

TAX LAW LOBBYING RULES

[A Summary by the Packard Foundation]

Under the federal tax rules applicable to the Packard Foundation, an activity is lobbying only if it involves either a “direct lobbying communication” or “grassroots lobbying communication.” Both of these terms have quite narrow, but rather technical definitions.

A. Direct Lobbying:

Direct lobbying is a communication with a legislator (federal, state, local, or foreign) or legislative staff member which:

- (1) refers to specific legislation; and
- (2) takes a position on that legislation.

Referenda. Communications with the general public that both refer to and take a position on referenda or ballot initiatives also count as direct lobbying.

Executive branch officials. Most communications with executive branch officials are not lobbying for purposes of the tax rules. A communication with an executive branch official is direct lobbying only if:

- (1) the communication refers to and takes a position on legislation (not executive branch enforcement or interpretation action); and
- (2) its *primary purpose* is influencing legislation.

Legislation. For the definition of direct lobbying and grassroots lobbying “legislation” includes:

- (1) specific legislative proposals even before they have been introduced;
- (2) treaties requiring Senate ratification from the time the President begins negotiating the U.S. position with the other treaty parties;
- (3) Senate confirmation of administration appointees, for example federal judges and cabinet officials; and
- (4) resolutions, even if they have no binding legal effect.

Examples of direct lobbying include:

- Meeting with legislators or their staff to discuss specific legislation;
- Drafting or negotiating the terms of a bill;
- Discussing the potential contents of a sense-of-the-Senate resolution with legislators or staff;
- Meeting with officials of an administrative agency to influence testimony on a legislative proposal;
- Providing comments to legislators on confirmation of an administration appointee, such as the Secretary of State, unless the comments qualify for the technical advice exception described below; and
- Urging a Presidential or gubernatorial veto.

B. Grassroots Lobbying:

Grassroots lobbying is defined as a communication with the public which:

- (1) refers to specific legislation; and
- (2) takes a position on that legislation; and
- (3) Includes a “call to action.”

A call to action includes the following:

- (1) urging a recipient to contact a legislator or staffer (e.g. “Tell Congress what you think,” “Call your Representative.”);
- (2) providing the address or telephone number of a legislator;
- (3) providing a petition, tear-off postcard, etc. addressed to a legislator; or
- (4) identifying a legislator as opposing the legislation, as being undecided, as being a member of the committee considering the legislation, or as being the recipient’s representative. Identifying the sponsor of the legislation does **not** count as a call to action.

The one circumstance under which communications with the general public may be treated as lobbying communications even if they do not contain a call to action involves paid mass media advertisements on highly publicized legislation. The tax regulations establish a presumption that such paid communications are lobbying if

- (1) they occur within two weeks before a legislative vote;
- (2) they reflect a view on the general subject of the legislation; and
- (3) they either refer to the highly publicized legislation or encourage the public to communicate with legislators on the general subject of the legislation.

Legislation is “highly publicized” if the legislation receives frequent coverage on television and radio, and in general circulation newspapers, during the two weeks preceding the vote by the legislative body or committee, and (2) the pendency of the legislation or the legislation’s general terms, purpose, or effect are known to a significant segment of the general public (as opposed to the particular interest groups directly affected) in the area in which the paid mass media advertisement appears.

Examples of grassroots lobbying include:

- Sending an action alert urging recipients to contact their legislators about a pending bill.
- Attending a coalition meeting to help plan a grassroots lobbying communication addressing pending legislation.

C. Exceptions to the Definition of Lobbying:

There are four significant exceptions to the definition of lobbying:

- (1) **Nonpartisan analysis and research**. Making available materials that present a sufficiently full and fair exposition of public policy issues to allow the recipient to form his or her own conclusions does not constitute lobbying, even if the materials both refer to and take a position on a specific legislative proposal. In general, this exception is intended to include substantial analyses of public policy issues. To qualify for this exception, if the material is distributed to the public, rather than to legislators, it must not explicitly encourage recipients to contact legislators (although it may identify legislators as holding a particular position on the

legislation). This exception does not include material distributed only to persons interested on one side of the issue addressed.

- (2) **Self-defense**. Communications with government officials involved in the legislative process do not constitute lobbying for tax purposes if they concern legislation that could affect an organization's existence, powers, duties, tax-exempt status, or right to receive tax-deductible contributions.
- (3) **Technical assistance**. Oral or written responses to written requests for technical assistance from a legislative committee, subcommittee, or other governmental body likewise do not constitute lobbying for tax purposes. In order to qualify for this exception, the written request must be from the committee or subcommittee, not from an individual member asking on his own behalf.
- (4) **Discussions of broad social issues**. Communications addressing broad social, economic, and similar issues without referring to specific legislation are excluded from the tax law definition of lobbying, even if the issues discussed are the subject of pending legislation.