

C A M P A I G N F O R

ACCOUNTABILITY

September 27, 2019

VIA EMAIL: eoclass@irs.gov

IRS EO Classification
Mail Code 4910DAL
1100 Commerce St.
Dallas, TX 75242-1198

**Re: Tax-Exempt Organization Complaint (Referral) Regarding Citizens for
Balanced Use (EIN: 20-2858176)**

Dear Sir or Madam:

Campaign for Accountability (“CfA”)¹ respectfully requests that the Internal Revenue Service (“IRS”) open an investigation into whether Citizens for Balanced Use, a tax-exempt organization organized under Section 501(c)(3) of the Internal Revenue Code, engaged in unreported lobbying activity.

Background

Citizens for Balanced Use (“CBU”) is a nonprofit corporation registered in Montana.² CBU states that its mission is to “educate the public on the issues that confront our ability to access and actively manage our public lands.”³ CBU’s website states that the organization’s members, “work every day to preserve and protect our last remaining areas open to multiple use recreation and we advocate for active forest management and responsible resource development on our federally managed public lands.”⁴ Specifically, the organization’s homepage, balanceduse.org, states that “CBU engages with state and federal legislators to create and support policies beneficial to multiple use management of our public lands.”⁵

In addition to these public pronouncements, a review of CBU’s activities and marketing materials indicates the organization has had extensive lobbying contacts with state and federal officials. CBU claims on its annual 990 Schedule C tax returns, however, that the organization does not conduct any lobbying activity.

¹ CfA is a Code Section 501(c)(3) tax exempt organization (EIN:54-1850126) that serves as a non-partisan, nonprofit ethics watchdog.

² 2017 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 12, 2018, available at <https://projects.propublica.org/nonprofits/organizations/202858176/201813169349305491/IRS990>.

³ *Id.*

⁴ <https://balanceduse.org/>.

⁵ *Id.*

CBU's State Lobbying Activities

CBU openly admits that its purpose is to influence state and federal officials concerning the management of public lands. The organization's homepage highlights how CBU works directly with public officials.⁶ Additionally, the current version of the organizations' About Us page, balanceduse.org/about, explicitly recounts the organization's extensive efforts to lobby the Montana Legislature in 2017:

The 2017 year was very busy for CBU. January 2nd began the 65th session of the Montana Legislature. Many members of CBU travel to Helena during the 90 day session to testify on specific bills that affect our state. From recreation to resources to private property rights, the members of CBU are very diverse and involved. CBU educates our members and supporters in how to testify and engage in the legislative process. We help people understand the complicated process of legislature from drafting, introduction, hearings, and passage or defeat of bills.

Here is a list of bills that the members and supporters testified at hearings during the session. House bills include 434, 498, 481, 97, 305, 311, 324, 454, 597, 240, and 38. Senate bills include 46, 342, 101, 342, 91, 218 and 281. Two House Joint Resolutions were also of interest to our members, HJ 9 and 15. Some of these bills were passed into law and benefited the multiple use recreation in Montana.⁷

The same page also indicates that CBU worked to influence state officials within the executive branch that year:

Early May [*sic*] CBU met with the Montana FWP to establish rules to implement the new OHV tracked use of winter snowmobile trails.⁸

Similarly, a recap of the organization's 2016 accomplishments, which is linked to on the About Us page, detailed the organization's lobbying contacts with state officials:

We share information and facts with the public, we testify at meetings, write letters to legislators, and meet with our local, state, and federal agencies in an effort to educate the public on the importance of proper land management to provide a clean and healthy environment.

CBU founding member, Kerry White is a current Montana legislator. Representative White HD 64) [*sic*] introduced HJ 13 in the 2015 legislature. HJ 13 was the result of a focused study identifying the thousands of miles of roads closed by the Forest Service and BLM in Montana during the last 20 years. The study was assigned to the Montana legislative interim committee (EQC) of which

⁶ <https://balanceduse.org/>.

⁷ <https://balanceduse.org/about>.

⁸ *Id.*

Representative White is a member. The final report of this study was released late 2016 and can be found at <http://leg.mt.gov/content/Committees/Interim/2015-2016/EQC/Committee-Topics/hj-13/hj13-finalreport.pdf>.

The Executive Director of CBU travelled to Helena on April 18th to meet with FWP [Montana Fish, Wildlife & Parks] to discuss recreation access on state land. The closure of roads on federally managed land has raised the discussion about the state providing multiple use recreation activities on State Land.

