

Notes from meeting with TIGTA on January 31, 2013

The meeting started off with an overview of the general format for the discussion as well as some comments and observations from TIGTA and our response to those observations.

- TIGTA pulled some cases that they wanted to discuss with us. They did not think that it would be productive proceed on a case-by-case basis.
- After reviewing our spreadsheet and documents, TIGTA took 13 cases off of their lists (as a note both Judy and Hilary updated the spreadsheets during the meeting to reflect these changes). They cases taken off the list are:
 - Case # 4
 - Case # 14
 - Case # 20
 - Case # 24
 - Case # 31
 - Case # 37
 - Case # 65
 - Case # 72
 - Case # 75
 - Case # 76
 - Case # 82
 - Case # 124
 - Case # 125
- According to TIGTA, their problem is not with the facts of each particular case, but rather the “criteria” used to move the cases in the first place. They are concerned that the criteria was so broad that anything involving advocacy or lobbying could ostensibly be involved
- TIGTA felt that it was odd that there were only two I.R.C. § 501(c)(6) organizations on the list. They thought there would have been more.
- TIGTA noted that the documentation related to the decision on whether to send a case is limited (only check sheet and handwritten notes of “tea party” cases). Without more, it is hard to know whether anything more went into the process, like website reviews, etc.
- In their review, TIGTA stated that they only looked at the initial identification of the case and how it was assigned to the advocacy group. They said that they did not look at the ultimate result or any factors beyond the initial identification (though they often reference the bucket lists in deciding whether the screening process was appropriate).
 - TIGTA stressed that their review was limited to the information that came with the application and anything that the screeners identified in making their determination to send something to the advocacy group.

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- TIGTA noted that it seemed to them that more cases should have first gone to general development. They felt that some cases should have been sent over to advocacy group at a later time, after more development revealed a problem. As an example of this, they cited TIGTA case 12 (EO case 3).
 - In response, Holly stated that there is some concern that the specialists who work in general development may not understand the specialized issues that are presented with these particular cases and may not develop a case properly or even ask the appropriate questions. For example, if an organization mentions holding rallies, the specialist may not think to ask if whether they are political and how they are being conducted.
 - She added that we initially cast a broad net in order to understand the big picture of what was going on. As we learned more, we were able to narrow it down.
 - She also added that the bucketing decisions were not determinative of any final decisions. We issued a fair number of favorable determinations, and have not yet issued any adverse rulings. The impact was that the cases sat for a little longer.
 - She also noted that we have specialized groups for other types of complex cases including group rulings, supporting orgs, etc. Those cases also end up sitting a little longer. Essentially any coordinated efforts will take longer; this situation doesn't occur just in advocacy cases.
- TIGTA stated that they did not think that these cases were treated consistently with other types of organizations, particularly when looking at the evolution of the criteria.
 - Holly thought it was interesting that their list of cases that should have been treated as advocacy cases, but instead were not, was a very small number. She would have thought that if the accusations made against us were true and we were only looking at one side or the other that TIGTA's list of "should have been included" would have been longer and skewed accordingly towards other groups.
 - While she agrees that the screeners used terminology that was not always ideal, she also understood that they operated under several constraints: they only spend 15 minutes per case; they lack the luxury of time to include a lot of documentation/research, etc.
- TIGTA thought that although it was plausible that nothing negative occurred during the identification process, outside people could look at the combination of our initial criteria and the supplemental criteria to make a negative conclusion.
 - Holly agreed again that the language in the BOLO was incorrect, but adds that it was corrected. She has no problem with TIGTA saying that the language was incorrect on the BOLO, but she doesn't think that they can say that the logical extension of the language is that we had a concerted effort to target one group of organizations.
- TIGTA believes that there is documentation saying that these groups were targeted. They base this on the BOLO list, and the fact that the only rationale noted on the screening form is a "✓ tea party" notation. This is problematic for them.

- Holly informed them that when we have similar cases and issues, the screeners often times call them by a shorthand name, such as what is in their names. She used the newspaper cases as an example. She also added that for many when you say “party” in your name, that is a term of art and it means a § 527 organization.
- Although TIGTA plans to put in their report that a lot of these cases ultimately did have political intervention in them, they have a problem with how the cases were identified.
 - Holly wanted to know if they would acknowledge that we did not target one side or the other.
 - TIGTA responded that they did not look at it in a “right vs. left way.” But they will include their results of what “should have gone.”

The discussion then turned to comments on the specific cases listed on the case spreadsheet.

- Judy disagreed with the (b)(3)/6103 organization. She also disagreed with the (b)(3)/6103 case because it was more (b)(3)/6103 than anything.
- Holly agreed to send Judy and Hilary’s comments on those cases to TIGTA. She said the real concern was on campaign advocacy but it was hard to make sure it was focused correctly on items such as rallies, etc.
- TIGTA said that one issue we discussed previously was when an organization stated “in the future we might, but it won’t be primary” They wanted to understand how we handle developing a case when something is mentioned in that way.
 - Holly said this situation comes up regularly in a variety of area, such as international grant-making, scholarships, etc. During the development process we have to flesh all of their activities that they have brought up to us. If they mentioned that they might do an activity, then it is more of a solid idea than the things they didn’t mention to us. It is important that we develop these areas because of the role it could play during the revocation process. It may make the difference between retroactive and prospective revocation. Even if the organization has no additional details, we still have to ask the follow up questions or else we are limited with regards to the revocation process under § 7805(b).
- The IRC § 501(c)(3) cases: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED] *non-responsive*
[REDACTED]
 - [REDACTED] *non-responsive*
[REDACTED]

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- Case # 26: When TIGTA looked at the bucketing list, they didn't see any problem activities found during bucketing. The only non-exempt purpose listed on the bucketing sheet was publishing and no other non-exempt activities were observed at that time. If there was nothing found in bucketing, they wonder why this case was picked in screening.
 - Holly replied that bucketing is different than screening and the purposes/questions behind them are different. In screening, the questions being asked are can we get to a yes answer now and if we cannot, what needs to be done with the application.
 - There was a discussion on organizations making a § 501(h) election. TIGTA admitted that they didn't look at the election in the decision making.
 - TIGTA stated that when they see "no nonexempt activities observed" on the bucketing sheet then they have to question how it was pulled from screening.
 - Holly stated that people, even those who are experts, can disagree. She doesn't know that she would look to the ultimate bucketing outcome to determine whether we were right in pulling it from screening. When we get additional information we can narrow down the criteria. She gave an example of the newspaper cases and how we started out more broadly. She also discussed the evolution of the criteria used for the advocacy cases. In May 2012 the criteria was indicators of potential political activity. By that point we have now seen enough to know that in some of these, the issues ended up not ultimately being political activity but instead inurement and private benefit.
 - TIGTA stated again that they have a problem with the perception of the criteria and the evolution of the criteria. For example, the fact that it switched back to more objectionable language at some point is troubling.
 - Holly noted that what is being alleged to have occurred is much more serious than the classification of the cases. It is also the outcome of the cases. There are still cases coming in and the people who are working them are those who went through the specialized bucketing training. There are two people bucketing and they write up a work sheet and then when that is done it goes to Ron to be documented.
 - She agreed to follow up with Ron on the timing of when a case gets added to the spreadsheet by him.
- Case #2: § 501(c)(3) with an affiliated § 501(c)(4)
 - TIGTA thinks that this is another one where the issue was the criteria itself and not the facts of the case. They said that advocacy could lead to political intervention but that they didn't see an intervention here from a screening perspective.

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- Holly noted that when there is a related § 501(c)(4) that can raise a red flag. For example, we must ask whether the § 501(c)(3) subsidizing the (c)(4) activity of intervention/lobbying. Additionally, the (c)(3) is giving money to the (c)(4) then it cannot be used for political intervention. Judy added that if the funds are used for lobbying then it counts towards the limit as well.
- Judy stressed that even for organizations who know these rules or should know them, that we still see a lot of issues in Exams where there is not a clear separation (e.g. shared web sites).
- TIGTA agreed to look at the (c)(3) with affiliated (c)(4) again to see if they see any of the issues we raised.
- Holly mentioned that they should also look at the cases involving leadership training (e.g. 23, 85, etc.). There they train local leaders, elected officials, etc. It could be training of candidates for one political party. Noted that #85, our quality people bucketed differently.
 - Case #23
 - TIGTA said that in bucketing, there weren't concerns of political activity but of private benefit. They thought this case should have gone to general development rather than the advocacy group.
 - Holly discussed examples of political officials on boards and how we need to ask questions about that.
 - Judy reiterated the earlier concerns about general development and explained how it can be problematic later during an examination.
 - TIGTA inquired into the training prior to the May 2012 training. They also wanted additional information about the change in the criteria.
 - Holly mentioned that Judy and Justin did training in 2011. She said they did a CPE CENTRA session in the summer/early fall 2012. She also thinks there may have even been an earlier session with Justin and Siri teaching it. This was training for everyone.
 - As for the criteria, the criteria were broadened again because agents were raising so many cases. Many of which had detailed apps with organizations who were just doing legislative activities.
 - TIGTA wanted to know if the screeners were part of the training in May 2012.
 - Holly responded that she believes it was just the agents. The screeners have new BOLO language, but she doesn't think they had a training session on this.
- Case #5 ((b)(3)6103) – brought up by Hilary
 - TIGTA said they didn't see the language in the original application that we said was there.
 - Judy went into TEDS to pull up the application. There are 2 files and one is 908 pages so she couldn't open it. She didn't find the language in the smaller file, but saw that the participants were encouraged to be involved in local, state and federal government by communicating with elected officials.

