

## Rules on Lobbying Activities for Churches

### **Limitations on Lobbying under Federal Tax Law**

Churches, which qualify for federal tax exemption under Section 501(c)(3) of the Internal Revenue Code, must satisfy certain organizational and operational requirements to maintain that status. One of these requirements provides that “**no substantial part** of the activities” of the church may constitute “carrying on propaganda, or otherwise attempting, to influence legislation.” So, churches can certainly lobby. Unfortunately, there is remarkably little guidance from the IRS about what constitutes a “substantial part of the activities” of a church. This places churches in a difficult bind: they are permitted to engage in some lobbying, but too much may jeopardize their exempt status, and there is no clear test for determining how much lobbying is too much.

This document explains the “no substantial part” test under Section 501(c)(3) so that, as you carry out advocacy work for the church, you are aware of the lobbying rules in order to protect the tax-exempt status of the church.

### **No Substantial Part Test**

In applying the “no substantial part” test an organization must: (1) determine which of its activities constitute “lobbying” and then (2) evaluate whether those activities may be considered “substantial.”

#### **1. What Is Lobbying?**

Federal tax regulations define lobbying as any attempt to influence legislation. “Legislation” is defined as action by Congress, any State legislature, any local council or similar governing body, or the public in a referendum, initiative, constitutional amendment, or similar procedure. Legislation does not include attempts to influence executive branch of government or administrative agencies with respect to regulatory matters. For example, this means that encouraging the President to sign an executive order to protect the environment would not be lobbying, but encouraging the President to veto legislation harming the environment would be lobbying.

Under these rules, lobbying would include contacting members of a legislative body to propose, support, or oppose legislation (called “direct lobbying”) or urging the public to do contact members of a legislative body to propose, support or oppose legislation (“grassroots lobbying”).

#### **2. What Isn’t Lobbying?**

There are some commonly held exceptions to lobbying:

**(a) Nonpartisan Study, Analysis, and Research**

Lobbying does not include the conduct of nonpartisan analysis, study or research, as long as the dissemination of such analysis does not advocate the adoption of legislation to implement its findings. The analysis may conclude that legislation is appropriate to achieve a given objective if it contains a “sufficiently full and fair exposition of the pertinent facts to enable the public or an individual to form an independent opinion or conclusion.” Nonpartisan analysis may not be disseminated to those interested in only one side of a particular issue.

**(b) Examinations of Broad Social, Economic, and Similar Problems**

Lobbying does not include examinations of broad social, economic, and similar problems. However, communications on general topics which are also the subject of specific legislation should not refer to such legislation or encourage the recipients to take action.

**(c) Requests for Technical Advice or Assistance**

A church can provide technical advice on proposed legislation to a governmental body or committee in response to a written request from that governmental body or committee. This exception does not apply to advice provided at the request of an individual legislator.

**(d) Self-Defense Communications**

Direct lobbying with respect to proposed legislation that might affect the church’s existence, powers and duties, tax-exempt status, or the deductibility of contributions is an exception to the lobbying rules. Within these specific areas, an organization may communicate with legislators or their staff and may initiate legislation. However, this exception does not cover proposed legislation involving public policy issues that may be of importance to the church in carrying out their future charitable programs. For example, lobbying against legislation that would reduce federal funding for a particular program of interest to a church would not qualify under the self-defense exception; lobbying against legislation to eliminate the charitable contribution deduction would qualify.

**3. How Much Lobbying is Substantial?**

There is no guidance as to when lobbying activities constitute a substantial part of a church’s activities. It is simply not clear whether this determination is based on the charity’s activities, or its expenditures, or both. A few cases provide some limited guidance. In *Seasongood v. Commissioner*, 227 F.2d 907 (6th Cir. 1955), the court looked only at lobbying expenditures as a percentage of total expenditures and held that five percent of the organization’s budget was not substantial. Subsequent cases have rejected a percentage test or have combined it with an overall evaluation of the significance of the charity’s lobbying activities. The IRS takes the position that charities must consider lobbying activities undertaken by volunteers on their behalf in determining the substantiality of their lobbying activities. Without any bright-line test in this area, charities subject to the “no substantial part” test must exercise caution as to the size and scope of their lobbying activities.

## **Lobbying FAQ's**

It is important to understand that when a church decides to advocate for an issue important to the congregation, such as creating housing for homeless folks, it can do so by conducting many different activities advocating for such housing. There are a whole variety of activities that can range from education to lobbying. As your congregation begins to plan advocacy activities, it is important to understand what activities may constitute lobbying so that the tax exemption of the church remains protected.

### ***Can a church conduct lobbying activities?***

Yes, you can do some lobbying on issues of importance to the church. The difficulty under federal tax law is determining how much you can do without jeopardizing the church's tax exempt status.

### ***What is lobbying?***

Lobbying is defined as any attempt to influence *legislation*. "Legislation" is defined as action by Congress, a State legislature, any local council or similar governing body (such as a city or county council). Legislation also includes a vote by the public in a referendum, ballot initiative, or similar procedure.

There are two kinds of lobbying: direct lobbying and grassroots lobbying. Direct lobbying includes any communications with members of a legislative body, such as state legislators or city council members, or their staff which propose, support, or oppose proposed legislation. Grassroots lobbying is urging the public to do contact members of a legislative body to propose, support or oppose legislation.

### ***How much lobbying can we do?***

Under federal tax law, lobbying activities cannot constitute a "substantial part" of the church's activities. Unfortunately, we have no real guidance as to when lobbying activities constitute a substantial part of a church's activities. It is simply not clear whether this determination is based on the charity's activities, or its expenditures, or both. It is likely that lobbying activities carried out by volunteers will be included in the determination of the substantiality of a church's lobbying activities. Without any bright-line test, it is clear that we must exercise caution with regard to the size and scope of a congregation's lobbying activities.

### ***Are there exceptions to lobbying?***

Yes, and these can be quite helpful as part of a strategy in advocating on an issue. Educational activities are not lobbying. For example, a church can educate members of the public, including legislators, city council members or other people serving on a legislative body, about issues of homelessness and the need for more housing. That is not lobbying as long as it does not refer to specific proposed legislation.

There are several other exceptions, including:

Nonpartisan Study, Analysis, and Research: This is educational material which contains a full and fair discussion of an issue, in which research is presented, all sides of an issue are discussed and a conclusion is drawn based on that research and discussion, such that a reader could reach an independent opinion or conclusion. This material can refer to proposed legislation, as long as it does so as part of a full and fair discussion.

Examinations of Broad Social, Economic, and Similar Problems: This is also educational material on an issue. However, please note that such communications on general topics which are also the subject of specific legislation should not refer to such legislation or encourage people to take action.

Communications with Executive Branch or Administrative Agencies. The definition of legislation does not include attempts to influence executive branch of government or administrative agencies with respect to regulatory matters. For example, encouraging the State Department of the Environment to adopt new regulations to protect the environment would not be lobbying, but encouraging the Governor to veto a bill passed by the Legislature harming the environment would be lobbying.

Requests for Technical Advice or Assistance and Self Defense Communications are two other exceptions that are described on page 1 of this document.