CBU attended another meeting with the Gallatin National Forest on April 29th to further discuss the new Forest Plan revision and the desired conditions our organization wanted to see in the completed plan. On May 2nd CBU met with Montana FWP to advise them of progress in the Custer Gallatin Forest Plan.⁹

In 2015, CBU also appears to have engaged in lobbying activities. A description of the organization's activities for the year, which is linked to on the About Us page, described how the groups' executive director, Kerry White, "wrote several letters to our congressional leaders and submitted many comments on government actions. (Forest Plans, BLM and forest travel planning, objections to flawed decisions, etc.)."¹⁰

CBU's "projects" tab also includes information showing that the organization works to influence state policy. Among the many projects listed, CBU included one about a Montana initiative:

- Oppose Confederated Salish and Kootenai Tribe Water Compact in NW Montana (working with legislators and irrigators to protect water rights and continued state control of our water) Helped create the people's Compact, a fair alternative to the flawed compact introduced by Senator Tester¹¹

CBU's Facebook page also has published several posts about the organization's work to lobby public officials.¹² For instance, on May 16, 2019, the account posted about the importance of attending a County Commission meeting:

The Montana Wilderness Association is presenting to the Gallatin County Commission a plan to turn the Hyalite Porcupine Buffalo Horn Wilderness Study Area into wilderness. This flawed plan left out the majority of stakeholders including grazing, logging, mineral hunters, and motorized interests. Claiming to

⁹ https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

¹⁰ https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2015_Accomplishments_for_taxes-6030305.pdf.

¹¹ <https://balanceduse.org/projects>.

¹² <https://www.facebook.com/balanceduse/>.

have broad support for this plan the environmental groups are going to try and convince our Gallatin County Commission to support this flawed plan.

It is important to attend this meeting and ask the Commission to reject this plan.

Tuesday, May 21st, 9am
Gallatin County Courthouse
311 West Main, Bozeman
3rd floor conference room¹³

On March 5, 2019, CBU's Facebook page shared a post from the James Brown Law Office, LLC announcing a broadcast of a "mid-session legislative update" that was sponsored by CBU.

Austin Markus James will be going LIVE at 3:30 PM for the first of a four part live-stream series this week providing the mid-session legislative report on behalf of Citizens For Balanced Use. Today's broadcast will cover bills related to hunting, fishing, and wildlife.

Later this week: (2) ORV, Trail Riders, Snowmobile (3) General Outdoor Recreation and (4) Private Property and Natural Resources.

Today's broadcast will cover:
-Hunting Privileges for Purple Heart Recipients
-Voluntary Wolf Mitigation Account
-Requirements for use of fishing access sites
-Elk Harvest during shoulder seasons
-Grizzly Bear Delisting
-Fees for Resident Wolf Licenses
-Bird Hunting Dog Laws
& Much more.¹⁴

On January 11, 2019, CBU's Facebook account published a post about the importance of lobbying state legislators:

¹³ <https://www.facebook.com/pg/balanceduse/posts/>.

¹⁴ https://www.facebook.com/JamesBrownLawOffice/posts/1882919851820420?__xts__%5B0%5D=68.ARBcGrROhHgo3m23ZEYUhtt44V3hzzxBugwFv6jGfHZBakFBKmjvMTIfUEmv0sBe-FZZuYN-GHpuuo4bcEI09hLf_fB01RThT4SeUelNLI9vIvCfkY8bLK40sREfPXWiYN5ATm9wH46b6ugnpi-CqyKHUe5Jwic837MMfeJS_QhwDLjqvEnUte0-byn1Bse4G96uKkeqxbPeQUzxKmCkV8IHYaL3w-u7B42ixuh12ziSU0Ex6YrfW2z2p4VCJ_UH5B8yoOwKVpflZmM12cAbwjG9dHp96D5eMNM9QuFhzDmY_VkNnMy_n9Kw9-ksWdcFjMYNP7xNUdy1Fmk8lpk-2vqNTgJORArpZtj3E05OXIs9wG2hZBepwRxmRsp1sgQdPDy2j5YSOHdPHgifMCW7ECITqz4Lm356zy7fkMRACQ3-iPFdMczkI-W62A1nUfMxHnTgcZOAx-9MaBTojmfHgNHEbmnkNp18OFjr8Wa3WYDcrQ&__tn__=C-R

Citizens for Balanced Use, Montana Snowmobile Association, and Montana Trail Vehicle Riders Association will be sponsoring the bi-annual luncheon for legislators at the Montana State Capitol Rotunda, January 15 2019, from 11:00 am to 1:00 pm.

