



## Tax Exemption Restrictions for TU Chapters & Councils

TU's 501(c)(3) status, or charitable status, is one of TU's most important assets. Among other things, this status allows donors to deduct their charitable contributions to your chapter or council, to the extent allowed by law. 501(c)(3) status is a status granted to charitable groups by the IRS. It is separate from being a not-for-profit corporation. Chapters and councils of TU come under the umbrella of TU national's 501(c)(3) status. This is one of the reasons chapters and councils report their financial status to national each year and use the same fiscal year as national. In order to maintain this status, you should be sure to report any change in your status (such as incorporating) and a new Employer Identification Number to [volunteer operations](#) staff promptly.

### **There are four critical requirements to maintaining 501(c)(3) status:**

#### **1. Chapters or councils may not endorse or oppose any candidate for public office:**

TU cannot endorse or oppose any candidates for elective office; nor can TU use its funds or any other of its resources (e.g., phones, computers, offices) to support or oppose candidates for elected political office. The prohibition is found in the federal tax code under provisions that regulate tax-exempt charitable organizations. It applies to the national organization, councils, chapters, and to staff and volunteers acting on behalf of or in the name of TU. While there is a variety of ways 501(c)(3) organizations can play neutral, non-partisan roles in the electoral process, failure to comply with these narrowly defined restraints could endanger TU's tax-exempt status, and therefore the very financial foundation of our organization. Trout Unlimited's exempt status is a hugely important asset that the Board of Trustees, staff, and volunteers are duty-bound to safeguard at all cost. Because the penalties are so serious, we want to act with an abundance of caution when dealing with candidates for office by detailing prohibited activity and strongly encouraging you to consult with TU staff before considering even electoral activity authorized for tax-exempt organizations.

In addition to complying with the prohibition against use of TU funds and resources for political campaign contributions, all TU volunteer leaders and staff must refrain from making any statement that has the effect of endorsing or opposing a candidate for elected political office in TU's name. In addition to the obvious examples ("TU endorses Candidate A" or "TU opposes Candidate B"), please bear in mind that anything you say publicly in your capacity as a TU leader or staff regarding how you or someone else should or even might vote for or against a candidate for elected political office ("I, the President of a chapter of TU, voted Egalitarian in the last elections, but I'm voting for the Contrarian Party this time" or "You may have voted Contrarian last time, but as President of a TU chapter I think you should vote Green this time") could be construed as a TU endorsement or statement in opposition. Even if you are careful to say that you are voicing a personal opinion and not speaking on behalf of TU, in the heat of a political campaign season, any such public statement of support or opposition may be construed as a statement by or on behalf of TU.

The above obviously places some limits on the free speech of TU volunteer leaders and staff, but it does not affect such private activity as making campaign contributions of personal funds or non-public statements of support or opposition to candidates for elected political office, or (obviously) casting your vote. Nor does it prohibit you in your private, non-TU capacity, from participating in election-related canvassing or other activities or hosting or attending fund-raising events for candidates for elected office, but you must be careful not to use any TU mailing lists or other resources in connection with any such activity or event and must (obviously) observe the other precautions and prohibitions described in this section of the Leadership Manual.

TU will continue to engage in advocacy efforts in pursuit of its mission, and doing so will at times will include communication regarding legislators' positions on issues on which TU has long been working. At

all times, but particularly during campaign season, such communication must be handled in a way that is consistent with IRS rules for 501(c)(3) nonprofits. There are numerous ways to engage legislators and candidates that, if done correctly, are well within the IRS rules, such as candidate forums, questionnaires, and issue-oriented presentations to candidates and their staffs as long as TU representatives treat each candidate with equal consideration, do not pass judgment on their positions and are in accord with TU's mission. Please consider engaging in these activities in order to advance TU's mission, but err on the side of caution, and contact [volunteer operations staff](#) before engaging in any kind of activity that could be construed as attempting to influence an election.

## **2. Chapters or councils must strictly account for the portion of its activities devoted to lobbying:**

In the case of either direct or grassroots lobbying, IRS rules require that a tax-exempt organization not devote a substantial part of its expenditures to lobbying. Chapters should restrict lobbying expenditures to no more than five percent of their annual budgets and refrain from any lobbying altogether unless there are well established accounting procedures for tracking expenditures and maintaining them at or below five percent.

The IRS defines "lobbying" very narrowly. Lobbying is the act of asking (such as through a letter or direct communication) an elected official or their staff to take action on a piece of legislation, such as voting for, against, or cosponsoring a bill. The official definition of "legislation" is reprinted below:

Legislation includes 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.

Controls are in place at the national level and applied to expenditures for activities such as congressional testimony, the Grassroots Activist Network, and direct mail appeals. Chapters and councils generally do not have such controls in place, and thus must exercise cautious restraint when it comes to lobbying. Additionally, no council or chapter should employ or retain the services of a lobbyist unless it files a 990 return with the IRS and is able to demonstrate in the filed return that its expenditures, in connection with the lobbyist, as well as any other lobbying expenditures, are collectively less than five percent of its total annual expenditures. If you have any further questions, or are concerned about your chapter's activities, contact TU's [volunteer operations staff](#) immediately. Please also be sure to contact staff before engaging in any lobbying activities.

