

Lobbying, Political Activity, and Nonprofit Tax Credits

Nonprofits operate under strict rules when it comes to political and legislative activity—and available tax credits can meaningfully offset their costs. This course covers what lobbying is permissible, how political campaign activity restrictions apply, and where free speech and religious liberty considerations intersect with tax law. It also introduces tax credits available to nonprofit organizations. A valuable resource for practitioners helping nonprofit clients stay compliant while taking full advantage of credits available to them.

CREDIT HOURS 2 | FIELD OF STUDY TAXES | EXAM QUESTIONS 10

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LEARNING ASSIGNMENTS AND OBJECTIVES

Assignment

- Study the full course materials included here.
- Complete the review questions after each chapter.
- Answer 10 final exam questions.
- Final exam is scored immediately, 70% or better passes.
- Certificate of completion is available in your account.
- Failed exams can be retaken free of charge.

Course Objectives

- Recognize the difference between lobbying efforts and nonlobbying advocacy.
- Recognize the characteristics of various tax credits available to nonprofits.

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Chapter 1: LOBBYING AND POLITICAL CAMPAIGN ACTIVITIES

Chapter Objective

After completing this chapter, you should be able to:

- Recognize the difference between lobbying efforts and nonlobbying advocacy.

Many people in the nonprofit community think that lobbying by nonprofits is completely prohibited. It isn't. Some think it's okay for nonprofits to support political candidates. This belief is wrong too. The IRS rules on lobbying and political campaigning by nonprofits are some of the most misunderstood rules in the nonprofit world. In this chapter, we'll explain what nonprofits can and can't do with respect to these two activities.

The context in which a nonprofit's role in lobbying and political campaigning comes up can be surprising. After reading this chapter, you'll have a better understanding of how to act in certain circumstances where there may be lobbying and political campaign issues, such as:

- Your city council is about to vote on cutting its grant to your nonprofit by 80%. Can you attend the council meeting and complain? Can you ask the public to email or call council members to complain?
- Joe Dokes is running for mayor of your town. Can your nonprofit host a fundraiser for him? Can it register people to vote? Can it hold a public forum in which all candidates for mayor are invited to speak?

LOBBYING BY NONPROFITS—WHAT'S ALLOWED AND WHAT'S NOT

Let's assume that you are president of Peoria Clayworks, a small nonprofit arts organization in Peoria, Illinois, dedicated to teaching ceramic arts to the poor and elderly. Due to budget constraints, the Peoria City Council is considering reducing its grants to all local arts organizations by 80%. The new city budget containing these reductions comes up for a council vote in two weeks. If your grant is cut by 80%, your nonprofit will have to close its doors. You are a Section 501(c)(3) public charity and as such are subject to IRS restrictions on lobbying by nonprofits. You can take which of the following actions without risking the IRS's wrath:

- Call the mayor of Peoria to complain about the proposed cuts.
- Place a notice on your organization's website alerting the community to the cuts.
- Contact the Peoria city manager to discuss whether some of the cuts can be restored.

- At the city council's invitation, testify before the city council about the effect the proposed budget cuts would have on your nonprofit.
- Send a letter to all the city council members protesting the proposed cuts.
- Ask the public to call and email their city council members to protest the cuts.
- Join a coalition of small arts groups that plans to hire a high-priced lobbyist in the state capital to persuade the state legislature to increase state funding for the arts.

The answer: *All of them*. That's right. Despite what you might have heard about nonprofits not being allowed to lobby, nonprofits can and do engage in lobbying. The key is that they may not engage in too much of it.

Many in the nonprofit community have the idea that the IRS frowns upon or even prohibits nonprofits from lobbying. Some even fear that they will lose their tax exemption if they engage in lobbying. Perhaps as a result, only about 1% of the hundreds of thousands of nonprofits registered with the IRS report any lobbying expenditures. However, nothing could be further from the truth. Public charities (501(c) (3) organizations) are allowed to engage in lobbying as long as it doesn't constitute a substantial part of their overall activities. Moreover, many activities you might think of as lobbying aren't considered such by the IRS.