This is a great time to have lunch and talk with Montana legislators, and representatives from the sponsoring organizations. Hope to see you there.¹⁵

CBU's Federal Lobbying Activities

CBU has also conducted lobbying activities at the federal level. In 2017, CBU sent a letter to Montana Sen. Steve Daines requesting legislation to end the Wilderness Study Area (“WSA”) designation for certain public lands in Montana.¹⁶ Later that year, Sen. Daines introduced legislation to remove the requested areas from the WSAs. Sen. Daines cited CBU’s support for the legislation in his press materials when he announced the introduction of the bill.¹⁷

CBU’s 2016 list of accomplishments also recounted the organization’s interactions with Sen. Daines as well as its extensive lobbying contacts with other federal officials:

CBU met with Senator Daines on October 17th in Bozeman to discuss federal legislation which may affect the members of CBU and our supporting organizations. CBU keeps in contact with our Washington congressional members to inform them of our issues. CBU also meets with our state Representatives and Senators on a regular basis to discuss the state issues that affect CBU. It is important for CBU to educate the public on the importance of engaging with not only our elected representatives but also with our local, state, and federal agencies to communicate our issues and concerns and build relationships with these individuals.¹⁸

The Projects page on CBU’s website also details how the organization is working to influence federal policies. Among the many projects listed, CBU includes:

¹⁵ <https://www.facebook.com/pg/balanceduse/posts/>.

¹⁶ Letter from Kerry White, Executive Director of CBU, to U.S. Senator Steve Daines, available at <https://www.daines.senate.gov/download/tsriawsa>.

¹⁷ Press Release, Daines Introduces Legislation to Protect Public Use of Public Lands, Office of U.S. Senator Steve Daines, Dec. 7, 2017, available at <https://www.daines.senate.gov/news/press-releases/daines-introduces-legislation-to-protect-public-use-of-public-lands>; Statements of Support, The Protect Public Use of Public Lands Act, Office of U.S. Senator Steve Daines, available at <https://www.daines.senate.gov/imo/media/doc/BD%20Wilderness%20Study%20Area%20Statements%20of%20Support%20.pdf>.

¹⁸ https://content.web-repository.com/s/94960605924673672/uploads/Accomplishments/2016_Accomplishments_for_taxes-6030306.pdf.

- Support release of Wilderness Study Areas in Montana (S. 2206 / HR. 5148 / HR. 5149)
- Revise ESA [Endangered Species Act] and defund EPA [Environmental Protection Agency]
- Revise EAJA [Equal access to Justice Act] (no accountability)
- LWCF [Land and Water Conservation Fund] (oppose) (20 billion in the bank) (funds go to eco groups)¹⁹

CBU's Facebook page also details how the organization lobbies federal officials. On December 14, 2018, CBU's Facebook account wrote a post about the importance of lobbying to defeat an unwanted piece of legislation:

The way we stop it boils down to two things, money and influence. Donations and lobbyist visits to Washington to meet with key decision makers.²⁰

Failure to Disclose Lobbying Activities

Despite CBU's extensive lobbying activities, the organization has failed to disclose these activities to the IRS on its annual tax forms. CBU received its tax-exempt status in May 2006, and it has filed a 990 annual tax return in every year since then.²¹ As detailed above, CBU conducted extensive lobbying efforts between 2015 and 2017, the most recent years for which its tax returns are available, in addition to its continued lobbying activity in recent years. CBU, however, failed to accurately disclose its lobbying activity on its annual tax forms that cover the corresponding years.

The 990 tax form for nonprofits requires organizations to answer whether they "engage[d] in lobbying activities..." for the corresponding year. If the organization responds "YES" to question, number 4 in Part IV of the 990, then the organization must complete a Schedule C form, which asks for details about the organization's political and lobbying activity. While CBU responded YES to question 4, indicating the organization conducted lobbying activity, the organization failed to provide any accurate information about its lobbying activities in its answers to the questions listed in Schedule C.

Specifically, Part II-B of the Schedule C form requires 501(c)(3) nonprofits to answer several questions about their lobbying activity:

¹⁹ <https://balanceduse.org/projects>.

²⁰ <https://www.facebook.com/pg/balanceduse/posts/>.

²¹ <https://projects.propublica.org/nonprofits/organizations/202858176>.

During the year, did the filing organization attempt to influence foreign, national, state or local legislation, including any attempt to influence public opinion on a legislative matter or referendum, through the use of...

The question then lists several possible conduits for lobbying activity including volunteers; paid staff; mailings to members and legislators; direct contact with legislators, their staffs, government officials, or a legislative body. The section of the form also requires the nonprofit to disclose the amount spent on each category. CBU's completion of this section indicates the organization did not file Form 5768 or conduct an election under 501(h).

