



# Lobbying for Land Trusts: A guide to lobbying regulations for nonprofit organizations

*September, 2018*

## **Can my tax-exempt land trust lobby?**

**Yes.** It is a common misconception in the nonprofit community that any involvement with politics and advocacy could threaten your tax-exempt status. In fact, nonprofit corporations, including land trusts, may engage in a limited amount of lobbying and may advocate generally for policies that promote land conservation and environmental protection. Lobbying and political advocacy are an important part of nonprofit work and can and should be used to help your organization achieve its goals.

This guidance document will help you understand the basic rules about lobbying and involvement in politics. It is highly unlikely that a land trust will ever engage in more than the permissible amount of lobbying, particularly because broad and nonpartisan advocacy does not constitute lobbying. However, if you have specific questions please consult an attorney or tax advisor with experience in nonprofit law.

## **What are the basic rules I should know about lobbying?**

- A nonprofit may spend up to 5% of its time and budget on lobbying.
- Lobbying may include contacting legislators directly or encouraging the public to contact their legislators.
- Providing general information or nonpartisan education about policy issues to the public does not count as lobbying.
- A nonprofit may not participate in political campaigns for candidates for public office or donate to candidate elections.
- A nonprofit may initiate, support or oppose ballot measures. These activities constitute direct lobbying.
- A nonprofit must keep good records and report any lobbying activity on IRS Form 990.

## **What laws and regulations govern lobbying?**

As nonprofit corporations, land trusts are governed by state and federal law. Almost all land trusts are Oregon public benefit corporations, which are nonprofit corporations that are tax-exempt under the Federal Internal Revenue Code §501(c)(3) and organized for a public or charitable purpose. It is primarily IRS regulations that define permissible lobbying activities for Oregon §501(c)(3) nonprofits.

## **What is lobbying?**

The IRS draws a distinction between “lobbying” and “political activity”.

**Political activity** is defined by the Internal Revenue Code, as “directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office.”<sup>1</sup> Section 501(c)(3) organizations may not engage in political campaign activity by supporting or opposing any candidate or political party. Likewise, contributions to political campaign

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<sup>1</sup> IRS Charitable Organizations, [The Restriction of Political Campaign Intervention by Section 501\(c\)\(3\) Tax-Exempt Organizations](#), Page Last Reviewed or Updated: 13-Sep-2016.

funds or public statements of position about any candidate for public office would violate the prohibition against political campaign activity.

**Lobbying** is defined as “attempting to influence legislation”, and legislation is further defined as “action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive office), or by the public in referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.”<sup>2</sup> Note that lobbying involves influencing legislation by contacting legislators directly as well as involving the general public and asking them to contact their legislators.<sup>3</sup> The Internal Revenue Code states:

In general, no organization may qualify for 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). A 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status. ... An organization will be regarded as attempting to influence legislation if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, organizations may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.<sup>4</sup>

There are two forms of lobbying: direct lobbying, and indirect or grassroots lobbying. **Direct lobbying** is an attempt to influence legislation directly through communications with legislators and their employees, or government officials who participate in the formation of legislation.<sup>5</sup> **Grassroots lobbying** is an indirect attempt to influence legislation by encouraging the public to contact legislators about a specific piece of legislation.<sup>6</sup> Grassroots lobbying requires that the organization include a call to action, meaning that members of the public are asked to contact legislators about the issue, provided with contact information for the legislators, and either providing contact material (like a postcard) or specifically identifying legislators who will vote on the piece of legislation. Note that in Oregon ballot measures are legislation made by the public, so communication with the public about a ballot measure would be direct lobbying. An initiative or referendum may be sponsored by any person, individually or on behalf of an organization.<sup>7</sup>

### **How much lobbying is allowed?**

Since a nonprofit may not engage in “substantial” lobbying activity, it is important to review the meaning of “substantial” in this context. The IRS has two tests for whether a nonprofit is engaging in lobbying that rises to the level of being a substantial part of the organization’s activities.

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<sup>2</sup> IRS Charitable Organizations, [Lobbying](#), Page Last Reviewed or Updated: 24-Feb-2017.

<sup>3</sup> Cumfer, Cindy and Kay Sohl, [The Oregon Nonprofit Corporation Handbook](#) (2012) at 180.

<sup>4</sup> *Id.*

<sup>5</sup> *Id.* at 183.