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- Hilary agreed to go back through the file to locate the language. TIGTA admitted that it didn't read all 908 pages to see what was in the application.
 - Hilary sent an email on 2/1 with the language attached. It was on page 3 of their Form 1024, page 3. under their "Community Involvement Program, Ongoing" heading, bullets (1) and (2).
- Case # 7 [REDACTED] (b)(3) 6103
 - Holly stated that low voter participation was listed as a reason. Anytime someone talks about raising voter participation it can raise a red flag because there is a right way and a wrong way to do voter participation activities.
- Case # 8 – [REDACTED] (b)(3) 6103
 - Holly said that the organization talks about organizing around Congressional districts.
 - TIGTA says they couldn't find that language.
 - Judy pulled up the application on TEDS. She informed them that it was in their attachment to the Form 1023, organizational structure. There it says they are organized by Congressional District.
 - TIGTA agreed to go back and look at this.
- Case # 10 – [REDACTED] (b)(3) 6103
 - TIGTA said that in their narrative that they hold forums for people of both parties so they aren't sure why we would flag it.
 - Judy said that we have to look into how they are doing it. Inviting both sides isn't enough. They have to ask non-biased questions. It is incumbent upon us to explore how they are conducting the activity.
- Case # 11 [REDACTED] (b)(3) 6103
 - Holly says that they discuss voter education on a particular political platform. Again this could be one where they are talking about a lot more than just advocacy.
 - Judy said there has to be a weighing were we look and see how much is (c)(4) and how much is other. Sometimes it went to ROO later.
 - Holly added that if you are a screener you are asking if this case is ok now or whether it needs another look. She said that you can't compare that to the bucketing. The bucketing was done by the best of Cincinnati and the best of DC who really looked at it and weighed out everything. That is a very different analysis than the up-front screening.
 - TIGTA wanted to know if we are saying that the criteria are any indicators of advocacy or only significant indicators of advocacy.
 - Holly responded that the criteria mentions significant. But if someone says they are going to do rallies, the question is how much are they really doing. You can't always tell if it is going to be significant at the beginning. If it is a recurring activity, it is impossible for the screeners to make that judgment. If it was a one off event, then no it probably should be sent. But that is different than a recurring activity.

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- Case # 21 (b)(3)\6103
 - Holly said there was a line in the app at that needed an additional look. They talk about responsive government, accountability, urging leaders to be responsive, educating citizens about where officials stood on the issues. Maybe this is lobbying but it seems like a lot of direct leaning on the legislators.
 - TIGTA noted that this was one where someone wrote tea party even though that terms wasn't in its name or contained elsewhere.
- Case # 49 (b)(3)\6103
 - Holly said they mentioned billboards in their application
 - TIGTA thought that it was only a small percentage of what they were doing.
 - Holly informed them that there isn't an exact percentage that tips it over.
 - Judy added that when you are engaged in other types of advocacy you have to add it all up. People think that if they don't say to vote for or against something than it isn't advocacy but that isn't true for us.
 - Holly added in that there is vague information on the billboards, like the expenses they list for it that makes it seem like they may be spending more around the election on billboards for candidates.
- Case # 55 (b)(3)\6103
 - Holly mentioned that they are affiliated with a PAC
 - TIGTA said that they looked at the file and they didn't see this relationship identified until after screening. They don't think it came up until bucketing.
 - Judy pulled up the application on TEDS and showed them where the PAC information was contained on the application.
 - TIGTA agreed to go back and reread the application.

Once cases were discussed, more general issues were discussed again such as the timeline for the report.

- TIGTA added that we are probably going to have to agree to disagree on many of these. Not on the actual facts of the cases, but on the framework used in screening.
- Holly said that to the extent possible, it would be helpful if they could acknowledge our perspective.
- TIGTA wanted to know if we had gotten through the timeliness list and the list of inappropriate questions.
- Holly wanted to know how much time we have to look at it. If we have until March, then we will get through as much as we can.
- TIGTA said in theory they hope to have a discussion draft by the beginning of March. But that if we have concerns about the other spreadsheets to give them a call.
- TIGTA asked about the inappropriate questions list.
 - Holly said that Judy made that original list herself and it was not vetted. We can potentially see how/why some of them were asked, so we may have questions for TIGTA on that list or one items we no longer agree with.

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- TIGTA discussed the 270 day issue and how many organizations could have filed in court because of the delays.

We then took a break so that Lois could speak with TIGTA

- Lois stated that she was frustrated over what appears to be confusion about the purpose of the audit.
- TIGTA said that the purpose was whether there was any targeting of organizations and of so, what were the consequences.
- Lois felt that the purposes were similar to what TIGTA said, but slightly different in important regards. She phrased the purpose as whether there was a political bias shown in our actions. In her mind, with all that has gone on, where the allegations have come from, and the allegations of political bias for one side or the other, that she thought that is what TIGTA was looking at.
- Lois agreed that the initial articulation on the Cincinnati BOLO list was bad, but said the real question was whether then made us act badly. And it did not. She also added that we have fixed the BOLO list issue. That is a very different problem than one where we say that the list created a problem that couldn't be fixed.
- Lois also felt that TIGTA did not understand the difference between screening and bucketing. She pointed out that these are different processes with different intentions.
- Lois noted that it is difficult for non-lawyers (like our exams and deterns agents) who are looking for clear rules to operate in areas where there are no clear rules. In this situation you can't apply black and white rules. So, in screening, if they thought someone else should look at it, the agents erred on the side of caution. She is not unhappy with our screeners for being cautious because after looking at them, many were moved out.
- Lois felt that there is a disconnect between our thinking and TIGTA's, and would like a meeting with them, Terry, and her people to explain the process.
- She noted that our regulated community looks at the approvals to see what we are allowing organizations to do and the redacted denials to see what we denied. It is incumbent on us to err on the side of caution because of the potential impact of being wrong.
- She also discussed the bucketing process saying that in when it appeared that people were struggling, we sent down our people to help talk them through it and to give them training. We are seeing that the process put in place there really did work.
- TIGTA discussed that the period they look at was before May 2012. They looked to see three things:
 - Was there targeting?
 - Were there delays?
 - Were there unnecessary questions?
 - Noted that the delay in getting guidance from DC was 13 months. That wasn't biased, but it was delayed.

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- Lois noted that it was important to distinguish between the actions and the motivations between the actions. There is a big difference between bad judgment and bias. She asked if they had any examples of anyone acting with bias.
 - TIGTA responded that at the beginning there was one person who pulled out information on TEDS just based upon the names of the organizations (e.g. tea party, liberty, patriot, etc.). That individual received advice to conduct the search in that manner. They think that searching for names or beliefs is targeting.
 - Lois said that may have been one individual but there was never institutional IRS bias. There was never direction from anyone in management to target anyone. She said it was less targeting than not providing them with the tools needed early on.
 - Holly added that if you look at the list of organizations, not all have those terms in their names. That was not the sole basis for an organization to be included in a list of advocacy organizations.
 - Lois asked whether the whole process was bad if it flowed from one poor choice.
- Lois thinks both sides should ask:
 - What are the things left unanswered or not explained if the IRS was indeed targeting organizations?
 - Where are the places that EO hasn't explained the process/law well enough for TIGTA to understand what we are saying?

To Do List:

1. Send Judy and Hilary's comments to TIGTA on the cases that TIGTA thought should go.
2. Send an updated list to TIGTA with the cases, buckets, statuses, etc.
3. Forward TIGTA the information Hilary and Judy found on the (b)(3)\6103, (b)(3)\6103, and the (b)(3)\6103 cases.
4. Check on how the person managing the status updates on the list checks/verifies the status.
5. Hilary will go back through the language in the (b)(3)\6103 case
6. Look at the lists sent to us by TIGTA on unnecessary questions and submit comments.
7. Look at the list sent to us by TIGTA on the timeliness issue and submit comments.

