



## Lobbying and Political Activities: A Guide for 501(c)(3) Organizations

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### ACQUIRING TAX-EXEMPT STATUS

#### INTRODUCTION

Non-profit organizations are not subject to federal income taxes. Therefore, non-profits must take care in qualifying for, and maintaining, this status.

#### WHO CAN ACQUIRE TAX-EXEMPT STATUS?

Section 501 of the Internal Revenue Code (IRC) governs this area. Under Section 501(c)(3) of the IRC, non-profits may not engage in lobbying or political activities. Under this section, organizations operated exclusively for religious, charitable, or educational purposes are eligible for tax-exempt status **ONLY** if:

- no substantial portion of their activities involve attempts to influence legislation; and
- they do not participate in any way in the political campaign of any candidate for public office.

Organizations wishing to obtain tax-exempt status must file IRS Form 1023. Although places of worship are automatically recognized as tax-exempt, other religious organizations primarily concerned with the study and advancement of religion are not automatically exempt and must submit the IRS form to gain tax-exempt status. Regardless of whether a religious organization has automatic tax-exempt status, it may be beneficial to file Form 1023 to gain formal recognition of this status. This can help assure potential donors that

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the organization is tax-exempt, which will allow any donations made to the organization to be tax-deductible.

## CONSEQUENCES OF LOSING TAX-EXEMPT STATUS

Once an organization obtains tax-exempt status, it should be careful to maintain it. Loss of tax-exempt status can have **any or all** of the following consequences:

- The organization may become subject to federal income tax.
- Donors may become unable to deduct contributions to the organization, including any dues and fees associated with membership.
- The organization may lose any sales and property tax exemptions it had enjoyed.
- For religious organizations, clergy and religious leaders may lose their housing allowance exclusion.

## LIMITATIONS ON LOBBYING

Tax-exempt organizations may engage in some lobbying activity, but will lose their tax-exempt status if lobbying makes up a substantial portion of their activities.

### *WHAT CONSTITUTES LOBBYING?*

Activities qualify as lobbying when they attempt to influence legislation at the federal, state or local level. Activities influencing actions undertaken by executive (governors and mayors, for example), judicial, or administrative bodies (zoning board, for example), however, are not considered lobbying.

Examples of forbidden activities include:

- Contacting, or urging the public to contact, members of the legislature for the purpose of supporting or opposing legislation;
- Conducting mail, e-mail, telephone campaigns supporting or opposing legislation;
- Displaying literature directed at a particular legislative issue in the non-profit's building.

## LIMITATIONS ON POLITICAL ACTIVITIES

Organizations obtaining tax-exempt status under Section 501(c)(3) are **absolutely prohibited** from participating in political

campaigns on behalf of, or in opposition to, candidates for public office. Any amount of political campaigning can cause an

organization to lose its tax-exempt status. It is important for organizations to realize that participation in a political campaign covers a wide array of activities. Prohibited activities include the following:

- Monetary contributions to a political campaign;
- Oral or written statements, made by or on behalf of the organization, which express support for or opposition to a political candidate;
- Allowing a candidate to use the organization's facilities, if other candidates for the same office are not given an equal opportunity to use the facilities;
- Distribution of materials expressing support for or opposition to a political candidate.

Organizations should be aware that they are responsible for the content of any materials distributed *or* presented by the organization, regardless of the source of the material. Therefore, it is important for organizations to review materials they receive from outside sources and independently evaluate whether the content is appropriate for distribution by the organization.

Organizations that participate in political campaigns will find themselves subject to penalties, including the loss of tax-exempt status.

### *PERMISSIBLE ACTIVITIES*

Non-profit organizations may wish to participate in activities which, while not directly involving political campaigns, address related issues, such as voting. Some political activities, as long as they are

conducted in a nonpartisan manner, are permissible.

### **Educational Activities**

Voter education has become increasingly important, and many non-profit organizations may wish to conduct activities intended to educate the voting public. As long as such activities are conducted in a nonpartisan manner, organizations will not jeopardize their tax-exempt status by sponsoring or participating in these activities. Examples of permissible activities include:

- Educating individuals about the importance of voting and encouraging them to vote;
- Production and/or distribution of voter guides;
- Conducting public forums in which all candidates for a particular office are given the opportunity to speak to the public.

### *Voter Encouragement*

Non-profit organizations may participate in activities designed to encourage individuals to vote, such as voter registration or get-out-the-vote drives. These activities are permissible at any time. The main consideration that non-profit organizations should keep in mind is that these activities must be conducted in a nonpartisan manner. Providing information about an upcoming election or the benefits of participating in the political system is permissible. However, organizations may not express their position on specific candidates or parties and cannot encourage voters to vote a particular way.

### *Use of Voter Guides*

Voter guides are intended to educate voters about candidates' stances on a wide array of issues. In order to protect their tax-exempt status, organizations compiling these guides must be careful to ensure they are unbiased. Organizations can ensure that guides are nonpartisan by ensuring that the following criteria are satisfied:

- All candidates for a particular office are represented in the guide;
- The guide focuses on a wide range of issues, not only those that are important to the organization and would therefore suggest bias;
- The organization's position on any issue is not set out in the guide.