Lobbying Congress, state legislatures, city councils, and other legislative bodies can be a nonprofit's most valuable public service, gaining attention for people and causes that would otherwise be overlooked. Lobbying by nonprofits has resulted in many important legislative achievements, including the passage of stricter drunk driving laws and improved funding for medical research and public health. There are more than 17,000 registered professional lobbyists in Washington, D.C., and thousands more in the 50 state capitals. The vast majority work to promote the interests of business and industry. If nonprofits don't fight for the interests of those who can't afford to hire lobbyists, who will?

Why the Limits?

Lobbying and political activity by nonprofits are subject to limitations that don't apply to other types of organizations. Why? Because nonprofits receive significant tax benefits that other organizations don't receive. Not only is their income tax free, but people who donate to a nonprofit can deduct their contributions. These tax benefits amount to a substantial financial subsidy by the government. In return, nonprofits are required to engage in charitable activities—this is what Congress wants to encourage. However, Congress also believes the federal government should be neutral in political affairs and not subsidize partisan political activity. Thus, it has imposed certain limitations on lobbying and political campaigning by tax-exempt

nonprofits. These limitations have withstood court challenges that they deny nonprofits their First Amendment right of free speech or interfere with the free exercise of religion by churches.

Caution!

Check for lobbying registration requirements. Nonprofits that engage in lobbying might have to register with the federal government in Washington, D.C., and one or more state governments. The Lobbying Disclosure Act of 1995 requires nonprofits to register their in-house lobbyists with the House and Senate and file semiannual reports on their lobbying activities and expenses. The act applies to any nonprofit that has at least one employee who devotes 20% or more of their time to lobbying and spends \$20,000 or more on lobbying every 6 months. States have their own registration requirements. For more information, see www.citizen.org.

What Is Lobbying?

Basically, for IRS purposes, your nonprofit engages in lobbying anytime it attempts to persuade members of a legislative body to propose, support, oppose, amend, or repeal legislation. “Legislation” means anything a legislative body must vote to adopt or reject—whether a law, resolution, proposal, nomination, treaty, zoning rule, or anything else. It also includes things like referendums, initiatives, and constitutional amendments that must be placed on the ballot and voted on by the general public. “Lobbying,” then, means trying to persuade a member of Congress, a state legislature, city council, county board of supervisors, or even a foreign legislature or parliament, to vote in a certain way. It also means trying to help to enact or oppose a law or another item that would have to be voted on to take effect. For example, the nonprofit Peoria Clayworks (from the above example) would be engaged in lobbying if it attempted to persuade Peoria City Council members not to adopt a new budget containing drastic budget cuts for the arts.

However, a specific law doesn’t have to be pending in a legislative body for lobbying to occur. Lobbying includes support for or opposition to proposed laws that are a long way from actually being voted on—for example, a church would be engaged in lobbying if it urged members of Congress to approve a constitutional amendment allowing school prayer, even if no such amendment was pending in Congress at the time.

A nonprofit can attempt to persuade a legislator in many different ways; however, they can all be divided into two broad categories—direct lobbying and grassroots lobbying.

Direct lobbying. “Direct” lobbying occurs when your nonprofit or its members directly communicate with legislators or their employees. For example, Peoria Clayworks would be engaged in direct lobbying if its president, or any other person acting on its behalf, met with, called, wrote, or emailed any member of the Peoria City Council (or a member of a councilperson’s staff) and

asked that person to vote “no” on proposed budget reductions for the arts. The nonprofit would also be engaged in direct lobbying if it urged its members to lobby the city council.

Grassroots lobbying. “Grassroots” lobbying occurs when you urge members of the general public—or any segment of the public—to contact their legislators to voice their opposition or approval of specific legislation or proposals. This approach can be a very effective form of lobbying, especially if lots of people become involved. Any method your nonprofit uses to get the public’s attention and persuade them to contact their legislators constitutes grassroots lobbying—for example, mass mailings; public meetings and rallies; press conferences; websites; newspaper, radio, and television advertisements; and any other efforts to reach the general public.