Meeting 4/30/13

Attendees:

Capitol Hill staff

Laura Stuber (Majority Senior Counsel)

Elise Bean (Majority Staff Director and Majority Chief Counsel)

Henry Kerner (Minority Staff Director and Minority Chief Counsel)

Stephanie Hall (Minority Counsel)

Scott Wittmann (Minority Research Assistant)

Aaron Fanwick (Majority Law Clerk)

IRS

Nikole Flax

Lois Lerner

Nan Marks

Janine Cook

Susan Brown

Catherine Barre

Suzanne Sinno

Judith Kindell

Laura Stuber asked about the EO office structure. Lois Lerner explained that she oversaw three main functions. CE&O managed our website, coordinated our public speaking appearances and created our brochures and other publications. The Exam function, in addition to doing traditional exams (or audits) also had other units. One is the Review of Operations (ROO) which generally looks at public information without contacting the organization to see if there is an issue with the organization and, if so, refer it for an examination. Their work is generated from several sources. For example, if we examine an organization and they are generally compliant but there were some issues discovered during the exam, the ROO will do a follow-up to see if the organization continues to be compliant. The ROO also does the hospital community benefit reviews mandated by the ACA. The ROO also will do a post-determination review of a random sample of organizations who were recognized as exempt by the IRS. They also review organizations flagged by the Determinations function if the Determinations agent sees issues of concern when reviewing the application that are not sufficient to warrant a denial of the application. The ROO is one function of the Exempt Organization Compliance Area (EOCA). The other function of the EOCA is the Exempt Organization Compliance Unit (EOCU). The EOCU does compliance checks where they may be asking an organization for information missing from a Form 990. They also send out compliance check questionnaires, where we gather information from a large number of organizations. We have used these for hospitals, credit counseling and colleges and universities. These are not exams, so the organizations are not required to respond, but we may refer them for an exam if they do not. We generally get a very high response rate, 95% to 98%. We make the questionnaires public so that even those that don't get the questionnaires can see what we are interested in. We generally issue a public report on our findings from the questionnaire. We also may

select some organizations for exam based on information on the questionnaire, their Form 990 filings and other information. The EOCU sends out the questionnaire and may do some of the data analysis.

Henry Kerner asked how many people work in the ROO. Lois Lerner did not have the numbers but could get them. In our latest annual report we stated that there were 516 EO Exam employees. Henry Kerner asked how many questions were on the questionnaires. Lois Lerner said that it depends. We have a couple active questionnaires out now and available on our website. They are being done electronically, so that the organization only sees the questions that are relevant to them. In the C&U questionnaire, we sent it to 400 organizations and asked questions on their demographics, possible UBI activities, compensation and investment practices.

Elise Bean asked if we were looking into section 501(c)(4) organizations that were engaged in political campaign activities. Lois Lerner said that in our self-declarers questionnaire we asked about lots of things, most relating to the tax year of their most recently filed Form 990 (either 2010 or 2011). We also included a section asking about any political campaign activities in calendar year 2012, which we would not otherwise have since their 2012 Form 990 is not yet due. The questionnaire was sent to all self-declared section 501(c)(4), (5) and (6) organizations that filed Form 990. Elise Bean asked about the scope of the universe. Nikole Flax clarified that the questionnaires were only sent to organizations that filed Form 990 in 2010 or 2011 and not the organizations that filed Form 990-EZ or Form 990-N. Laura Stuber asked what the deadline for responding to the questionnaire was. Lois Lerner explained that the questionnaires were not all sent at once because the staff could not handle it, but were sent out in waves. The organizations are given 60 days to respond, but may request an extension, so it could be 90-120 days before they respond. The last of the questionnaires went out last week. Henry Kerner asked if we had received any responses yet. Lois Lerner said she was sure we had but had not checked. Henry Kerner asked about the process and whether we checked any of the answers to the questionnaire. Lois Lerner explained that we don't verify the responses, we report on what we are told by the organizations. We do select for examination organizations that appear to have issues. In the C&U study, we looked at compensation and UBI issues and selected organizations for exam based upon information on the questionnaire and their Form 990. Henry Kerner asked about checking with other organizations. Lois Lerner explained that other organizations may define things differently. We had a situation a few years ago where someone referred an organization based upon their reporting to another agency. When we looked at the information, we determined there was no issue because the other agency had a different definition. There is also the issue of the timing of the reporting. For example, the FEC has real time reporting. The reporting to the IRS looks at previous years. That is why in the self-declarers questionnaire we asked about 2012 data as we won't be getting the Forms 990 for some time. In putting together the questionnaires, we work with our Research function to ensure that we are getting information that we can apply to the universe being studied. In some instances, this will mean asking the question a little differently. They also help us ensure that we have a statistically valid sample so that we can take the

information learned and make broad statements about the universe. For the organizations we select for exam, this is not a statistically valid sample. Therefore, the observations we make based upon the exams apply only to those organizations examined. When we report on our findings, we note any trends and concerns raised as well as any next steps we will be taking. Stephanie Hall asked whether the final report would identify organizations by name, Lois Lerner said no. Henry Kerner asked whether exam and audit were the same and Lois Lerner said yes.

Elise Bean then asked about the third function in the EO Division. Lois Lerner said this was the Rulings and Agreements function. This includes the Determinations function, which processes the applications for recognition of exemption. It also includes the Technical and Guidance functions in the DC office which handle exemption applications that present unique issues, private letter ruling and technical advice requests, congressional correspondence and working with Counsel and Treasury on guidance projects. They also provide support and technical advice to the CE&O, Examinations and Determinations functions. They work closely with Counsel on issues.

Elise Bean said that they were trying to get the scope of the universe they were dealing with and asked what the breakdown of the organizations that received the self-declarers questionnaire. Lois Lerner said that she did not have it, but could get it.

Lois Lerner explained that the general exam function did traditional audits. There are various sources for these audits. Some of them arise out of our projects, like the C&U project. We also are using the Form 990 data to develop risk models. We also get referrals, both internal and external. The external referrals come from the public, the press and Congress. When we receive a referral, we have a classification unit that reviews the allegation to see if there is an indication that the organization may not be in compliance. While most cases are reviewed by a single classifier, some referrals are reviewed by a committee of experienced, career civil service employees. These are the more complex or sensitive issues. If the classifier or review committee determine that there is an issue in the referral that warrants examination, they will send it to the examination function. That does not necessarily mean that an exam will be opened immediately. We must wait for the Form 990 to be filed – we audit returns, not organizations. We also need to have an agent available to work the case with the appropriate level of experience.

Laura Stuber asked if we could deny an organization an extension for filing Form 990 if we are waiting on the filing to open the audit. Lois Lerner said that we could not. The first extension is automatic and the second extension is granted if the organization has a reasonable explanation for why it needs the extra time. Lois Lerner did note that we were discovering errors in filling out Form 990. The better the information on the form, the better are case selection. We have found cases where the organization filled the form out incorrectly and were selected for exam. When we examined, we found no issue, just the error in completing the form. Had the organization filled the form out correctly, it would not have been selected for exam. Form 990 fills an important transparency role, which is improved by having more accurate information on the form.

Henry Kerner asked about the time lag for filing from the election cycle. Lois Lerner explained that is the way the law is set up. This is like all taxpayers that need extra time to complete the forms, they can get an extension of time to do so.

Henry Kerner then asked about the penalty part, what happens if there is a problem. Lois Lerner said that if the organization is generally compliant, but there was one issue, we may issue an advisory letter. Henry Kerner asked what is an advisory letter. Lois Lerner explained that an advisory letter was issued when we saw an issue, but it was not sufficient to result in a change, but might be a problem if the organization continued. We would close the exam by issuing the no change letter with advisory telling them that we were not making a change to their exempt status or tax obligations, but advising them of issues that might affect their exempt status or tax obligations in the future. We have found that, for the most part, exempt organizations are a compliant sector. They want to comply with the law. They also want to look good because of the public disclosure of the Form 990. For the most part, they fix the problems we identify.

Lois Lerner discussed some of the issues we look at. We look at compensation issues, whether the organization is paying reasonable compensation. This is not an easy calculation. For section 501(c)(3) organizations there is an excise tax that is imposed on the person receiving the excess compensation, not the organization. The managers who knowingly approved the excess compensation may also be subject to the excise tax. We might issue an advisory about the organization's compensation practices if they had excess compensation. In other cases, there might be penalties or taxes, such as the unrelated business income tax. Ultimately, no one wants revocation. However, if we do revoke the organization's exempt status

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Suzanne Sinno

Judith Kindell

Laura Stuber asked about the EO office structure. Lois Lerner explained that she oversaw three main functions. CE&O managed our website, coordinated our public speaking appearances and created our brochures and other publications. The Exam function, in addition to doing traditional exams (or audits) also had other units. One is the Review of Operations (ROO) which generally looks at public information without contacting the organization to see if there is an issue with the organization and, if so, refer it for an examination. Their work is generated from several sources. For example, if we examine an organization and they are generally compliant but there were some issues discovered during the exam, the ROO will do a follow-up to see if the organization continues to be compliant. The ROO also does the hospital community benefit reviews mandated by the ACA. The ROO also will do a post-determination review of a random sample of organizations who were recognized as exempt by the IRS. They also review organizations flagged by the Determinations function if the Determinations agent sees issues of concern when reviewing the application that are not sufficient to warrant a denial of the application. The ROO is one function of the Exempt Organization Compliance Area (EOCA). The other function of the EOCA is the Exempt Organization Compliance Unit (EOCU). The EOCU does compliance checks where they may be asking an organization for information missing from a Form 990. They also send out compliance check questionnaires, where we gather information from a large number of organizations. We have used these for hospitals, credit counseling and colleges and universities. These are not exams, so the organizations are not required to respond, but we may refer them for an exam if they do not. We generally get a very high response rate, 95% to 98%. We make the questionnaires public so that even those that don't get the questionnaires can see what we are interested in. We generally issue a public report on our findings from the questionnaire. We also may

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Lois Lerner explained that the general exam function did traditional audits. There are various sources for these audits. Some of them arise out of our projects, like the C&U project. We also are using the Form 990 data to develop risk models. We also get referrals, both internal and external. The external referrals come from the public, the press and Congress. When we receive a referral, we have a classification unit that reviews the allegation to see if there is an indication that the organization may not be in compliance. While most cases are reviewed by a single classifier, some referrals are reviewed by a committee of experienced, career civil service employees. These are the more complex or sensitive issues. If the classifier or review committee determine that there is an issue in the referral that warrants examination, they will send it to the examination function. That does not necessarily mean that an exam will be opened immediately. We must wait for the Form 990 to be filed – we audit returns, not organizations. We also need to have an agent available to work the case with the appropriate level of experience.