On each of its 990s for 2015, 2016, and 2017, CBU answered "NO" to every question in Part II-B, and it did not list any amount of money for any of the categories.²² Additionally, CBU did not disclose any spending on lobbying in response to Part IX, Question 11d, in each of its 990s for the three years.²³ Yet, as detailed above, between 2015 and 2017, CBU conducted extensive lobbying activities through several of the conduits listed on the forms.

Legal Violations

CBU appears to have violated federal law by failing to report any lobbying activity on its annual returns. Although CBU has been actively involved in attempts to shape public policy, the organization has failed to disclose its activities to the IRS. CBU measured its lobbying activity using the "no substantial part" test, because it responded under Schedule C, Part II-B, rather than Part II-A, which is completed by 501(h) electors.

A non-electing organization "will generally be regarded as engaging in lobbying activity if the organization either contacts, or urges the public to contact, members of a legislative body for the purpose of proposing, supporting, or opposing legislation or the government's budget process; or advocates the adoption or rejection of legislation."²⁴ A non-electing public charity's exempt expenditures do not include lobbying expenditures.²⁵ Attempting to influence any legislation

²² 2017 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 12, 2018, available at <https://projects.propublica.org/nonprofits/organizations/202858176/201813169349305491/IRS990>; 2016 Return of Organization Exempt from Income Tax, Form 990, Schedule C, Citizens for Balanced Use, Nov. 14, 2017, available at

<https://projects.propublica.org/nonprofits/organizations/202858176/201733189349310948/IRS990ScheduleC>; 2015 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 15, 2016, available at https://projects.propublica.org/nonprofits/display_990/202858176/2017_03_EO%2F20-2858176_990_201512.

²³ 2017 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 12, 2018, available at <https://projects.propublica.org/nonprofits/organizations/202858176/201813169349305491/IRS990>; 2016 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 14, 2017, available at <https://projects.propublica.org/nonprofits/organizations/202858176/201733189349310948/IRS990>; 2015 Return of Organization Exempt from Income Tax, Form 990, Citizens for Balanced Use, Nov. 15, 2016, available at https://projects.propublica.org/nonprofits/display_990/202858176/2017_03_EO%2F20-2858176_990_201512.

²⁴ IRS, Instructions for Schedule C (Form 990 or 990-EZ), at 5, available at <https://www.irs.gov/pub/irs-pdf/i990sc.pdf>; 26 C.F.R. § 56.4911-2.

²⁵ 26 C.F.R. § 56.4911-4(c)

through communication with a member or employee of a legislative body, or a government official or employee who may participate in the formulation of legislation constitutes a direct lobbying communication, and attempting to influence legislation by encouraging members of the general public to lobby legislators constitute grassroots lobbying communications.²⁶

CBU's own materials make it clear that the organization worked extensively to lobby public officials. Nevertheless, in tax years 2015, 2016, and 2017, the organization's Form 990, Schedule C, Part II-B fails to provide the "detailed description of lobbying activity" required. CBU responded "No" to every question in Part II-B, essentially stating that it engaged in no lobbying activity. By failing to report its lobbying activities over several years, CBU appears to have engaged in a continuing violation of the Internal Revenue Code. Further, anyone who willfully submits a false tax return may have violated the prohibition on fraud and false statements punishable by a fine of up to \$500,000 and three years imprisonment.²⁷

In addition to the reporting violations, based on CBU's own reports, it appears the organization may have engaged in substantial lobbying activity in violation of its 501(c)(3) status. To the extent that CBU engaged in "substantial" lobbying activities, tax law classifies it as an "action organization" not exempt under IRC § 501(c)(3).²⁸ Therefore, CfA requests that the IRS further investigate to determine whether CBU violated its § 501(c)(3) status.

Conclusion

Tax-exempt status is a privilege, and the IRS has the responsibility of ensuring that organizations comply with all applicable tax laws. Based on the facts and circumstances described above, CfA respectfully requests that the IRS conduct a full-scale investigation to determine whether there are other instances where CBU engaged in unreported lobbying. We further request that based on the apparent instances where CBU failed to report lobbying activity, the IRS revoke the organization's tax-exempt status, impose all applicable fines and penalties, and pursue all other available civil and criminal remedies against those involved in the foregoing transactions.

Thank you for your consideration of this important matter. Please contact me if I can provide additional information or be of further assistance.

Sincerely,

A handwritten signature in blue ink, appearing to read "Dan E Stevens", with a long horizontal flourish extending to the right.

Daniel E. Stevens
Executive Director

²⁶ 26 C.F.R. § 56.4911-2(b)(1)&(2).

²⁷ 26 U.S.C. § 7206.

²⁸ 26 C.F.R. § 1.501(c)(3)-1(c)(3).