intend to provide an exception for providing technical advice or assistance.

The proposed regulations provide that a lobbying communication is any communication that (1) refers to specific legislation and reflects a view on that legislation, or (2) clarifies, amplifies, modifies, or provides support for views reflected in a prior lobbying communication. The proposed regulations provide that the term *specific legislation* includes both legislation that has already been introduced in a legislative body and a specific legislative proposal that the taxpayer either supports or opposes.

Several commentators stated that the phrase ''reflects a view'' should be defined to mean an explicit statement of support or opposition to legislative action. Some commentators also suggested that the regulations should make clear that a taxpayer is not reflecting a view on specific legislation if it presents a balanced analysis of the merits and defects of the legislation.

The final regulations do not adopt either of these recommendations. A taxpayer can reflect a view on specific legislation without specifically stating that it supports or opposes that legislation. Thus, as illustrated in § 1.162–29(b)(2), *Example 8*, a taxpayer reflects a view on specific legislation even if the taxpayer does not explicitly state its support for, or opposition to, action by a legislative body. Moreover, a taxpayer's balanced or technical analysis of legislation reflects a view on some aspect of the legislation and, thus, is a lobbying communication.

The proposed regulations do not contain a definition of the term ''specific legislative proposal,'' but do contain several examples to illustrate the scope of the term. For instance, in *Example 5* of § 1.162–29(b)(2) of the proposed regulations, a taxpayer prepares a paper indicating that increased savings and local investment will spur the state economy. The taxpayer forwards a summary of the paper to legislators with a cover letter that states, in part:

> You must take action to improve the availability of new capital in the state.

The example concludes that the taxpayer has not made a lobbying communication because neither the summary nor the cover letter refers to a specific legislative proposal.

In *Example 6* of that section, a taxpayer prepares a paper concerning the benefits of lowering the capital gains tax rate. The taxpayer forwards a summary of the paper to its representative in Congress with a cover letter that states, in part:

> I urge you to support a reduction in the capital gains tax rate.

The example concludes that the taxpayer has made a lobbying communication because the communication refers to and reflects a view on a specific legislative proposal.

Numerous commentators stated that they do not perceive a distinction between the two examples. In addition, certain commentators requested that the term ''specific legislative proposal'' be defined.

Whether a communication refers to a specific legislative proposal may vary with the context. The communication in *Example 5* is not sufficiently specific to be a specific legislative proposal, and no other facts and circumstances indicate the existence of a specific legislative proposal to which the communication refers. In *Example 6*, however, support is limited to a proposal for reduction of a particular tax rate. Although commentators suggested a number of definitions of the term ''specific legislative proposal,'' none was entirely satisfactory in capturing the full range of communications referred to in section 162(e)(4)(A). Thus, the final regulations do not adopt these suggestions.

The proposed regulations provide that an attempt to influence legislation means a lobbying communication and all activities such as research, preparation, and other background activities engaged in for a purpose of making or supporting a lobbying communication. The purpose or purposes for engaging in an activity are determined based on all the facts and circumstances.

The proposed regulations provide two presumptions concerning the purpose for engaging in an activity that is related to a lobbying communication. The first presumption provides that if an activity relating to a lobbying communication is engaged in for a nonlobbying purpose prior to the first taxable year preceding the taxable year in which the communication is made, the activity is presumed to be engaged in for all periods solely for that nonlobbying purpose (favorable presumption). Conversely, the second presumption provides that if an activity relating to a lobbying communication is engaged in during the taxable year in which the lobbying communication is made or the immediately preceding taxable year, the activity is presumed to be engaged in solely for a lobbying purpose (adverse presumption).

The adverse presumption was intended to prevent taxpayers from abusing an intent- or purpose-based rule by labelling their lobbying activities as mere monitoring. On the other hand, the favorable presumption provides substantial certainty to taxpayers who engage in an activity for a nonlobbying purpose a sufficient time before a lobbying communication is made.

While commentators approved of the purpose test, many criticized the presumptions. Many commentators argued that the presumptions would create unreasonable recordkeeping burdens requiring detailed records concerning the purpose of a taxpayer's every activity. Several commentators also argued that the presumptions operated over too great a period of time and recommended that, if retained, they should apply to a period of 6 months or, alternatively, a calendar year. A number of commentators expressed a belief that the presumptions created a 2-year lookback recharacterizing activities as lobbying activities. Other commentators further argued that the presumptions used undefined terms and would be difficult to rebut.

Although the presumptions were intended as an aid in identifying activities that were more or less likely to be lobbying activities, the IRS and Treasury believe that the presumptions have been viewed by the commentators as undermining and complicating the purpose-based test. Therefore, the final regulations eliminate the presumptions, replacing them with a list of some of the facts and circumstances to be considered in determining whether an activity is engaged in for a lobbying purpose.

In addition, in response to various comments concerning the treatment of activities engaged in for the purpose of deciding to lobby, the final regulations clarify that the activity of deciding to lobby is to be treated in the same manner as research, preparation, and other background activities. Thus, a taxpayer who engages in the decision-making process may be treated as engaged in that activity for a lobbying purpose. This rule applies to a taxpayer who alone or as part of a group is deciding whether a lobbying communication should be made.

Under the proposed regulations, if a taxpayer engages in an activity for a lobbying purpose and for some nonlobbying purpose, the taxpayer must treat the activity as engaged in partially for a lobbying purpose and partially for a nonlobbying purpose (multiple-purpose rule). While many commentators approved of a facts and circumstances analysis to determine whether a taxpayer engages in an activity for a lobbying purpose, some of these commentators thought that an activity should be subject to section