Laura Stuber asked if we could deny an organization an extension for filing Form 990 if we are waiting on the filing to open the audit. Lois Lerner said that we could not. The first extension is automatic and the second extension is granted if the organization has a reasonable explanation for why it needs the extra time. Lois Lerner did note that we were discovering errors in filling out Form 990. The better the information on the form, the better are case selection. We have found cases where the organization filled the form out incorrectly and were selected for exam. When we examined, we found no issue, just the error in completing the form. Had the organization filled the form out correctly, it would not have been selected for exam. Form 990 fills an important transparency role, which is improved by having more accurate information on the form.

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Lois Lerner discussed some of the issues we look at. We look at compensation issues, whether the organization is paying reasonable compensation. This is not an easy calculation. For section 501(c)(3) organizations there is an excise tax that is imposed on the person receiving the excess compensation, not the organization. The managers who knowingly approved the excess compensation may also be subject to the excise tax. We might issue an advisory about the organization's compensation practices if they had excess compensation. In other cases, there might be penalties or taxes, such as the unrelated business income tax. Ultimately, no one wants revocation. However, if we do revoke the organization's exempt status, the organization that applied for and received recognition of its exempt status can rely on the determination letter if it disclosed its activities in the application, so the revocation is prospective. If the organization did not apply, or if it engaged in activities that it did not disclose in its application, the revocation may be retroactive.

Henry Kerner asked whether section 501(c)(4), (5) or (6) organizations never have to apply. Lois Lerner confirmed that they do not. Most of the applications we receive are section 501(c)(3) organizations, because those organizations are required by the statute to apply. Section 501(c)(3) organizations receive more benefits, such as tax-deductible contributions, and therefore have higher standards to meet. The section 501(c)(3) organizations use Form 1023 to apply, all other section 501(c) organizations use Form 1024.

Lois Lerner explained how we process applications. All applications received get screened by our most experienced determination agents. They quickly look at the application and determine whether the organization has provided sufficient information to determine that it meets the requirements for exemption. If so, we send the determination letter recognizing the organization's exempt status. Approximately 70% of the applications last year were screened. This is a pretty stream-lined process for organizations that completely filled out the application form and there were no questions on the face of the application. If the application can't be screened, there is a second category it may fall into. If the organization basically appears okay, but there is some missing information or a minor change needed (for example, its articles of incorporation do not have the required purpose or dissolution clause). In those cases, we quickly request the needed information to finish the process. The remaining cases need to be

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Elise Bean asked if the section 501(c)(4) issue has exploded. Nikole Flax said it was fair to say it has taken a lot of time. Lois Lerner said that in the last year it felt like a lot. Elise Bean said they were trying to get a feel for the size of the issue, they expect it to be a fairly small size. She said she was glad we are doing the self-declarers questionnaire. Lois Lerner explained that the 1.5 million organizations were those filing annual Forms 990 with us. Most of those organizations are section 501(c)(3). With certain exceptions, all exempt organizations have to file annually with us, either the Form 990, the Form 990-EZ, or the Form 990-N. Elise Bean asked how many were section 501(c)(4) organizations. Lois Lerner said she did not have that number, but could get it. She explained that we receive approximately 60,000 applications every year. Henry Kerner asked how many organizations have fallen off the list. Lois Lerner said that the enactment of PPA provided the first time for us to get a sense for how many fall off. So far, approximately 500,000 organizations have had their exempt status automatically revoked for failure to file for three years.

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Meeting 4/30/13

Attendees:

Capitol Hill staff

Laura Stuber (Majority Senior Counsel)

Elise Bean (Majority Staff Director and Majority Chief Counsel)

Henry Kerner (Minority Staff Director and Minority Chief Counsel)

Stephanie Hall (Minority Counsel)

Scott Wittmann (Minority Research Assistant)

Aaron Fanwick (Majority Law Clerk)

IRS

Nikole Flax

Lois Lerner

Nan Marks

Janine Cook

Susan Brown

Catherine Barre

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Elise Bean said they were interested in the section 501(c)(4) organizations that reported independent expenditures to the FEC. She asked if we had any arrangements with the FEC where we got information about section 501(c)(4) organizations reporting independent expenditures. Lois Lerner asked whether the FEC would know whether an organization was a section 501(c)(4) organization. Laura Stuber said that the organization would have an FEC number. Lois Lerner said that she did not know if the FEC required organizations to identify themselves as section 501(c)(4) organizations. Elise Bean asked if the FEC were required to identify section 501(c)(4), (5) and (6) organizations, would the IRS be able to use that information in the FEC database. Lois Lerner said that there was still a timing issue with respect to the Form 990 filing. Elise Bean said that if the IRS wanted to find organizations to monitor, would this information be helpful. Lois Lerner said that the organizations were required to report on the Form 990 what they are spending. Laura Stuber said that sometimes comparing the 2010 FEC filings to the 2010 IRS filings revealed differences. Lois Lerner explained that even when comparing the same time period, there still might be differences. For example, the FEC electioneering communications rules rely on a bright line test while the IRS looks at all of the facts and circumstances. Elise Bean asked whether it would be useful to us to have the FEC identify section 501(c)(4), (5) and (6) organizations making independent expenditures and the amount of those expenditures. Nikole Flax said there was still a timing issue. Even if the organization was spending lots of money on political campaign activity, we would not know on what else the organization was spending money. These organizations may engage in political campaign activity without jeopardizing their exemption, but we have to look at their activities for the entire year. We would not know in real time whether this was an issue. Lois Lerner said that any information that we have is useful, we just want to manage expectations about the use of the information. Elise Bean asked whether we could ask the FEC to add something. Nikole Flax said that we are open to talking to them, but that decision rests with them. With respect to the differences in what was reported to the IRS and the FEC, Lois Lerner expressed concerns about how the research was done. Henry Kerner asked if that was because of the different definitions. Lois Lerner said that it was also due to the different types of information. While section 501(c) organizations would report their independent expenditures to the FEC, if they make contributions to political committees, it is the political committee that reports the information to the FEC. Both types of expenditures would need to be reported to the IRS. Nikole Flax said there was not a clean match-up for the information. Elise Bean said that it could be a good place to start. Lois Lerner said that it is always useful to have information.

Elise Bean asked what percentage of section 501(c)(4) organizations did file Form 1024. Lois Lerner said that a significant number of section 501(c)(4) organizations do apply for recognition. One of the questions we are asking in the self-declarers questionnaire is why those organizations that do not apply choose not to

do so. Elise Bean asked for a ballpark on how many section 501(c)(4) organizations file Form 1024 and what percentage file Form 990s. Lois Lerner said that anyone not compliant after three years is automatically revoked. Nan Marks noted that organizations can attempt to hide. Lois Lerner said that one of our projects is looking at skip filers – organizations that file at least once every three years, but not every year.

Stephanie Hall asked if we had noticed any difference in the desire to be compliant in section 501(c)(3) organizations versus other section 501(c) organizations, since section 501(c)(3) organizations receive more benefits. Lois Lerner noted that most of our enforcement is in the section 501(c)(3) area, but when we do look at other section 501(c) organizations, we also see a desire to be compliant with the tax rules.

Laura Stuber asked about the IRS staff focused on political campaign activity. Are there certain staff who work on these issues? Lois Lerner said that there are designated folks looking at political campaign issues in the Determinations function. We provided training to these folks and they work with technical experts in the DC office. Many cases are also coordinated with Counsel. The application process is a paper representation of what are the organization's current plans for its future activities. Once an organization has been recognized as exempt, it could change its activities and report that change on the Form 990. We have provided training on political campaign issues to the R&A function, both the Determinations staff and the staff in the DC office, and to the Examination function. In addition to the self-declarers project, we are also looking at referrals alleging political campaign activity and we are identifying potential indicators of political campaign activity on the Form 990 that we are testing. Exam agents that work on these projects were trained. For any project, the technical experts put together training on the issue.

