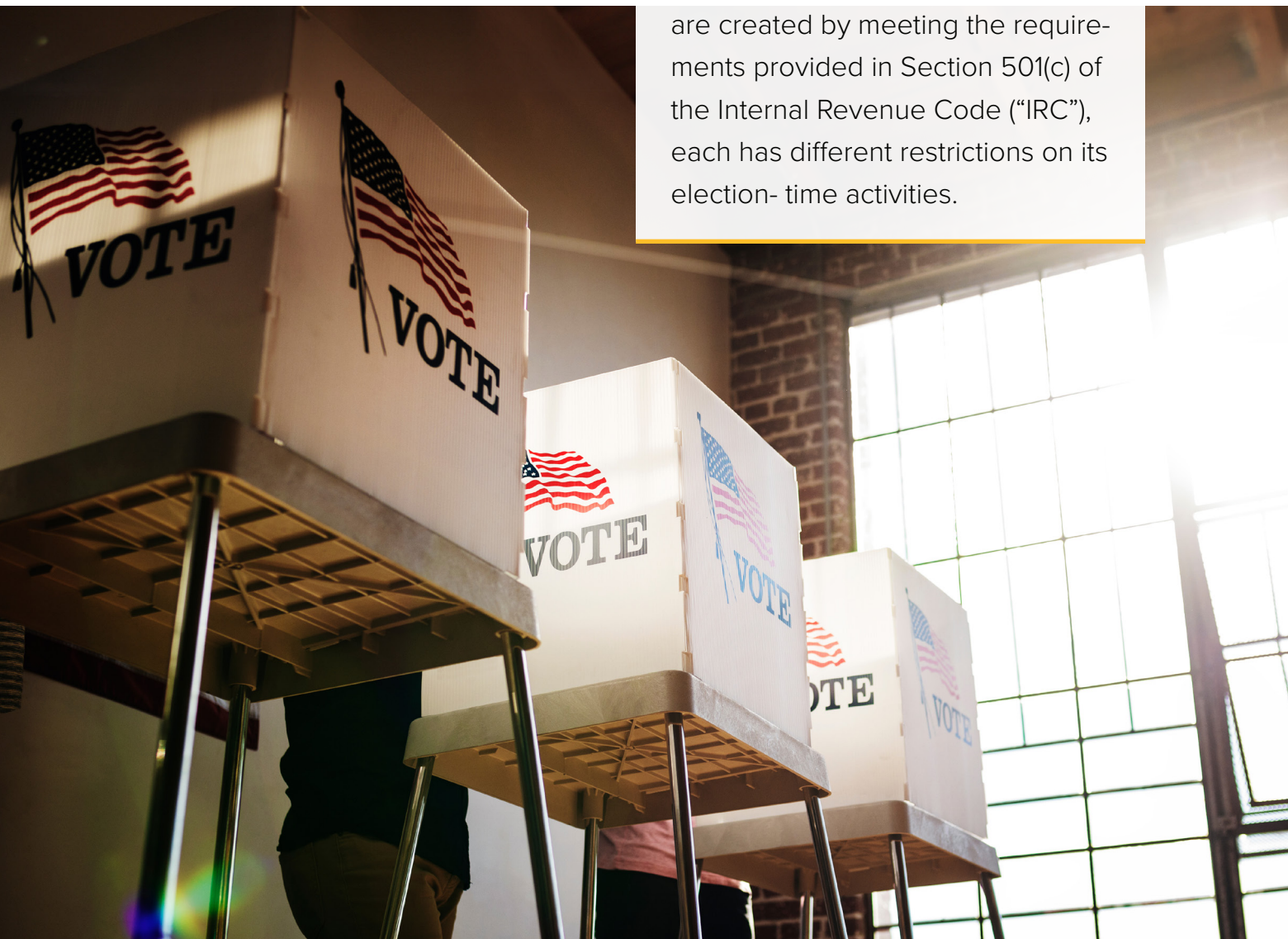


ELECTION YEAR

Considerations for Associations

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As another election season approaches and the candidates and issues begin to come into focus, now is a good time to review the regulations that govern exempt organizations and their involvement in politics. While each of the entities discussed here are created by meeting the requirements provided in Section 501(c) of the Internal Revenue Code (“IRC”), each has different restrictions on its election-time activities.



501(c)(3) (“C3’s”) are organized for a charitable, religious, or educational purpose and largely prohibited from engaging in political activities.

