

MAKING THE MONEY WORK

Adapted from the Sierra Club document

Nonprofit organizations rely on contributions from members, donors, and foundations to support their work. These contributions can take four separate forms and must be strictly segregated to prevent violations of state and federal tax law.

1) Tax-deductible

2) Non tax-deductible



3) Voter Education

4) Political Action Committee

Is Your Group "C3" or "C4"?

Most not-for-profit groups that people encounter are considered 501(c)(3) - tax exempt, non-profit.

Sierra Club is different in that we are 501(c)(4) - a non-tax exempt, non-profit.

501(c)(3) and (c)(4) both refer to the sections of the Internal Revenue Service tax code that defines charitable organizations and activities which can be supported with tax or non tax -deductible contributions.

How your group is classified directly impacts your work and fundraising abilities.

1) Tax-Deductible

AKA: "soft money," "501(c)(3) money," "(c)(3) money," "C3 dollars," "charitable dollars"

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1) Using Tax-Deductible "C3" Funds

A) *Administrative Advocacy/Conservation Action:* Conservation action activities are defined as efforts to implement existing laws to protect the natural and human environment for the benefit of the general public. This includes the following activities: encouraging the implementation and enforcement of existing laws, working with government agencies charged with implementing environmental laws (i.e. members of the executive branch of the government), and any activity that does not advocate the enactment of pending (introduced) legislation or voter initiatives. This is considered to be "administrative lobbying" or "advocacy" and is not considered to be legislative lobbying. The expenses for these visits, including materials, travel, etc., can be paid for with charitable dollars.

Examples of conservation action campaigns include:

- Protection of human health from unclean air and water and from exposure to toxic or hazardous chemicals in our communities;
- The conservation of open space, fish and wildlife, and public lands for recreational use and wildlife habitat;
- Efforts designed to reduce the consumption of nonrenewable resources, such as oil and gas, as well as to increase the reuse and recycling of materials;
- Encouraging the development of urban and suburban sustainable models to reduce resource use, consumption of valuable natural and agricultural lands, and the use of automobiles; and
- Relief of the disproportionate burden on poor and minority communities to accept the siting of polluting industries and waste disposal sites within their boundaries.

Examples of more specific conservation outreach' activities include:

- Careful planning of non-legislative conservation campaigns to best utilize their limited resources. Some examples are planning, research, and reports. As the issues addressed become more complicated, an effective tactic is for advocates to undertake cost-effective measures by researching the issues to be addressed and to report the results to the news media, administrative decision-makers, and to the public at large.

501(c)(3) organizations are exempt from federal income tax; they engage in educational, religious, scientific, or other charitable activities (environmental); and contributions or grants by individuals, foundations, or corporations to the organizations are deductible for federal income tax purposes under section 170(b)(1)(A)(vi) of the Code.

REMEMBER: Avoid meetings with elected officials where the topic either does include or might include legislation or legislative proposals. It is okay to speak with legislators about implementing existing laws or about issues of broad community concern. Conversations about legislation or legislative proposals a legislative lobbying - which is not a tax-deductible activity.

REMEMBER: Materials that are originally created using 501(c)(3) funds cannot subsequently be used for direct lobbying or other non-501(c)(3) activities, unless the original material was distributed to a wide market and made available to the general public. The original intent must have been for public education.

- Participating in the administrative decision-making process, staff and volunteers can become directly involved in governmental decision-making. Such direct involvement ensures that administrative decision-makers will be forced to consider an environmental perspective in their process. Expert technical assistance is sometimes needed to address complex topics.
- Direct administrative agency lobbying includes one-on-one meetings with administrative decision-makers to advocate the implementation of environmental and public health laws. It can also include addressing the concerns of administrative decision-makers and urging them to meet the challenges outside of the formal agency processes.
- Citizen training, organizing, and mobilization is educating interested citizens about environmental issues and how to most effectively become involved in administrative decision-making; and alerting the public to opportunities to become involved in non-legislative decision-making processes.
- Materials that ask individual decision-makers to express an influential opinion on an administrative issue (as long as they are not voting on the issue or stating an opinion as a decision-making body)

B) Public Education: Educating members of the media or the general public about nature, environmental problems, and the need to protect the human and natural environment. Educational is defined as a “full and fair exposition of the facts.” Public education can include education about the impacts of passing new legislation, as long as this education does not include certain prohibited components that constitute lobbying under IRS rules.

C) Publications Or Portions Of Publication: Materials which serve to educate the public, but which do not advocate support for a specific legislative proposal. If a publication contains any electioneering activities, the entire publication does not qualify for 501(c)(3) funding.