Voter guides may only be produced and distributed to inform voters, not to express support for or opposition to a particular candidate. Because voter guides necessarily involve presenting candidates' positions on various issues close to an upcoming election, the risk of including possibly biased information is high. Non-profit organizations should consider the following questions when determining whether a guide has the effect of favoring one candidate over another:

- Whether the questions asked of the candidates are clear and unbiased;
- Whether all candidates were given a reasonable opportunity to respond to the questions and explain their answers;
- Whether the answers provided by the candidates have been edited before their inclusion in the guide

Organizations must be aware that they will be held responsible for material in guides they either produce *or* distribute.

Organizations wishing to distribute voter guides created by an outside party should be careful to review the guide to ensure that it does not reflect bias.

### *Public Forums*

Political candidates often seek opportunities to speak with the public preceding an election. Non-profit organizations may host political forums as long as they are not conducted in a manner that expresses or suggests bias for a particular candidate. In order to avoid bias, organizations must extend invitations to participate to all candidates seeking the same office. Organizations should also consider the following in order to avoid biased forums:

- Whether all candidates are given an equal opportunity to present their views;
- Whether the topics cover a broad number of issues;
- Whether questions to be used in the forum are prepared by an independent, nonpartisan panel;
- Whether a moderator comments on the answers given by the candidates;
- Whether the candidates are asked to agree or disagree with particular positions or agendas of the organization.

Organizations must independently evaluate whether a proposed format for a forum is biased. They should be careful not to rely on the assurances of political candidates that a particular format is permissible.

Candidates are primarily concerned with complying with election laws and regulations, and may not be aware of the requirements that non-profit organizations must satisfy to maintain tax-exempt status.

### *Inviting Candidates to Speak Individually*

Organizations may also invite individual candidates to speak at an organization's events, if certain conditions are met. The main concern with inviting candidates to speak at an organization's events is that the invitation may be viewed as an endorsement of the candidate. To avoid this, organizations must ensure that their involvement with the candidate remains nonpartisan and that no political fundraising occurs at the event.

Although they do not all need to be invited to any particular event, all candidates for a particular office must be given an equal opportunity to speak at an organization event.

Organizations also cannot indicate support for or opposition to any candidate. This can best be accomplished by the organization expressly stating that it is not supporting or opposing the candidate by extending an invitation to speak. Although non-profit organizations are not required to do so, making such a statement can help the organization avoid potential confusion about its involvement with the candidate.

### **Individual Activity of Organization Leaders**

Limitations on lobbying and political activities restrict the activities of tax-exempt organizations, but not their individual members. The line between individual activity and organizational activity can be particularly blurry for organization leaders.

To ensure that their individual actions are not attributed to their organizations, leaders must be careful to maintain clear separation between their individual and organizational lives. Leaders may not make partisan statements in an official capacity, which includes official organizational functions as well as organization publications. When speaking outside their official capacity, leaders are encouraged to clearly indicate that their statements are personal and do not represent the views of the organization.

### **Inviting Candidates to Speak in Their Capacity as Individuals**

Organizations may wish to invite an individual to speak to the organization for a wide variety of reasons. The fact that the individual is also running for public office does not restrict the organization's ability to do so. When inviting a candidate to speak in his individual capacity, an organization must ensure that:

- The individual speaks only in a non-candidate capacity. The candidate cannot be permitted to discuss his political agenda;
- No mention is made of the individual's candidacy for office;
- No campaign activity occurs at the event.

### **Public Policy Issues**

Although organizations cannot take official positions on political candidates, they are permitted to take positions on issues of public policy. Positions on public policy issues are permissible even if the issue divides candidates in a particular election. An organization's actions and statements regarding a particular issue are not

permissible, however, if they can be interpreted as a message of support for or

opposition to a particular candidate.

## **ADDITIONAL CONCERNS**

### *CONCERNS REGARDING WEBSITES*

Many 501(c)(3) organizations now have websites which are used as an additional means of distributing information. Organizations should be aware that information posted on a website is treated the same way as information distributed by other methods. Therefore, organizations should be careful to consider the implications of posting information that could be construed as lobbying or participation in a political campaign.

Organizations must also exercise caution in establishing links to outside websites on an organization website. Although linked information is not directly displayed on the organization's website, the organization is responsible for the consequences of establishing a link to outside information. Organizations should be careful to monitor any information linked from the organization's website to ensure that this information has not changed in a way that may jeopardize the organization's tax-exempt status.

## ADDITIONAL RESOURCES

Internal Revenue Service

<http://www.irs.gov>

Internal Revenue Service: Election Year Activities and the Prohibition on Political Campaign Intervention for Section 501(c)(3) Organizations

<http://www.irs.gov/newsroom/article/0,,id=154712,00.html>

Tax Guide for Churches and Religious Organizations

<http://www.irs.gov/charities/churches/index.html>

Internal Revenue Service: Political and Lobbying Activities

<http://www.irs.gov/charities/charitable/article/0,,id=120703,00.html>

Internal Revenue Code: Exemption from Tax on Corporations, Certain Trusts, etc. 26 U.S.C. § 501

Internal Revenue Code: Charitable, etc., Contributions and Gifts

26 U.S.C. § 170

The Center for Non-profits: Non-Profit Organizations CAN Lobby

<http://www.njnonprofits.org/NPsCanLobby.html>