Laura Stuber asked about the 643 examinations of section 501(c)(4) organizations that we identified in our response. Of those 643, there were 22 that reported using PIC codes that political campaign intervention was an issue in the exam. In our response, we explained the limitations of the PIC codes and said that we would have to do a manual review for more information. When the manual review was requested, the IRS declined to do so. Nikole Flax reiterated what we told them in our letter. Lois Lerner said that the PIC code could indicate they looked at the issue, but the determination could be that the issue was not present. For example, there may have been an allegation of political campaign activity, but we determined that the organization did not intervene. Elise Bean said that in less than 5% of the cases, we identified political activity as an issue, using the 22 cases as a ceiling. Nikole Flax said that the 22 was not necessarily a ceiling. Nan Marks explained that the agents identify the most important issues in the case when choosing the PIC codes. There could be cases where the agent looked at political campaign activity issues, but also had UBI, employment tax or other issues that resulted in a change that were considered more important. Nevertheless, the 22 number is pretty accurate, it is more likely to be ceiling. Elise Bean asked if they could say less than 25 cases involved political campaign activity. Nan Marks said that was probably in the right ballpark. Elise Bean asked if we had any comment on the low number of cases involving political campaign activity.

Nikole Flax noted that the numbers would not include the 2010 tax year. Elise Bean said that these cases would all be pre-*Citizens United*. Nikole Flax said that they should not look at those numbers as the current posture. Laura Stuber asked what happened to those 22 cases. Lois Lerner referred to page 3 of the November 23, 2012 letter where we discussed the revocation letters. Elise Bean asked what happened to the 22 cases. Lois Lerner explained that we track how a case closed differently from the PIC codes. Nan Marks said an example would be a case with political activity, compensation and unrelated business income issues. The case was closed no change with an advisory, but we can't relate the closing code to the PIC code. Lois Lerner said that agents would be dealing with different issues, we would not know without looking at the case files.

After the break, Lois Lerner explained that when we open cases where political campaign activity might be an issue, we do look at FEC data.

Laura Stuber asked whether it was a red flag if a group reapplies under another name. Lois Lerner said that we do ask on the Form 1023 and Form 1024 whether they had a different name or had applied before. Laura Stuber said it looked bad. Lois Lerner said that without knowing the facts, she couldn't say. There may be legitimate reasons to change the name. For example, if there is bad press about a person associated with an organization that taints the public perception of the organization, the organization may decide to end its relationship with the person and change its name. We have seen some auto-revoked organizations that try to join a group ruling rather than applying for reinstatement, but we find them.

Elise Bean asked about the interpretation of "primarily" as allowing up to 49% of other activities. Where did people get that? Judith Kindell explained that when GCMs were released to the public, one was released with some supporting background memos. In one of those memos, there was a statement that while the 51/49 was not supportable for section 501(c)(3), it was a reasonable interpretation of the section 501(c)(4) regulations. Elise Bean asked for a copy of that GCM. Laura Stuber asked if the GCM was released around the time that the IRS was considering a change to the regulations. Nan Marks explained that GCMs used to be internal documents. Tax Analysts brought a case against the IRS seeking disclosure of these internal documents which they won in the early 1980s.

Elise Bean said that on the primarily issue, everyone wants a bright line rule. Why is there no bright line guidance? Nikole Flax said that one issue is 49% of what – we have a facts and circumstances test. Lois Lerner said the real question is what is the political campaign activity. Susan Brown used an example of an organization that supports the cherry trees that has a lot of volunteers doing work with the cherry trees, but very few expenditures, most or all of which are for political campaign activity. Under the facts and circumstances test, we can look at all of the volunteer activity and determine that this is a good organization. Under a pure expenditure test, that organization would have a problem. Elise Bean agreed that looking at volunteer activity is important, but why not a percentage test. Laura Stuber noted that section 501(c)(3) has a 20% test. Susan

Brown explained that section 501(c)(3) organizations can not intervene in political campaigns, but can engage in a limited amount of lobbying. That was originally under a facts and circumstances test. Congress enacted section 501(h) to allow section 501(c)(3) organizations to elect to be subject to a pure expenditure test. With respect to the regulations, Janine Cook pointed out that we have to look to the law as a whole and that the section 501(c)(3) regulations have the same language. Lois Lerner said that they have to be careful about unintended consequences.

Elise Bean asked whether it would make sense to have a similar rule for section 501(c)(4). Susan Brown asked to clarify whether it would be for all non-exempt activity. Elise Bean said that it would be a rule for political campaign activity. Lois Lerner said that under existing rules we have to look at all non-social welfare activity.

Elise Bean asked about the primary test for section 527 organizations. Judith Kindell explained that, while the test for tax exempt status is whether the organization is organized and operated primarily to accept contributions and make expenditures for a section 527 exempt function, the way it is taxed further limits the amount of non-political campaign activity it can do. The statute excludes from taxable income certain types of income, provided they are segregated for section 527 purposes. If a section 527 organization has one fund and makes more than insubstantial non-section 527 expenditures from that fund, it is no longer segregated and all of the income to that fund is taxable income. If a section 527 organization has more than one fund and makes more than insubstantial non-section 527 expenditures from one of the funds, that fund is no longer segregated and the income to that fund is taxable, but the other funds remain segregated so the income to those funds may be excluded from taxable income. In both cases, the organization still may be primarily engaged in exempt function activities and therefore still treated as a tax-exempt section 527 organization.

Elise Bean said that if an organization was primarily engaged in political campaign activities, it had no choice but to be treated as a section 527 organization. Susan Brown said that it could be a taxable section 527 organization. Elise Bean said that if a section 501(c)(4) organization had 70% of its expenditures on political campaigns and had no volunteer activity, clearly it wouldn't qualify for section 501(c)(4) and shouldn't it be a section 527 organization. Lois Lerner said that if it meets the requirements for section 527 it would, but it would not necessarily be tax-exempt. Judith Kindell explained that certain section 527 organizations were required to notify the IRS to be treated as tax-exempt. If they did not, they were taxable organizations and all of their income was included in gross income and they could only deduct those expenses that were directly connected to earning the taxable income. Therefore, they could deduct the fundraising expenses to generate their contribution income, but could not deduct the amounts spent on their political campaign activity. Lois Lerner said that when we see that an organization is not qualified under the code section it has applied under, we tell them they are taxable. Sometimes we work with the organization to get them to the right code section. Elise Bean said that if we want to encourage them to be section 527 organizations, why don't we take the step for section 501(c)(4) organizations that fail and tell them they are a section 527 organization. Judith Kindell noted that taxable

section 527 organizations are not required to disclose their donors. Lois Lerner said that based on her days at the FEC, if the organization made mistakes, the money was already gone. Elise Bean said they were interested in preserving the integrity of the tax code. The organization should not be able to say it is just a corporation, that it is a section 527 organization. Lois Lerner said they should consider the impact of the legislation. She expects organizations will just rack up enormous expenses with no money left. Henry Kerner asked how to get to the abuse of organizations claiming section 501(c)(4) but designed to be primarily political. Lois Lerner said the system works, but not in real time. Henry Kerner noted that these organizations don't disclose donors. Lois Lerner said that if they don't meet the requirements, we can come in and revoke, but it doesn't happen timely. Nan Marks said if the concern is that the organizations engaging in this activity don't disclose donors, then the system doesn't work. Henry Kerner said that maybe the solution is to audit so many that it is financially ruinous. Nikole noted that we have budget constraints. Elise Bean suggested using the list of organizations that made independent expenditures. Lois Lerner said that it is her job to oversee it all, not just political campaign activity. Lois Lerner said that she does have other tools. When we issue compliance check questionnaires, we are very transparent about it and post the questionnaire on our website.

Elise Bean asked about section 527 disclosures. Lois Lerner explained that these were on the IRS website in a searchable database. Susan Brown said that under the primarily test, an organization could fail to qualify as a section 501(c)(3) without automatically being section 527. Henry Kerner asked whether a taxable corporation could deduct business expenses. Lois Lerner noted that she never saw a rule that stopped the money from flowing in politics, it just moved it to another venue.

Elise Bean asked how we determined what is political activity and about the law, regulations and revenue rulings. Nan Marks said that revenue rulings are the opinion of the IRS as to how the law applies to a set of facts. They are precedential, but given less preference. We respect revenue rulings, even if we made a mistake. How we do revenue rulings have changed over time, but the recent practice of fairly long standing is for IRS, Counsel and Treasury to work together with sign off from all three offices from senior levels. Elise Bean asked about exam guidance and educational material. Lois Lerner said that generally this is not precedential, but if a judge wants to use it, the judge will. Nan Marks said that regulations are the drafted product of Chief Counsel, but they are Treasury regulations and all three offices (IRS, Counsel, Treasury) work on them and they are cleared through all three offices. Regulations do get deference.