Example

The nonprofit Peoria Clayworks places an advertisement in its local newspaper urging all the citizens of Peoria to contact their city council members to protest proposed budget cuts that will hurt its operations. This situation is grassroots lobbying. On the other hand, if the nonprofit sent an email only to members of its organization, it wouldn’t be grassroots lobbying because it isn’t directed to the general public.

Not All Advocacy Is Lobbying

Lobbying is just one form of advocacy that your nonprofit can engage in to help accomplish its exempt purposes. And, although lobbying by nonprofits is allowed, it is subject to restrictions (see “How Much Lobbying is Too Much?” later). Advocacy, on the other hand, that doesn’t fall within the IRS definition of lobbying is completely unrestricted. Such nonlobbying advocacy includes the following activities.

Actions by administrative bodies. Lobbying only involves something a legislative body can vote on, such as Congress, a state legislature, or city council or county board of supervisors. Lobbying doesn’t include items voted on or otherwise approved by administrative bodies, such as school boards; housing authorities; sewer and water districts; zoning boards; and other federal, state, or local special-purpose bodies (whether elected or appointed). Nonprofits can try to persuade members of administrative bodies and their staffs to take any action within their authority, including voting on laws, rules, proposals, budgets, or other items. For example, the president of the Peoria Clayworks wouldn’t be engaged in lobbying if he contacted the Peoria School Board and asked its members to provide more money for arts education in the schools.

However, it would be lobbying to ask an administrative body to propose, support, or oppose legislation that would have to be voted on by a legislative body. For example, if the president of Peoria Clayworks asked the Peoria School Board to support the Peoria City Council restoring

funding for the city arts budget, it would constitute lobbying because the city's arts budget is a matter that must be voted on by a legislative body—the city council.

Actions by the executive. For the same reason that asking a school board or another administrative body to take (or refrain from taking) an administrative action isn't lobbying, asking the executive branch to take or not take an executive action is also not lobbying. An executive action is anything an executive—such as the president, governor, mayor, or another elected executive—can do without obtaining approval from a legislative body. For example, it isn't lobbying to ask the governor to commute the death sentence of a prisoner on death row because this doesn't require a vote of the state legislature. However, requesting an executive to support or propose legislation is lobbying because adopting the legislation would require a vote by the appropriate legislative body. For example, it would be lobbying to ask the governor to support a bill outlawing the death penalty.

Invited legislative testimony. Ordinarily, if a nonprofit testifies before a legislative committee regarding legislation, it would be considered lobbying. However, it isn't considered lobbying when a nonprofit testifies (in person or in writing) in response to an official request from a governmental body or legislative committee for the nonprofit's technical advice. The request must be made in the name of the governmental body or committee rather than by an individual member. If requested to do so by the legislators, the nonprofit may even offer its opinions or recommendations regarding specific legislation.

So, for example, it wouldn't be lobbying for the president of the Peoria Clayworks to testify about the impact of the proposed budget cuts for the arts if he was officially invited to do so by the Peoria City Council. However, if he asked to appear and testify before the city council to oppose the budget cuts and the council agreed to hear him, his testimony would constitute lobbying.

Lobbying by individuals. Only official acts are attributed to a nonprofit organization. So, lobbying by individual members of a nonprofit isn't attributed to the organization if it is done without the organization's consent or approval. Similarly, lobbying by an employee, an officer, or a director of a nonprofit isn't attributed to the organization where it is done in a purely private capacity, not as a representative of the nonprofit. So, when does a person act in an official, as opposed to private, capacity? This can be difficult to discern. The basic rule is that a person's actions on behalf of a nonprofit are "official" if the person acted within their authority, or the actions were later approved by the nonprofit.

For example, the president of Peoria Clayworks has the authority to represent and speak for the organization on all matters regarding government grants and fundraising. So, he is acting within his official capacity—and, therefore, lobbying—when he tells the Peoria City Council that he is the nonprofit's president and then attempts to persuade them to restore arts funding. On the other hand, Clayworks wouldn't be engaged in lobbying if its president sent a personal letter to his state

legislator urging him to support a bill allowing gay marriage and the letter didn't mention his involvement with Clayworks.

