



# legislation regulations

By Eugene Goldman

## Conable Bill Backed

In June 1975, more than a majority of the House Ways and Means Committee, led by Representative Barber Conable of New York, introduced legislation which would clearly define and moderately expand the extent to which public charities may act to influence legislative policy development. According to Representative Conable, the bill (H.R. 8021) represents "an effort to remedy the uncertainty and vagueness presented by the Internal Revenue Code's prohibition of 'substantial' lobbying activities by charitable organizations."

Under section 501 (c)(3) of the Code, "no substantial part of the activities" of a charitable organization may consist of "carrying on propaganda, or otherwise attempting, to influence legislation." Although this "substantial" test has been in effect for approximately 40 years, neither the courts nor the Treasury has been able to derive a universally acceptable definition of "substantial." In fact, it is the policy of the Internal Revenue Service not to define the term clearly, leaving charitable organizations engaged in influencing legislation at the mercy of subjective determinations which may threaten their tax deductible status.

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*Eugene Goldman is NCVA's special assistant for legislative and regulatory Affairs.*

**Businesses Favored.** The significant problems which arise from the chilling effect of section 501 (c) (3) are compounded by the disparate statutory treatment afforded businesses which engage in lobbying activities. In 1962, Congress granted to business entities the right to deduct as ordinary and necessary business expense amounts paid or incurred in connection with direct lobbying before governmental bodies with respect to legislation of direct interest to the business entity. The legislative history of this provision suggests that Congress felt it desirable governmental policy to have available information concerning the impact pending legislation would have on American businesses.

It is the position of several major national voluntary organizations that this tax treatment of business discriminates against section 501 (c) (3) charitable organizations whose activities are predicated upon serving the public interest. The "Coalition of Concerned Charities," a group of more than 50 major national voluntary organizations supporting the Conable bill, maintains that these business deductions enable businesses to present a distorted picture of a bill's environmental, social or economic impact.

**Clearer Guidelines.** The Conable Bill provides clearer guidelines for public charities on the extent to which they may influence legislation. It eliminates the "substantial" test. In its place is a provision which permits a certain per-

centage of expenditures for lobbying dependent upon the charity's total expenditures. The amount spent on lobbying is restricted to a downward graduated percentage of the total disbursements: 20% of the first \$500,000; 15% of the next \$500,000; 10% of the next \$500,000; and 5% of the excess over \$1,500,000. Thus, an organization with a budget of \$200,000 might expend \$40,000 on lobbying activities.

The following is a description of the bill's other main features:

- Charitable organizations could freely communicate with their *bona fide* members on legislation of direct interest to the organization and such *bona fide* members.
- The bill places no restrictions on the extent to which unpaid volunteers may lobby for their charitable organization.
- The bill would also codify and exempt from the reverse graduation scale the existing exceptions to the "substantial" test. These exceptions include: making available the results of nonpartisan analyses and studies; providing invited expert testimony; and influencing the drafting and implementation of regulations.
- Public charities would be able to engage in unlimited lobbying with respect to legislation affecting its existence, powers and duties, tax exempt status, or the deductibility of contributions to it.
- The bill would eliminate the "substantial" test only for those organizations electing to come under the bill. One reason given for the election is

that compliance with the expenditure test would require more frequent and comprehensive audits for some organizations than are required under existing law.

**Support Needed.** The House Ways and Means Committee will consider the Conable bill and other charity-related legislation in November. NCVA supports the Conable bill and encourages volunteers and other voluntary organizations to do the same.

Letters or phone calls to your national representatives (including Senators) would be most helpful to the efforts of the Coalition of Concerned Charities.

## **IRS Commissioner Comments on Volunteer Bills**

Donald Alexander, Commissioner of the IRS, has offered certain observations about two bills which would provide a tax deduction for volunteer time under certain conditions. The observations are contained in a letter to Virginia Knauer, Special Assistant to the President for Consumer Affairs, who called Alexander's attention to the bills.