Elise Bean said that the facts and circumstances test is not in the regulations, just in revenue rulings. Where did the facts and circumstances test come from. Nikole Flax said that absent a bright line, we generally use a facts and circumstances test. Nan Marks said this is a general rule prevalent in tax law. Elise Bean asked if there is a general regulation providing for the facts and circumstances test. She said that Senator Levin thinks there should be more bright line tests. Janine Cook noted that in the section 501(c)(3) regulations it states that all facts and circumstances are to be considered. Lois Lerner said that the problem with bright line tests is that there are

always exceptions. Elise Bean said that Senator Levin worked on BCRA which provided a bright line test for electioneering communications. Nan Marks suggested we step back and look at the generic issue. When you have line drawing at the statutory level, we follow those lines. If you have a fuzzy statute, some clarification is desirable, but to what extent is it appropriate to draw bright lines.

Elise Bean said that Senator Levin believes more regulations are needed, not revenue rulings. She said that the regulations should provide if you make an independent expenditure, that is political campaign activity. If you give money to a candidate, that is political campaign activity. The regulations should provide some bright line rules. Lois Lerner said that if you put out a regulation that says these 10 items are in, those are the only 10 items that are in. With a revenue ruling, we can say here are the facts and here is how we think about it. Elise Bean said that we are dealing with a regulation that is really old and two revenue rulings that are really old. When the issue is politics, the IRS gets creamed no matter what.

Meeting 4/30/13

Attendees:

Capitol Hill staff

Laura Stuber (Majority Senior Counsel)

Elise Bean (Majority Staff Director and Majority Chief Counsel)

Henry Kerner (Minority Staff Director and Minority Chief Counsel)

Stephanie Hall (Minority Counsel)

Scott Wittmann (Minority Research Assistant)

Aaron Fanwick (Majority Law Clerk)

IRS

Nikole Flax

Lois Lerner

Nan Marks

Janine Cook

Susan Brown

Catherine Barre

Suzanne Sinno

Judith Kindell

Laura Stuber asked about the EO office structure. Lois Lerner explained that she oversaw three main functions. CE&O managed our website, coordinated our public speaking appearances and created our brochures and other publications. The Exam function, in addition to doing traditional exams (or audits) also had other units. One is the Review of Operations (ROO) which generally looks at public information without contacting the organization to see if there is an issue with the organization and, if so, refer it for an examination. Their work is generated from several sources. For example, if we examine an organization and they are generally compliant but there were some issues discovered during the exam, the ROO will do a follow-up to see if the organization continues to be compliant. The ROO also does the hospital community benefit reviews mandated by the ACA. The ROO also will do a post-determination review of a random sample of organizations who were recognized as exempt by the IRS. They also review organizations flagged by the Determinations function if the Determinations agent sees issues of concern when reviewing the application that are not sufficient to warrant a denial of the application. The ROO is one function of the Exempt Organization Compliance Area (EOCA). The other function of the EOCA is the Exempt Organization Compliance Unit (EOCU). The EOCU does compliance checks where they may be asking an organization for information missing from a Form 990. They also send out compliance check questionnaires, where we gather information from a large number of organizations. We have used these for hospitals, credit counseling and colleges and universities. These are not exams, so the organizations are not required to respond, but we may refer them for an exam if they do not. We generally get a very high response rate, 95% to 98%. We make the questionnaires public so that even those that don't get the questionnaires can see what we are interested in. We generally issue a public report on our findings from the questionnaire. We also may

select some organizations for exam based on information on the questionnaire, their Form 990 filings and other information. The EOCU sends out the questionnaire and may do some of the data analysis.

Henry Kerner asked how many people work in the ROO. Lois Lerner did not have the numbers but could get them. In our latest annual report we stated that there were 516 EO Exam employees. Henry Kerner asked how many questions were on the questionnaires. Lois Lerner said that it depends. We have a couple active questionnaires out now and available on our website. They are being done electronically, so that the organization only sees the questions that are relevant to them. In the C&U questionnaire, we sent it to 400 organizations and asked questions on their demographics, possible UBI activities, compensation and investment practices.

Elise Bean asked if we were looking into section 501(c)(4) organizations that were engaged in political campaign activities. Lois Lerner said that in our self-declarers questionnaire we asked about lots of things, most relating to the tax year of their most recently filed Form 990 (either 2010 or 2011). We also included a section asking about any political campaign activities in calendar year 2012, which we would not otherwise have since their 2012 Form 990 is not yet due. The questionnaire was sent to all self-declared section 501(c)(4), (5) and (6) organizations that filed Form 990. Elise Bean asked about the scope of the universe. Nikole Flax clarified that the questionnaires were only sent to organizations that filed Form 990 in 2010 or 2011 and not the organizations that filed Form 990-EZ or Form 990-N. Laura Stuber asked what the deadline for responding to the questionnaire was. Lois Lerner explained that the questionnaires were not all sent at once because the staff could not handle it, but were sent out in waves. The organizations are given 60 days to respond, but may request an extension, so it could be 90-120 days before they respond. The last of the questionnaires went out last week. Henry Kerner asked if we had received any responses yet. Lois Lerner said she was sure we had but had not checked. Henry Kerner asked about the process and whether we checked any of the answers to the questionnaire. Lois Lerner explained that we don't verify the responses, we report on what we are told by the organizations. We do select for examination organizations that appear to have issues. In the C&U study, we looked at compensation and UBI issues and selected organizations for exam based upon information on the questionnaire and their Form 990. Henry Kerner asked about checking with other organizations. Lois Lerner explained that other organizations may define things differently. We had a situation a few years ago where someone referred an organization based upon their reporting to another agency. When we looked at the information, we determined there was no issue because the other agency had a different definition. There is also the issue of the timing of the reporting. For example, the FEC has real time reporting. The reporting to the IRS looks at previous years. That is why in the self-declarers questionnaire we asked about 2012 data as we won't be getting the Forms 990 for some time. In putting together the questionnaires, we work with our Research function to ensure that we are getting information that we can apply to the universe being studied. In some instances, this will mean asking the question a little differently. They also help us ensure that we have a statistically valid sample so that we can take the

information learned and make broad statements about the universe. For the organizations we select for exam, this is not a statistically valid sample. Therefore, the observations we make based upon the exams apply only to those organizations examined. When we report on our findings, we note any trends and concerns raised as well as any next steps we will be taking. Stephanie Hall asked whether the final report would identify organizations by name, Lois Lerner said no. Henry Kerner asked whether exam and audit were the same and Lois Lerner said yes.

Elise Bean then asked about the third function in the EO Division. Lois Lerner said this was the Rulings and Agreements function. This includes the Determinations function, which processes the applications for recognition of exemption.

Elise Bean said that they were trying to get the scope of the universe they were dealing with and asked what the breakdown of the organizations that received the self-declarers questionnaire. Lois Lerner said that she did not have it, but could get it.

Lois Lerner explained that the general exam function did traditional audits. There are various sources for these audits. Some of them arise out of our projects, like the C&U project. We also are using the Form 990 data to develop risk models. We also get referrals, both internal and external. The external referrals come from the public, the press and Congress. When we receive a referral, we have a classification unit that reviews the allegation to see if there is an indication that the organization may not be in compliance. While most cases are reviewed by a single classifier, some referrals are reviewed by a committee of experienced, career civil service employees. These are the more complex or sensitive issues. If the classifier or review committee determine that there is an issue in the referral that warrants examination, they will send it to the examination function. That does not necessarily mean that an exam will be opened immediately. We must wait for the Form 990 to be filed – we audit returns, not organizations. We also need to have an agent available to work the case with the appropriate level of experience.

Laura Stuber asked if we could deny an organization an extension for filing Form 990 if we are waiting on the filing to open the audit. Lois Lerner said that we could not. The first extension is automatic and the second extension is granted if the organization has a reasonable explanation for why it needs the extra time. Lois Lerner did note that we were discovering errors in filling out Form 990. The better the information on the form, the better are case selection. We have found cases where the organization filled the form out incorrectly and were selected for exam. When we examined, we found no issue, just the error in completing the form. Had the organization filled the form out correctly, it would not have been selected for exam. Form 990 fills an important transparency role, which is improved by having more accurate information on the form.

Henry Kerner asked about the time lag for filing from the election cycle. Lois Lerner explained that is the way the law is set up. This is like all taxpayers that need extra time to complete the forms, they can get an extension of time to do so.

Henry Kerner then asked about the penalty part, what happens if there is a problem. Lois Lerner said that if the organization is generally compliant, but there was one issue, we may issue an advisory letter. Henry Kerner asked what is an advisory letter. Lois Lerner explained that an advisory letter was issued when we saw an issue, but it was not sufficient to result in a change, but might be a problem if the organization continued. We would close the exam by issuing the no change letter with advisory telling them that we were not making a change to their exempt status or tax obligations, but advising them of issues that might affect their exempt status or tax obligations in the future. We have found that, for the most part, exempt organizations are a compliant sector. They want to comply with the law. They also want to look good because of the public disclosure of the Form 990. For the most part, they fix the problems we identify.

Lois Lerner discussed some of the issues we look at. We look at compensation issues, whether the organization is paying reasonable compensation. This is not an easy calculation. For section 501(c)(3) organizations there is an excise tax that is imposed on the person receiving the excess compensation, not the organization. The managers who knowingly approved the excess compensation may also be subject to the excise tax. We might issue an advisory about the organization's compensation practices if they had excess compensation. In other cases, there might be penalties or taxes, such as the unrelated business income tax. Ultimately, no one wants revocation. However, if we do revoke the organization's exempt status, the organization that applied for and received recognition of its exempt status can rely on the determination letter if it disclosed its activities in the application, so the revocation is prospective. If the organization did not apply, or if it engaged in activities that it did not disclose in its application, the revocation may be retroactive.

