William & Mary Environmental Law and Policy Review

Volume 2 (1976-1977)
Issue 2 Environmental Practice News

Article 4

January 1977

# Tax Break

## TAX BREAK

The new tax law which is to become effective this January makes many important changes in operative tax concepts. One such change which may prove useful for environmental organizations is the clarification of permitted lobbying expenditures for tax exempt organizations. In short, a tax exempt organization may, after January 1, 1977, make substantial expenditures, within certain limits, for lobbying purposes while still retaining its tax exempt status. This change should aid environmental organizations in three major respects: first, such an organization will not now be subject to income tax if they would otherwise have taxable income; second, the new law should encourage private contribution to the organizations, because the contributor will be permitted to deduct such contribution; and third, the organization will be able to increase their effective lobbying efforts while retaining tax-exempt status. A review of the pertinent old provisions in this area follows.

The old Internal Revenue Code provisions in this area are noted for their complexity and ambiguity. According to §501 certain listed organizations are to be exempt from income taxation. Among tax exempt organizations are corporations organized under an Act of Congress which provides for the exemption, fraternal orders, chambers of commerce, recreation clubs, and the like. Section 501(c)(3) provides that, "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes . . ." shall be exempt if no "substantial part of [its] activities . . . is carrying on propoganda, or otherwise attempting to influence legislation." The level of expenditures which is permitted for lobbying activities and which does not rise to the level of "substantial" has remained undefined by the Code or Regulations. This lack of definition has caused environmental organizations who might otherwise qualify for the exemption to remain taxable in order to carry on specific and relatively limited lobbying activities.

Taxable status alone might not directly harm an environmental organization because of its restricted income potential, however the fact of its taxability may have an effect on the availability of contributions from individual taxpayers. Section 170 of the Code provides an income tax deduction for charitable contributions. Old §170(c)(2) provides that a contribution shall be considered charitable if made to an organization which is operated "exclusively for . . . charitable . . . or educational purposes" which "no substantial part of [its] activities . . . is carrying on propaganda, or otherwise attempting, to influence legislation . . ." Thus, under the old Code provisions the conditions for deductibility of a charitable contribution are identical to those required for the charitable organization's non-taxable status. If the organization is exempt under §501(c)(3) then it is also likely to be an organization for which contributions by taxpayers are deductible under §170(c)(2). The converse is also true.

Under the Tax Reform Act of 1976 an important change has been made in the definition of charitable organizations which are exempt from taxation. While retaining language prohibiting the carrying on of a "substantial part" of its activities for lobbying, the new §501(h) in conjunction with the new §4911 permits a charitable organization to regularly spend twenty percent of its first $500,000 "exempt purpose expenditures" on influencing legislation. In addition, twenty-five percent of that amount may be used to influence the general public. If the specific conditions and dollar amounts are observed by a charitable organization than it will retain its non-taxable status while it carries on what previously had been thought to be "substantial" lobbying activities.

The private taxpayer, under the new Act, will be able to deduct his contributions to these tax exempt organizations, because of amended language in §170(c)(2), provided that the organization to which the taxpayer contributes qualifies for non-taxable status under new §501(c)(3) and (h). If all other conditions for the deduction are met then contributors to environmental organizations will be able to deduct their contributions.

In practical terms the new provisions should give small-to-medium size environmental organizations an opportunity to increase the amounts contributed to them. The appeal to a taxpayer's self-interest in environmental matters can only be strengthened if an appeal to his tax self-interest is included. Therefore, any environmental organization which is presently taxable because of a desire to continue its lobbying activities may wish to examine the feasibility of becoming tax-exempt under the Tax Reform Act of 1976.