Self-defense lobbying. “Self-defense” lobbying doesn't count as lobbying for IRS purposes. This type of lobbying occurs when a nonprofit communicates with legislators about its own existence, powers, or tax-exempt status, or the deductibility of contributions to nonprofits. For example, a nonprofit might lobby Congress to reject a proposal by the president to limit the tax deduction for charitable contributions. Self- defense lobbying occurs relatively rarely.

Nonpartisan Education Isn't Lobbying

Educating the public or members of the government about public issues in a nonpartisan manner isn't lobbying as long as you don't ask or advise a legislative body to take a particular action.

Discussion of broad social and economic problems. Discussing broad social and economic problems doesn't constitute lobbying if you don't address specific legislation or directly encourage people to take action on legislation. For example, a nonprofit may discuss problems such as environmental pollution or population growth that Congress is considering. The discussion must not directly address specific legislation being considered and the nonprofit can't directly encourage people to contact Congress or others who participate in the legislative process to take specific action.

Example

A nonprofit group, Environmental Education Institute, sponsors a public forum in which several environmental scientists present the latest findings about global warming. Neither the institute nor the scientists recommend that Congress or other legislative bodies take any particular action on the issue, nor do they ask the public to do anything. They simply present the latest scientific facts. The forum doesn't constitute lobbying.

On the other hand, if your educational efforts also include a dose of advocacy, you would be engaged in lobbying.

Example

Assume that the Environment Education Institute sponsors a forum on global warming in which several scientists discuss the latest scientific research on the subject, and urge that the carbon cap and trade bill pending in Congress be enacted into law. This forum constitutes lobbying.

Nonpartisan education and analysis. Nonprofits often do studies of specific issues or problems and then publish their results. As long as they provide a nonpartisan analysis of the underlying issue, it

won't be considered lobbying when they distribute or make their results available to the public. To be considered nonpartisan, it must be a full and fair explanation of the relevant facts so that people can form their own independent opinion on the issue. In addition, it must not encourage people to take any particular action, including contacting their legislators. If your reports are nonpartisan, then you can make them available by any means you want, including publishing and distributing copies of the reports online or off, presenting information at conferences or meetings, or communicating through news media such as radio, television, or newspapers. In addition, the communications must be made available to anyone who wants them. Their circulation can't be limited to only those who are interested solely in one side of a particular issue.

Example

A nonprofit called Free the Bees establishes a research project to collect information on the dangers of using pesticides in agriculture. The information is distributed in a published report that analyzes the effects and costs of various pesticides that affect humans, animals, and crops. The report discusses the advantages, disadvantages, and economic cost of allowing the continued use of pesticides, of controlling their use, and of developing alternatives to them. The report concludes that the disadvantages of using pesticides are greater than the advantages, and that regulation of their use is needed. Even though the report advocates a certain viewpoint, it is within the exception for nonpartisan analysis because it presents a full and fair explanation of both sides of the issue. Free the Bees is free to distribute and use the report to advocate its position and it wouldn't be considered lobbying.

However, your nonprofit will be engaged in lobbying if it issues a report or study that recommends that specific legislation be adopted or opposed.

Example

Assume that Free the Bees' report on pesticide use recommends that legislation be enacted limiting the use of specific types of pesticides. The report is no longer nonpartisan and the nonprofit's efforts would constitute lobbying.

How Much Lobbying Is Too Much?

Remember, as a nonprofit, you are allowed to engage in some lobbying. The key is to make sure it remains at a level that is acceptable to the IRS. How do you do this? Unfortunately, this is where things can get confusing. Two different tests are available for determining whether your lobbying activities are within IRS guidelines. A majority of nonprofits use what is known as the "substantial part test." This test is the default test that will be automatically applied to your nonprofit if you don't make an IRS election to use the other test, called the "expenditures test." Although it is used less