Articles Appropriate for Tax-Deductible Funding:

- Wilderness/wildlife/conservation education, such as informational articles on plant life and wildlife, geologic phenomena, recycling, energy use, and transportation issues.
- Federal agency news such as timber harvest, proposed development on or near wildlife refuges or National Parks, and water rights issues.
- Photographs or artwork which convey an educational or otherwise charitable message.
- Articles that teach skills to readers. Reviews of books and other publications of interest to the general public.
- Leadership lists which provide a resource to the reader, including the names, addresses, and phone numbers of an organization’s leaders..
- Reports of past and future service, educational conferences, workshops, etc. If meetings/workshops are open to public, announce it in the article.

- Articles that encourage readers to contact an administrative body such as a water district, zoning board, or agency regarding existing environmental laws.
- Informational articles on legislative matters, which do not contain lobbying elements.

D) Research: Includes the investigation and preparation of facts for objective analysis and study, such as timber harvest data and geological analysis.

E) Public Interest Litigation: Defined as researching, initiating and prosecuting public, interest lawsuits to enforce the existing spectrum of environmental laws. Enforcement actions brought by an organization at the state and local level serve to protect the quality of life in local communities, air and water, state and local parks and forests, and fisheries and wildlife resources. They ensure that public entities honestly and openly consider the environmental consequences of their decisions. These lawsuits also force public agencies and private companies to properly store, handle and dispose of hazardous and toxic materials. The lawsuits also ensure that public utilities, when formulating their energy policies, use the most rigorous scientific and economic analyses and thereby fully consider the environmental costs of proposed choices. Charitable funds can be used to pay fees for legal services provided by outside lawyers who represent the an organization in litigation.

F) Skills Training, Workshops, Conferences, Public Events, Meetings, And Seminars: Includes issue education and training in leadership skills, conservation skills, project planning and evaluation, and how to conduct public campaigns where training is not for or against a specific legislative proposal.

When planning the event, be careful on how you structure the meeting if it will contain both 501(c)(3) and 501(c)(4) aspects. Set the agenda to have a clear break between the 501(c)(3) and 501(c)(4) sections. Don't try a tag team approach - this is when the host of an event educates the public about a legislative matter avoiding a legislative call to action, and then later arranges for a speaker or member of the audience to urge the audience to contact their legislator. This tactic is considered lobbying by the IRS.

G) Grants: To charitable 501(c)(3) organizations whose work furthers their mission

H) Social Welfare: Activities which promote social welfare and further the common good.

I) Purchase Assistance And Preservation Of Land: This is usually done to maintain trails or other amenities for wilderness areas and parks.

J) Media: The portion of press conferences, Public Service Announcements, and other communication vehicles that are educational and do not include a call to action are eligible for tax-deductible fund reimbursement.

Non Tax-Deductible

AKA: "hard dollars,"
"501(c)(4) money," "(c)(4)
dollars," "C4," "lobbying"
funds

A 501(c)(4) organization is **not** limited in the amount of lobbying it may conduct and can freely advocate a particular position as long as the issues are related to the primary purpose of the organization.

501(c)(4) organizations may also engage in political campaign activities, through an affiliated Political Action Committee fund, although this cannot be the primary purpose of the organization. Foundations do not give contributions for this type of work.

"Hard dollars" can be spent for both tax-deductible and non tax-deductible purposes.

2) Using Non Tax-Deductible "C4" Funds

- A) Lobbying:** This is defined as any attempt to influence legislation through:
- a) **Direct Lobbying** - direct communications with any member or staff of a legislative body, or
 - b) **Indirect Lobbying** - efforts to educate the general public about a legislative issue, expressing a position on that issue, & urging them to contact the member or staff of a legislative body.

"Legislation" is deemed as action by the U.S. Congress, any state legislature, any local council or similar legislative body, or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. Actions to influence the introduction of legislation, as well as support for or opposition to any specific legislative proposal even when the bill has not yet been introduced, also constitute lobbying. Legislation also includes providing advice on administrative treaties or judicial appointments.

B) Training: Trainings which include activist training in lobbying or political skills, encourage specific legislative action, or teach general electoral skills are not eligible for tax-deductible funding.

C) Membership Drives And Administrative Costs Of Non-501(C)(3)

Entities: Includes organizational meetings or other costs of running or maintaining the organization; and pamphlets, advertising, or newsletter articles whose primary purpose is new member solicitation.

D) Office Equipment: Purchases and repairs must be paid for with 501(c)(4) funds because equipment is used to conduct both tax-deductible and non tax-deductible activities.

