

On October 8, 2010, Lois Lerner, Joe Urban, Judy Kindell, Justin Lowe, and Siri Buller met with the section chief and other attorneys from the Department of Justice Criminal Division's Public Integrity Section, and one representative from the FBI, to discuss recent attention to the political activity of exempt organizations.

The section's attorneys expressed concern that certain section 501(c) organizations are actually political committees "posing" as if they are not subject to FEC law, and therefore may be subject to criminal liability. The attorneys mentioned several possible theories to bring criminal charges under FEC law. In response, Lois and Judy eloquently explained the following points:

- Under section 7805(b), we may only revoke or modify an organization's exemption retroactively if it omitted or misstated a material fact or operated in a manner materially different from that originally represented.
  - If we do not have these misrepresentations, the organization may rely on our determination that it is exempt. However, the likelihood of revocation is diminished by the fact that section 501(c)(4)-(c)(6) organizations are not required to apply for recognition of exemption.
  - We discussed the hypothetical situation of a section 501(c)(4) organization that declares itself exempt as a social welfare organization, but at the end of the taxable year has in fact functioned as a political organization. Judy explained that such an organization, in order to be in compliance, would simply file Form 1120-POL and paying tax at the highest corporate rate.

Lois stated that although we do not believe that organizations which are subject to a civil audit subsequently receive any type of immunity from a criminal investigation, she will refer them to individuals from CI who can better answer that question. She explained that we are legally required to separate the civil and criminal aspects of any examination and that while we do not have EO law experts in CI, our FIU agents are experienced in coordinating with CI.

The attorneys asked whether a change in the law is necessary, and whether a three-way partnership among DOJ, the FEC, and the IRS is possible to prevent prohibited activity by these organizations. Lois listed a number of obstacles to the attorneys' theories:

- b(5)-DP [REDACTED]
- [REDACTED]
- [REDACTED]
- [REDACTED]

b(5)-DP [REDACTED]. She pointed to Revenue Ruling 2004-6, which was drafted in light of the electioneering communication rules before they were litigated.