501(c)(4) (“C4’s”) are a so called “social welfare organizations”, which have grown in popularity over the past decade due to their ability to broadly engage in political activities.

501(c)(6) (“C6’s”) are associations, businesses leagues, and chambers of commerce; which like C4’s can engage in political activities, within limits.

What activities are allowed?

For the purpose of this question, it is important to distinguish between supporting/opposing a *candidate* (politics) and supporting/opposing an *issue or policy* (lobbying).

For C3’s the first part is simple – they are absolutely prohibited from donating to, advocating for (or against), or conducting activities biased toward any particular candidate(s). However, C3’s may lobby for/against certain policies either in the course of elections or through educating policymakers. C3’s must be mindful of the fact that lobbying cannot make up a substantial part of their activities.

C4’s and C6’s **can** support/oppose a candidate through their own activities or through contributions to the candidates or related parties. However, political involvement cannot be the organization’s “primary purpose;” which, as a general rule, means they must account for less than 50% of the organization’s overall activities.

On the other hand, C4’s and C6’s can spend **unlimited** amounts of time and money on lobbying activities, provided that such efforts further their exempt purpose and the portion of contributions and member dues used for such activities are not deducted as a business expense.

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Finally, C4's and C6's must think about who benefits from their activities, whether election related or not. A C4 could get into trouble with the IRS by advocating for the private benefit of one individual or a small group of individuals. Similarly, a C6 could get into trouble by focusing its efforts on the benefit of one member or a group of members rather than on their industry as a whole.



How is the activity financed?

For C3's, the source of funds can be grants, bake sales, car washes, and (perhaps most importantly) gifts donors. The upside for donors is that they can deduct the value of their donation to a C3. Funders of C4's and C6's do not get the same benefit of deductibility; however, to the extent that an expenditure is a legitimate business expense (i.e., association dues), the expense is at least partly deductible.

While most C6 donors (and some C4 donors) can deduct contributions as a business expense, they cannot deduct the portion of such contributions that are used for political or lobbying activities. Organizations that do not provide their members/donors with information related to such expenditures may be subject to additional tax liability, called a proxy tax.

What expenditures must be reported?

All of the organizations discussed here must file annual reports with the IRS (Form 990's), including a disclosure of their political and lobbying expenditures. Organizations that lobby federal government officials, either directly or through a paid lobbyist, may have to file reports under the Lobbying Disclosure Act of 1995 if such expenditures exceed \$14,000 or \$3,000 in a single quarter, respectively.

In Michigan, for 2024, organizations that have annual lobbying expenditures greater than \$3,075 (or more than \$775 to lobby a single public official) must register as a lobbyist with the Bureau of Elections. Individuals who are paid more than \$775 for lobbying activities must register as a lobbyist agent.

Once registered, lobbyists or lobbyist agents, must report expenditures to public officials if they exceed the following thresholds:

- **Financial Transactions:** \$1,550.00
- **Travel/Lodging:** \$1,000.00
- **Food/Beverage:** \$76 in any single month or \$475 for the year
- **Gifts:** \$76 in any single month

A Note on Political Action Committees and a Disclaimer

This article focuses on the direct activities of certain exempt entities and not on the use and function of affiliate organizations, such as a Political Action Committees (PACs). Exempt entities may find it useful to establish a PAC for use in organizing and operating the political and lobbying activities supportive of the organization's

exempt purpose. Because these activities are wholly non-deductible, housing them in a PAC and asking members and donors to contribute to the PAC separately could preserve the deductibility of member/donor contributions to the exempt entity. However, an exempt entity cannot use a PAC to indirectly perform an action that the entity could not pursue directly.

This article is not legal advice. For advice tailored to your organization's specific situation, consult with an expert on tax exempt organizations.

For questions or to learn more about Fraser Trebilcock's services, contact Bob at bburgee@fraserlawfirm.com.



Meet Bob

Bob Burgee is an attorney at Fraser Trebilcock and serves as Co-Chair of the firm's Business & Tax Department and Chair of the firm's Employee Benefits Department. Bob has over a decade of experience counseling business clients and entrepreneurs in matters ranging from startups, acquisitions, and support to more general practice of law, including civil matters, regulatory compliance, employee benefits, and human relations guidance. He also has legislative and policy experience from working with lawmakers and staff in the Michigan Legislature and trade association members. A lifetime Michigander, Bob enjoys spending his free time outside – whatever the season – with his wife and two young kids in activities including golfing, biking, camping, skiing, fishing or just being on the water.

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