## **3. Chapters or councils cannot donate money to a non-501(c)(3) organization or a 501(c)(3) organization that does not further TU's mission:**

TU (including its chapters and councils) can donate money to other entities only if doing so furthers our tax exempt purpose (in other words, our mission broadly defined or interpreted) and only if that entity itself is exempt under section 501(c)(3) or a governmental entity organized under section 501(c)(1). If your chapter or council wants to make a donation to another nonprofit, at a minimum you should obtain confirmation that the organization has section 501(c)(3) status by obtaining a copy of the organization's IRS determination letter. If the organization does not have a determination letter and the donation would further our tax exemption purpose, you should consider partnering with the other organization on the project and directly pay for specific goods and/or services associated with the project. Similarly, TU cannot pay for an individual's legal fees in association with a lawsuit, unless TU itself is a party to the lawsuit.

For example, a TU chapter could in principle donate money to a local watershed council for a stream restoration project if the project were consistent with our tax exempt purpose and the watershed council had a 501(c)(3) or 501(c)(1) exemption. Another example is the practice of giving money to the well-known "Casting for Recovery" program. While fly fishing is not central to TU's mission, we frequently use it as a recruiting tool, so supporting Casting for Recovery can be categorized as an acceptable fundraising expenditure. If the chapter goes further than just donating money and provides conservation materials to

the program that can serve to educate the participants about our conservation mission, a portion of the expenditure may be classified as a program expenditure.

However, if the watershed council in the above example did not have 501(c)(3) or 501(c)(1) status with the IRS, this donation would potentially violate IRS rules. This is because the funds given to the chapter are eligible for an income tax deduction by TU donors, but if the funds were given directly by the donor to the watershed council, the donor would not be able to take a deduction. Similarly, if a local individual brought a lawsuit trying to stop pollution of a local trout stream, TU could not pay that person's legal fees. The IRS would view doing so as using tax-exempt donations to benefit an individual, even if the lawsuit is consistent with TU's exempt purpose. This especially holds true if the trout stream is adjacent to the individual's property. In a slightly different example, TU could not donate funds to the local hospital for a new treatment center even though the hospital is a 501(c)(3), because medical treatment is not part of TU's stated exempt purpose.

It is perfectly acceptable, however, for TU chapters to pay entities that are not tax exempt for services rendered so long as the expenditure corresponds to TU's exempt purpose. For example, TU can pay contractors for work done on stream restoration projects. In the stream restoration example given above, the TU chapter could comply with IRS rules by partnering with the watershed council on the project and directly paying for specific goods or services associated with the project. A TU chapter could also pay a lawyer for representing TU in a lawsuit challenging pollution in a local trout stream.

Chapters and councils should also contact TU's [volunteer operations staff](#) with any questions or uncertainty about any donation you wish to make.

#### **4. Chapters or councils should use great caution if they choose to grant scholarships to individuals:**

While 501(c)(3) organizations (TU, its chapters and councils) are permitted by the IRS to grant scholarships that further the charitable purpose of the organization, the IRS has strict and complex rules for governing the process of granting and reporting on scholarships. This is because giving a scholarship directly to an individual runs the risk of using tax-exempt dollars to benefit a specific individual. If your chapter or council would like to pursue giving scholarships to individuals where the chapter or council in question would be selecting those individuals itself, you must be aware of and comply with the following:

- Grants to individuals are not permitted unless there is a "charitable class" of potential recipients. This requires that the group of persons that can benefit must be either a large enough or an indefinite class, so that the assistance to the members of the class benefits the greater community. For example, giving scholarships to the board of directors children or grandchildren would not meet this definition of charitable class due to its limited size. A scholarship fund cannot be established or operated to assist particular, pre-selected individuals from a limited population.
- No member of the selection committee can benefit, in any way, from choosing the scholarship recipients.
- The organization must ensure that any non-U.S. citizen who receives a scholarship is not on a published "Specifically Designated Nationals" terrorism watch list.
- The criteria for selecting the scholarship recipient must be objective, non-discriminatory, and reasonable related to the purpose of the grant.
- Grants must be made according to a procedure that results in performance by recipients of the activities that the grants are intended to finance.
- The organization must obtain reports from the recipients to determine whether they have performed the intended activities, this could come from the recipient themselves, or in the most prevalent case, from the institution of higher education where the scholarship funds are sent to be awarded to a specifically named scholarship recipient who received the award.
- A grant to an individual can only be renewed if the organization has information indicating the original grant was used for the intended activities.
- Because every situation is unique, and because granting scholarships is a complex undertaking with many potential risks, it is required that you seek approval from TU's Vice President for

Volunteer Operations or TU's Chief Financial Officer prior to granting scholarships. Additionally, it is advised that your chapter or council seek legal counsel with experience in this area of the law.

Another option to consider for TU chapters and councils that want to grant scholarships is to instead do so by giving money to a third party (i.e. a college or university) and allowing that institution to choose the sponsorship recipient.

Another option is a fellowship grant, which is different from a scholarship because it does not reimburse tuition costs. They are grants that are directly related to the recipient's education and our exempt purpose. The key to a permissible fellowship grant is that the recipient must render services to the chapter or council that further both the recipient's education and our exempt purpose. For example, a TU chapter can give a fellowship grant to a biology student who analyzes the water samples taken from the local stream that the chapter is restoring.

If you have any questions about any of the above policies or any other topic relating to TU's tax-exempt status, please do not hesitate to [volunteer operations staff](#). We have ongoing training sessions and tools to assist our chapters and councils in complying with these requirements. In today's climate of heightened scrutiny of the business practices in the for-profit and non-profit sectors, it is crucial that the activities of all parts of TU remain above reproach. Thank you for working with us to maintain TU's tax exemption.