) discusses only when certain transfers are lobbying expenditures by the transferor. This paragraph does not address other issues that may arise when an electing public charity makes a non-controlled grant to a noncharity. Nothing in this paragraph (c)(3) shall be used to interpret issues relating to noncontrolled grants by charities to noncharities, such as whether the non-controlled grant is consistent with the continued tax-exempt status of the electing public charity.

(A) *Transfers treated as grass roots expenditures.* The transfer is treated as a grass roots expenditure to the extent of the lesser of two amounts: The amount of the transfer and the amount of the transferee's grass roots expenditures.

(B) *Transfers treated as direct lobbying expenditures.* If the transfer is greater than the transferee's gross roots expenditures, the excess is treated as a direct lobbying expenditure, but only to the extent of the transferee's direct lobbying expenditures. (If, however, the transfer is less than the transferee's gross roots expenditures, none of the transfer is a direct lobbying expenditure.)

(C) *Transfers treated as nonlobbying.* If the transfer is greater than the sum of the transferee's gross roots and direct lobbying expenditures, the excess of the transfer over those lobbying expenses is not a lobbying expenditure.

(iii) *Example.* The following example illustrates the application of this paragraph (c)(3):

Example. Organization C, an electing public charity, shares employee E with N, a non-charity that makes lobbying expenditures. N's gross roots expenditures are \$5,000 and its direct lobbying expenditures are \$25,000. Each organization pays one-half of the \$100,000 in direct and overhead costs associated with E. E devotes one-quarter of his time to C and three-quarters of his time to N. In substance, this arrangement is a transfer (for less than fair market value) from C to N in the amount of \$25,000 (one-quarter of the \$100,000 of direct and overhead costs associated with E's work). Accordingly, C is treated as having made a \$5,000 gross roots expenditure (the lesser of N's gross roots expenditures (\$5,000) or the amount of the transfer (\$25,000)). C is also treated as having made a \$20,000 direct lobbying expenditure (the lesser of N's direct lobbying expenditures (\$25,000) or the remaining amount of the transfer (\$20,000)).

§ 56.4911-4 Exempt purpose expenditures.

(a) *Application.* This section provides rules under section 4911(e) for determining an electing public charity's "exempt purpose expenditures" for a taxable year for purposes of section 4911(c)(2) and § 56.4911-1(c)(2). Those two sections generally define an electing public charity's lobbying limit (lobbying nontaxable amount) as a sliding scale percentage of the organization's exempt purpose expenditures. In determining an electing public charity's exempt purpose expenditures, no expenditure shall be counted twice by an organization.

(b) *Included expenditures.* Amounts paid or incurred by an organization that are exempt purpose expenditures include—

(1) Amounts paid or incurred to accomplish a purpose enumerated in section 170(c)(2)(B), including (but not limited to) the amount of any transfer made by the organization (other than a transfer described in paragraph (e) of this section) to another organization to accomplish the transferor's exempt purposes, and including amounts expended by an organization out of transfers (other than a transfer described in paragraph (e) of this section) for which the organization is the transferee,

(2) Amounts paid or incurred as current or deferred compensation for an employee's services for a purpose enumerated in section 170(c)(2)(B),

(3) The allocable portion of administrative overhead, and other general expenditures attributable to the accomplishment of a purpose enumerated in section 170(c)(2)(B),

(4) Lobbying expenditures (as defined in § 56.4911-2(a)) whether or not for a purpose enumerated in section 170(c)(2)(B),

(5) Amounts paid or incurred for activities described in § 56.4911-2(c),

(6) Amounts paid or incurred for activities described in § 56.4811-5 that are not lobbying expenditures,

(7) A reasonable allowance for exhaustion, wear and tear, obsolescence or amortization, of assets to the extent used for one or more of the purposes described in paragraphs (b)(1) through (6) of this section, computed on a straight-line basis (for this purpose, an allowance for depreciation will be treated as reasonable if based on a useful life that would satisfy section 321(k)(3)(A) as in effect on January 1, 1985), and

(8) Fundraising expenditures (but see section 4911(e)(1)(C) and paragraphs (c)(3) and (4) of this section.)

(c) *Excluded expenditures.* Notwithstanding paragraph (b) of this section, exempt purpose expenditures do not include—

(1) Amounts paid or incurred that are neither expenditures to accomplish a purpose enumerated in section 170(c)(2)(B), lobbying expenditures (as