Direct Lobbying vs. Indirect Lobbying

Direct lobbying is an attempt to influence legislation by communicating with members or staff of a legislative body (Congress, a state legislature, or local council) or a government employee who participates in the legislative process to encourage them to introduce, support, oppose, repeal, or otherwise influence legislation. The principal purpose of the communication must be to influence legislation. Telephone calls, letters, and office visits to a member of Congress, testimony at a public hearing (unless in response to a written request by a legislative committee), or publication of materials to encourage passage of a bill are lobbying activities *if they contain all three of the following elements:*

- 1) reference to specific legislation;
- 2) reflection of a view on the legislation; AND
- 3) are addressed or given to a legislator, an employee of a legislative body, or other government official participating in the formulation of legislation.

These activities are considered tax-deductible if only two of the above elements are included.

Indirect, or Grassroots lobbying is communicating with the general public, directly or through the organization's members, to encourage them to take action with respect to specific legislation. For example, sending letters to a Senator's constituents requesting that they write to the Senator to oppose a piece of legislation is indirect lobbying if the letters contain **all three** of the following elements:

- 1) reference to specific legislation;
- 2) reflection of a view on the legislation; AND
- 3) a "call to action" such as:
 - encouraging recipients to contact legislators;
 - providing a legislator's name, address, and phone number;
 - providing a petition tear-off postcard to send to a legislator;; OR
 - identifying a legislator as being opposed to a particular view, undecided, the recipient's legislator, or a member of the committee or subcommittee that will consider the legislation.

REMEMBER Identifying the major sponsor of legislation is NOT a call to action.

501(c)(3) Organizations and Lobbying

501(c)(3) organizations are permitted to engage in direct and indirect lobbying. There are two ways to roughly determine the threshold of permissible lobbying:

1) The Expenditure Test

A 501(c)(3) organization may elect to spend not more than a set percentage of its budget on lobbying activities by filing with the IRS its intention to stay within specific expenditure guidelines set out below. Election is made by filing IRS Form 5768, "Election/Revocation of Election by an Eligible Section 501(c)(3) Organization to Make Expenditures to Influence Legislation," with the IRS. The objective guidelines under the Expenditure Test establish an exact percentage of an organizations total annual budget that may be devoted to lobbying activities

In addition to these overall limits, no more than 25% of total lobbying expenditures may be spend on grassroots (indirect) lobbying. Thus, if an organization's annual exempt-purpose expenditures total \$100,000, 20% (\$20,000) may be spend on lobbying and only 25% of that \$20,000 (\$5,000) may be spent on grassroots lobbying.

2) The Substantial Part Test

The basic premise of this test is that an insubstantial percentage of a 501(c)(3) organization's budget is spent on lobbying, both direct and indirect. The Substantial Part Test is generally advisable for organizations planning to conduct very limited lobbying programs.

Regardless of which method your organization selects, consultation with a lawyer is advisable.

Expenditure Test Guidelines

Total Annual Exempt Purpose Expenditures (EPEs)	Percent That May Be Spend on Lobbying
\$500,000 or less	20%
\$500,001 - \$1,000,000	\$100,000 + 15% of EPEs over \$500,000
\$1,000,001 - \$1,500,000	\$175,000 + 10% of EPEs over \$1,000,000
\$1,500,001 and over	\$225,000 + 5% of EPEs over \$1,500,000

NOTE: Total lobbying expenditures may not exceed \$1,000,000 per year

**Decision Whether to Elect:
The Expenditure Test vs. the Substantial Part Test**

Expenditure Test

- Generally allows an organization to spend more of its budget on lobbying - up to 20%; grassroots lobbying limited to 25% of total lobbying
- Objective test with definite expenditure guidelines; unpaid volunteer activity not counted against limit
- Direct and grassroots lobbying expenditures must be separately reported on IRS Form 990; part of the Lobbying Disclosure Act.
- Penalty for exceeding allowable lobbying expenditures is usually an excise tax, but the IRS may also revoke tax-exempt status

Substantial Part Test

- Lobbying activity is restricted to an insubstantial percentage of the annual activities; no separate limit for grassroots lobbying.
- Subjective test with no clear definition of lobbying vs. educational activity; IRS considers the overall character and emphasis of the lobbying activities; may count unpaid volunteer activity in limit.
- Direct and grassroots lobbying are not differentiated and fall under one limit; total figures must be maintained and reported.
- Penalty is revocation of tax-exempt status equal to 5% and imposition of an excise tax of the amount of the lobbying expenditure



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