The legislation, H.R. 4466 (to allow individuals who have attained age 65 a deduction for volunteer services performed for certain charitable organizations) and H.R. 6792 (to allow individuals a deduction for volunteer services performed in Veterans Administration hospitals), would permit the individuals performing such specified services to deduct an amount equal to the greater of \$2 per hour or the prevailing minimum hourly wage rate. Under existing law, donations of services do not qualify as charitable contributions.

While Alexander's "view in favor of or in opposition to those bills do not necessarily reflect those of the Department," they may serve as an indication of the IRS's attitude toward this type of legislation. Alexander's letter included several specific considerations. The letter, in pertinent part, reads:

**Social Considerations.** *It appears that a primary purpose of the bills is to encourage the growth of volunteer services. While it seems clear that public benefits would probably be derived from the proposals, the use of the Internal Revenue Code for the promotion of*

*social policy has contributed to its present complexity and the average citizen's lack of understanding of it. In the case of proposals of this kind, the convenience of using the Code as a vehicle for social policy must be weighed against the desirability of maintaining the primary purpose of the Code which is the collection of revenue.*

**Taxpayer Considerations.** *In order to benefit from either of the deductions proposed in these two bills, the taxpayer must itemize his deductions. Since most taxpayers do not itemize deductions, the proposed deductions would not be available to many. This lack of availability would be particularly true in the case of H.R. 4466 which limits the deduction to persons age 65 and over because persons in this age group generally are not making large interest payments on home mortgages that so often lead taxpayers to itemize their deductions. Thus, the proposed deductions may have less impact on taxpayers than would initially appear.*

**Administrative Considerations.** *Substantiation of the number of hours that a taxpayer claims he performed volunteer services, which number of hours support the claimed deduction, would be the principal administrative problem posed by the bills. Regulations establishing standards for such substantiation would have to be promulgated. Individuals claiming deductions for volunteer services might be required to produce certification that the services were, in fact, performed over the claimed number of hours. The burden of providing the certification to the individuals for furnishing to the Internal Revenue Service would necessarily fall upon the charitable organizations and Veterans' Administration hospitals benefiting from the services.*

**Revenue Considerations.** *While an estimate of the revenue impact of these bills has not, to my knowledge, been made, clearly each bill would have some adverse effect on revenues. Such effect would probably be relatively minor, particularly if the proposed deductions are limited to a statutorily stated value of services performed only by individuals age 65 and over or for Veterans' Administration hospitals. The deductions even so limited would obviously constitute precedent for*

*allowing similar deductions to other persons performing services for other charitable organizations whose eleemosynary merits are scarcely distinguishable from the merits of Veterans' hospitals. The allowance of more such deductions would erode the tax base and seems contrary to the legislative trend of recent years to limit deductions allowable for charitable contributions.*

## **Bill Would Raise Mileage Allowance**

Rep. Richard Ottinger of New York has introduced legislation (H.R. 8895) which would "equalize the mileage allowances for charitable organization volunteers with the amount already set for private industry." The bill would raise the standard deduction mileage allowance for people who travel for charitable organizations from 7 to 15 cents a mile.

Under existing Internal Revenue Service rulings, volunteers are permitted to deduct out-of-pocket expenses for gas and oil at a standard rate of 7¢ per mile to determine the volunteer's contribution. The 7¢ per mile rate became effective in September 1974. The costs of auto insurance and normal depreciation are not deductible. A pro rata portion of the general repair and maintenance cost of a volunteer's auto which is used occasionally for volunteer work is not deductible. Costs for auto insurance, normal depreciation, general repair, and maintenance are factored into the 15¢ rate for private industry.

Ottinger sees "no reason why the present distinction should exist in light of the fact that the costs of operating a vehicle are the same whether the owner is being paid or not." Ottinger recognizes that "recent increases in the price of fuel along with the higher operating costs of automobiles have made it harder and harder for volunteer organizations to recruit people. These agencies provide helpful services that benefit the community and I believe Congress should acknowledge this fact."

Changes in the standard mileage rate for volunteer driving have been set administratively by the IRS. The Ottinger bill would amend the Internal Revenue Code to increase the mileage deduction rate.