Henry Kerner asked whether section 501(c)(4), (5) or (6) organizations never have to apply. Lois Lerner confirmed that they do not. Most of the applications we receive are section 501(c)(3) organizations, because those organizations are required by the statute to apply. Section 501(c)(3) organizations receive more benefits, such as tax-deductible contributions, and therefore have higher standards to meet. The section 501(c)(3) organizations use Form 1023 to apply, all other section 501(c) organizations use Form 1024.

Lois Lerner explained how we process applications. All applications received get screened by our most experienced determination agents. They quickly look at the application and determine whether the organization has provided sufficient information to determine that it meets the requirements for exemption. If so, we send the determination letter recognizing the organization's exempt status. Approximately 70% of the applications last year were screened. This is a pretty stream-lined process for organizations that completely filled out the application form and there were no questions on the face of the application. If the application can't be screened, there is a second category it may fall into. If the organization basically appears okay, but there is some missing information or a minor change needed (for example, its articles of incorporation do not have the required purpose or dissolution clause). In those cases, we quickly request the needed information to finish the process. The remaining cases need to be

fully developed. These cases may have missing information, provide cursory information about their proposed activities, have inconsistencies, or raise legal questions. The cases must be assigned to a determinations agent that has the appropriate level of experience for the case. In addition, for some issues, we designate certain groups as specialists for that issue in order to promote consistency. As a result, these cases may wait for a while before being assigned to an agent to be worked. We have a tool on our website regarding how long the wait to be assigned is. We are working to improve that tool. Once a case has been assigned, the agent reviews the case and sends a letter to the organization with development questions. Most cases are handled that way. Cases involving issues of first impression are transferred to the R&A office in DC which is staffed primarily by lawyers who work in conjunction with the lawyers in the Chief Counsel's office.

The R&A office in DC consists of the Technical and Guidance functions which handle exemption applications that present unique issues, private letter ruling and technical advice requests, congressional correspondence and working with Counsel and Treasury on guidance projects. They also provide support and technical advice to the CE&O, Examinations and Determinations functions. They work closely with Counsel on issues.

Elise Bean asked if the section 501(c)(4) issue has exploded. Nikole Flax said it was fair to say it has taken a lot of time. Lois Lerner said that in the last year it felt like a lot. Elise Bean said they were trying to get a feel for the size of the issue, they expect it to be a fairly small size. She said she was glad we are doing the self-declarers questionnaire. Lois Lerner explained that the 1.5 million organizations were those filing annual Forms 990 with us. Most of those organizations are section 501(c)(3). With certain exceptions, all exempt organizations have to file annually with us, either the Form 990, the Form 990-EZ, or the Form 990-N. Elise Bean asked how many were section 501(c)(4) organizations. Lois Lerner said she did not have that number, but could get it. She explained that we receive approximately 60,000 applications every year. Henry Kerner asked how many organizations have fallen off the list. Lois Lerner said that the enactment of PPA provided the first time for us to get a sense for how many fall off. So far, approximately 500,000 organizations have had their exempt status automatically revoked for failure to file for three years.

Stephanie Hall asked how do we know about organizations that don't apply and don't file. Lois Lerner explained that we have no systemic way of knowing, but someone may refer the organization. If the organization has been holding itself out as exempt but not filing Forms 990 and then files an application, we will auto revoke the organization. Last year, in addition to the 60,000 applications we generally receive, we also received an additional 20,000 applications seeking reinstatement. That was a requirement of the law, if they were auto-revoked, they had to apply for recognition going forward. Stephanie Hall asked if we assessed taxes going back. Lois Lerner explained that the organizations may request retroactive reinstatement. We had some transition relief in the first year and provided a lower user fee for small organizations seeking reinstatement. Elise Bean asked when the first year was. Lois Lerner told her it was

2010. Elise asked for a ballpark percentage of section 501(c)(4) organizations. Lois Lerner said that SOI has that information and we would get it for them. Nikole Flax said we could get several years worth of information. Lois Lerner pointed out that not all section 501(c)(4) organizations are involved in political campaign activity.

Elise Bean said they were interested in the section 501(c)(4) organizations that reported independent expenditures to the FEC. She asked if we had any arrangements with the FEC where we got information about section 501(c)(4) organizations reporting independent expenditures. Lois Lerner asked whether the FEC would know whether an organization was a section 501(c)(4) organization. Laura Stuber said that the organization would have an FEC number. Lois Lerner said that she did not know if the FEC required organizations to identify themselves as section 501(c)(4) organizations. Elise Bean asked if the FEC were required to identify section 501(c)(4), (5) and (6) organizations, would the IRS be able to use that information in the FEC database. Lois Lerner said that there was still a timing issue with respect to the Form 990 filing. Elise Bean said that if the IRS wanted to find organizations to monitor, would this information be helpful. Lois Lerner said that the organizations were required to report on the Form 990 what they are spending. Laura Stuber said that sometimes comparing the 2010 FEC filings to the 2010 IRS filings revealed differences. Lois Lerner explained that even when comparing the same time period, there still might be differences. For example, the FEC electioneering communications rules rely on a bright line test while the IRS looks at all of the facts and circumstances. Elise Bean asked whether it would be useful to us to have the FEC identify section 501(c)(4), (5) and (6) organizations making independent expenditures and the amount of those expenditures. Nikole Flax said there was still a timing issue. Even if the organization was spending lots of money on political campaign activity, we would not know on what else the organization was spending money. These organizations may engage in political campaign activity without jeopardizing their exemption, but we have to look at their activities for the entire year. We would not know in real time whether this was an issue. Lois Lerner said that any information that we have is useful, we just want to manage expectations about the use of the information. Elise Bean asked whether we could ask the FEC to add something. Nikole Flax said that we are open to talking to them, but that decision rests with them. With respect to the differences in what was reported to the IRS and the FEC, Lois Lerner expressed concerns about how the research was done. Henry Kerner asked if that was because of the different definitions. Lois Lerner said that it was also due to the different types of information. While section 501(c) organizations would report their independent expenditures to the FEC, if they make contributions to political committees, it is the political committee that reports the information to the FEC. Both types of expenditures would need to be reported to the IRS. Nikole Flax said there was not a clean match-up for the information. Elise Bean said that it could be a good place to start. Lois Lerner said that it is always useful to have information.

Elise Bean asked what percentage of section 501(c)(4) organizations did file Form 1024. Lois Lerner said that a significant number of section 501(c)(4) organizations do apply for recognition. One of the questions we are asking in the self-declarers questionnaire is why those organizations that do not apply choose not to

do so. Elise Bean asked for a ballpark on how many section 501(c)(4) organizations file Form 1024 and what percentage file Form 990s. Lois Lerner said that anyone not compliant after three years is automatically revoked. Nan Marks noted that organizations can attempt to hide. Lois Lerner said that one of our projects is looking at skip filers – organizations that file at least once every three years, but not every year.

Stephanie Hall asked if we had noticed any difference in the desire to be compliant in section 501(c)(3) organizations versus other section 501(c) organizations, since section 501(c)(3) organizations receive more benefits. Lois Lerner noted that most of our enforcement is in the section 501(c)(3) area, but when we do look at other section 501(c) organizations, we also see a desire to be compliant with the tax rules.

Laura Stuber asked about the IRS staff focused on political campaign activity. Are there certain staff who work on these issues? Lois Lerner said that there are designated folks looking at political campaign issues in the Determinations function. We provided training to these folks and they work with technical experts in the DC office. Many cases are also coordinated with Counsel. The application process is a paper representation of what are the organization's current plans for its future activities. Once an organization has been recognized as exempt, it could change its activities and report that change on the Form 990. We have provided training on political campaign issues to the R&A function, both the Determinations staff and the staff in the DC office, and to the Examination function. In addition to the self-declarers project, we are also looking at referrals alleging political campaign activity and we are identifying potential indicators of political campaign activity on the Form 990 that we are testing. Exam agents that work on these projects were trained. For any project, the technical experts put together training on the issue.

Laura Stuber asked about the 643 examinations of section 501(c)(4) organizations that we identified in our response. Of those 643, there were 22 that reported using PIC codes that political campaign intervention was an issue in the exam. In our response, we explained the limitations of the PIC codes and said that we would have to do a manual review for more information. When the manual review was requested, the IRS declined to do so. Nikole Flax reiterated what we told them in our letter. Lois Lerner said that the PIC code could indicate they looked at the issue, but the determination could be that the issue was not present. For example, there may have been an allegation of political campaign activity, but we determined that the organization did not intervene. Elise Bean said that in less than 5% of the cases, we identified political activity as an issue, using the 22 cases as a ceiling. Nikole Flax said that the 22 was not necessarily a ceiling. Nan Marks explained that the agents identify the most important issues in the case when choosing the PIC codes. There could be cases where the agent looked at political campaign activity issues, but also had UBI, employment tax or other issues that resulted in a change that were considered more important. Nevertheless, the 22 number is pretty accurate, it is more likely to be ceiling. Elise Bean asked if they could say less than 25 cases involved political campaign activity. Nan Marks said that was probably in the right ballpark. Elise Bean asked if we had any comment on the low number of cases involving political campaign activity.