<sup>6</sup> *Id.*

<sup>7</sup> State Initiative and Referendum Manual, Oregon Secretary of State’s Office Elections Division, Revised 10-Jan-2018, available at <https://sos.oregon.gov/elections/documents/stateir.pdf>.

The “**Substantial Part**” test considers the organization’s activities as a whole and whether lobbying constitutes more than a substantial part of their total activity.<sup>8</sup> Factors include the time devoted (by paid workers and volunteers) and the expenditures devoted by the organization to lobbying. The general rule is that if the organization spends less than 5% of its time and budget on legislative activities it is probably not doing substantial lobbying.<sup>9</sup>

There is also a mathematical “**Expenditure**” test to quantify substantial lobbying activity.<sup>10</sup> This test compares lobbying activity to the amount expended by the organization on its exempt purpose. A nonprofit can elect to be judged under the expenditure test by filing Form 5768. It is highly unlikely that any land trust will participate in enough lobbying activity to require this test.

### **How do we account for lobbying in our reporting?**

Keep good records on expenditures, including any time and money spent lobbying, as part of your regular budget and book-keeping activities. When you fill out your IRS Form 990 for your nonprofit organization you will need to fill out lines 3 and 4 in Part IV. Line 3 asks if your organization has participated in political campaign activities – remember that these have to do with supporting and opposing political candidates and your organization must be able to check “no” and confirm that you did not participate in any of these activities. Line 4 asks if your organization participated in any lobbying activity or took a Form 5758 election. If you have participated in lobbying you will answer “yes”, and then fill out Schedule C with information for either the substantial part test or the expenditure test.

### **What happens if we violate the rules?**

If a nonprofit engages in more lobbying than allowed by the rules in a given year the organization can be taxed on the excess lobbying expenditures at a rate of 25%.<sup>11</sup> Directors, Board Members, or other responsible parties in the organization may also be personally responsible for paying the tax if they agreed to the excess expenditures knowing they would be used for lobbying purposes. These taxes must be reported to the IRS along with total expenditures. If the organization, on average over a period of four years, exceeds either the total lobbying amount or the total grassroots lobbying amount, the nonprofit will automatically lose its tax-exempt status.

### **What is a lobbyist?**

ORS 171.725 defines a **lobbyist** as any individual who agrees to provide personal services for money or any other consideration for the purpose of lobbying; any other person who provides personal services as a representative of a corporation association, or other group for the purposes of lobbying; or any public official who lobbies. Volunteers who receive no compensation are not lobbyists, nor are unpaid individuals who give testimony before the Legislative Assembly. A paid individual who spends more than 24 hours or \$100 on lobbying during any calendar quarter will be required to register as a lobbyist and report their expenditures. Note that the definition of lobbying in Oregon is broad: lobbying includes attempting to influence legislative action or attempting to gain the goodwill of legislative officials. For more information you can consult the Oregon Government Ethics Commission [Guide to Lobbying in Oregon](#).<sup>12</sup>

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<sup>8</sup> IRS Charitable Organizations, [Measuring Lobbying Activity: Substantial Part Test](#), Page Last Reviewed or Updated: 23-Feb-2017.

<sup>9</sup> [Seasongood v. Commissioner](#), 227 F.2d 907 (6<sup>th</sup> Cir. 1955).

<sup>10</sup> IRS Charitable Organizations, [Measuring Lobbying Activity: Expenditure Test](#), Page Last Reviewed or Updated: 08-Mar-2017.

<sup>11</sup> 26 U.S. Code § 4911 - Tax on excess expenditures to influence legislation.

<sup>12</sup> Available at [www.oregon.gov/ogec](http://www.oregon.gov/ogec).

**Resources and Further Reading:**

Cindy Cumfer and Kay Sohl, The Oregon Nonprofit Corporation Handbook (2012). Handbook offers guidance on federal and state laws governing nonprofit activities.

The Nonprofit Association of Oregon: Advocacy Resources, available at [https://nonprofitoregon.org/advocacy/advocacy\\_resources](https://nonprofitoregon.org/advocacy/advocacy_resources). Multiple guidance documents on advocacy for nonprofits.

Learn Foundation Law course “Advocacy and Lobbying Rules for Private Foundations”, available at <http://learnfoundationlaw.org/advocacy-and-lobbying-rules-for-private-foundations/>. Module includes rules for private foundations, which are beyond the scope of this guidance document. If your organization is receiving grant money from private foundations, please review those rules and consult a legal advisor.