



General Guidelines and Recommendations Relative to Lobbying

The IRC specifically denies a deduction to companies for payments made for lobbying activities. The IRC also excludes a deduction for the portion of membership dues or "other similar amounts" paid to an organization when the organization participates in lobbying activities. An association must notify its members of the portion of their dues and other similar amounts to which lobbying expenses are attributable, and thus, which are nondeductible by the member. In determining the portion of lobbying expenses related to dues, it is assumed that all lobbying expenses are paid out of dues. Thus, even though certain members may make payments to the legal defense fund for lobbying activities separate from the dues that they pay the association, the association must treat all payments for lobbying activities as if they were paid from dues received.

While there is no prohibition against an association exempt under IRC 501(c)(6) from participating in lobbying activities, if the expenditures for lobbying activities exceed the receipts from membership dues, the excess lobbying expenditures are subject to a proxy tax. If the organization does not want to pay the proxy tax, they can elect to adjust the portion of the membership dues that are nondeductible in the following year, by the amount of the excess expenditures.

When trade associations are exempt from tax under the IRC, they have a responsibility to promote the interests of the entire industry and not individual members. If the association promotes the interests of an individual member, they risk participating in a "private benefit" and could incur sanctions, up to and including loss of the association's exempt status. These sanctions, could be assessed upon the association and/or the members who received the benefit.

The ATMIA management and board have a responsibility to the membership to expend funds for lobbying on issues that are important to the industry as a whole, and not specific to individual members. While ATMIA may ask for input from the largest contributors to the legal defense fund regarding issues that are of concern for them, it may not be appropriate to allow those members to direct the funds, as it could be construed that the funds are being directed to issues that "privately benefit" particular members instead of the group as a whole. This could subject ATMIA and the member to sanctions. The management and/or board of ATMIA should direct the funds based on the best interests of all of the members.

Recommendation to collect lobbying contributions:

1. It is permissible to set up a separate 'lobbying' fund account to collect on behalf of the ISOs / ATM owners so they can share in the costs of the law firm/lobbyist.
2. ATMIA would charge an agency fee for acting on behalf of its members in this capacity and document that ATMIA is not directing these funds, but is merely acting as a conduit to facilitate a collaboration of some of its members.
3. ATMIA would also document that it has no control over the funds, but is simply acting as a clearing house, per se, for its members.
4. ATMIA would document that the agency fee being charged to the members is not "unrelated business income" because ATMIA is collecting the funds on behalf of its members and in service to its members.
5. ATMIA would open up a separate 'bank' account to track and monitor any contributions.
6. ATMIA would charge any contributors to the funds a 1% agency fee to handle the funds, balance accounts, pay bills and further monitor the lobbyists as directed by the contributors. This would allow for the companies making a contribution to have a voice – for example a contribution of \$20,000 breaks down to - \$19,800 contributor and \$200 agency fee to ATMIA.