Nikole Flax noted that the numbers would not include the 2010 tax year. Elise Bean said that these cases would all be pre-*Citizens United*. Nikole Flax said that they should not look at those numbers as the current posture. Laura Stuber asked what happened to those 22 cases. Lois Lerner referred to page 3 of the November 23, 2012 letter where we discussed the revocation letters. Elise Bean asked what happened to the 22 cases. Lois Lerner explained that we track how a case closed differently from the PIC codes. Nan Marks said an example would be a case with political activity, compensation and unrelated business income issues. The case was closed no change with an advisory, but we can't relate the closing code to the PIC code. Lois Lerner said that agents would be dealing with different issues, we would not know without looking at the case files.

After the break, Lois Lerner explained that when we open cases where political campaign activity might be an issue, we do look at FEC data.

Laura Stuber asked whether it was a red flag if a group reapplies under another name. Lois Lerner said that we do ask on the Form 1023 and Form 1024 whether they had a different name or had applied before. Laura Stuber said it looked bad. Lois Lerner said that without knowing the facts, she couldn't say. There may be legitimate reasons to change the name. For example, if there is bad press about a person associated with an organization that taints the public perception of the organization, the organization may decide to end its relationship with the person and change its name. We have seen some auto-revoked organizations that try to join a group ruling rather than applying for reinstatement, but we find them.

Elise Bean asked about the interpretation of "primarily" as allowing up to 49% of other activities. Where did people get that? Judith Kindell explained that when GCMs were released to the public, one was released with some supporting background memos. In one of those memos, there was a statement that while the 51/49 was not supportable for section 501(c)(3), it was a reasonable interpretation of the section 501(c)(4) regulations. Elise Bean asked for a copy of that GCM. Laura Stuber asked if the GCM was released around the time that the IRS was considering a change to the regulations. Nan Marks explained that GCMs used to be internal documents. Tax Analysts brought a case against the IRS seeking disclosure of these internal documents which they won in the early 1980s.

Elise Bean said that on the primarily issue, everyone wants a bright line rule. Why is there no bright line guidance? Nikole Flax said that one issue is 49% of what – we have a facts and circumstances test. Lois Lerner said the real question is what is the political campaign activity. Susan Brown used an example of an organization that supports the cherry trees that has a lot of volunteers doing work with the cherry trees, but very few expenditures, most or all of which are for political campaign activity. Under the facts and circumstances test, we can look at all of the volunteer activity and determine that this is a good organization. Under a pure expenditure test, that organization would have a problem. Elise Bean agreed that looking at volunteer activity is important, but why not a percentage test. Laura Stuber noted that section 501(c)(3) has a 20% test. Susan

Brown explained that section 501(c)(3) organizations can not intervene in political campaigns, but can engage in a limited amount of lobbying. That was originally under a facts and circumstances test. Congress enacted section 501(h) to allow section 501(c)(3) organizations to elect to be subject to a pure expenditure test. With respect to the regulations, Janine Cook pointed out that we have to look to the law as a whole and that the section 501(c)(3) regulations have the same language. Lois Lerner said that they have to be careful about unintended consequences.

Elise Bean asked whether it would make sense to have a similar rule for section 501(c)(4). Susan Brown asked to clarify whether it would be for all non-exempt activity. Elise Bean said that it would be a rule for political campaign activity. Lois Lerner said that under existing rules we have to look at all non-social welfare activity.

Elise Bean asked about the primary test for section 527 organizations. Judith Kindell explained that, while the test for tax exempt status is whether the organization is organized and operated primarily to accept contributions and make expenditures for a section 527 exempt function, the way it is taxed further limits the amount of non-political campaign activity it can do. The statute excludes from taxable income certain types of income, provided they are segregated for section 527 purposes. If a section 527 organization has one fund and makes more than insubstantial non-section 527 expenditures from that fund, it is no longer segregated and all of the income to that fund is taxable income. If a section 527 organization has more than one fund and makes more than insubstantial non-section 527 expenditures from one of the funds, that fund is no longer segregated and the income to that fund is taxable, but the other funds remain segregated so the income to those funds may be excluded from taxable income. In both cases, the organization still may be primarily engaged in exempt function activities and therefore still treated as a tax-exempt section 527 organization.

Elise Bean said that if an organization was primarily engaged in political campaign activities, it had no choice but to be treated as a section 527 organization. Susan Brown said that it could be a taxable section 527 organization. Elise Bean said that if a section 501(c)(4) organization had 70% of its expenditures on political campaigns and had no volunteer activity, clearly it wouldn't qualify for section 501(c)(4) and shouldn't it be a section 527 organization. Lois Lerner said that if it meets the requirements for section 527 it would, but it would not necessarily be tax-exempt. Judith Kindell explained that certain section 527 organizations were required to notify the IRS to be treated as tax-exempt. If they did not, they were taxable organizations and all of their income was included in gross income and they could only deduct those expenses that were directly connected to earning the taxable income. Therefore, they could deduct the fundraising expenses to generate their contribution income, but could not deduct the amounts spent on their political campaign activity. Lois Lerner said that when we see that an organization is not qualified under the code section it has applied under, we tell them they are taxable. Sometimes we work with the organization to get them to the right code section. Elise Bean said that if we want to encourage them to be section 527 organizations, why don't we take the step for section 501(c)(4) organizations that fail and tell them they are a section 527 organization. Judith Kindell noted that taxable

section 527 organizations are not required to disclose their donors. Lois Lerner said that based on her days at the FEC, if the organization made mistakes, the money was already gone. Elise Bean said they were interested in preserving the integrity of the tax code. The organization should not be able to say it is just a corporation, that it is a section 527 organization. Lois Lerner said they should consider the impact of the legislation. She expects organizations will just rack up enormous expenses with no money left. Henry Kerner asked how to get to the abuse of organizations claiming section 501(c)(4) but designed to be primarily political. Lois Lerner said the system works, but not in real time. Henry Kerner noted that these organizations don't disclose donors. Lois Lerner said that if they don't meet the requirements, we can come in and revoke, but it doesn't happen timely. Nan Marks said if the concern is that the organizations engaging in this activity don't disclose donors, then the system doesn't work. Henry Kerner said that maybe the solution is to audit so many that it is financially ruinous. Nikole noted that we have budget constraints. Elise Bean suggested using the list of organizations that made independent expenditures. Lois Lerner said that it is her job to oversee it all, not just political campaign activity. Lois Lerner said that she does have other tools. When we issue compliance check questionnaires, we are very transparent about it and post the questionnaire on our website.

Elise Bean asked about section 527 disclosures. Lois Lerner explained that these were on the IRS website in a searchable database. Susan Brown said that under the primarily test, an organization could fail to qualify as a section 501(c)(3) without automatically being section 527. Henry Kerner asked whether a taxable corporation could deduct business expenses. Lois Lerner noted that she never saw a rule that stopped the money from flowing in politics, it just moved it to another venue.

Elise Bean asked how we determined what is political activity and about the law, regulations and revenue rulings. Nan Marks said that revenue rulings are the opinion of the IRS as to how the law applies to a set of facts. They are precedential, but given less preference. We respect revenue rulings, even if we made a mistake. How we do revenue rulings have changed over time, but the recent practice of fairly long standing is for IRS, Counsel and Treasury to work together with sign off from all three offices from senior levels. Elise Bean asked about exam guidance and educational material. Lois Lerner said that generally this is not precedential, but if a judge wants to use it, the judge will. Nan Marks said that regulations are the drafted product of Chief Counsel, but they are Treasury regulations and all three offices (IRS, Counsel, Treasury) work on them and they are cleared through all three offices. Regulations do get deference.

Elise Bean said that the facts and circumstances test is not in the regulations, just in revenue rulings. Where did the facts and circumstances test come from. Nikole Flax said that absent a bright line, we generally use a facts and circumstances test. Nan Marks said this is a general rule prevalent in tax law. Elise Bean asked if there is a general regulation providing for the facts and circumstances test. She said that Senator Levin thinks there should be more bright line tests. Janine Cook noted that in the section 501(c)(3) regulations it states that all facts and circumstances are to be considered. Lois Lerner said that the problem with bright line tests is that there are

always exceptions. Elise Bean said that Senator Levin worked on BCRA which provided a bright line test for electioneering communications. Nan Marks suggested we step back and look at the generic issue. When you have line drawing at the statutory level, we follow those lines. If you have a fuzzy statute, some clarification is desirable, but to what extent is it appropriate to draw bright lines.

Elise Bean said that Senator Levin believes more regulations are needed, not revenue rulings. She said that the regulations should provide if you make an independent expenditure, that is political campaign activity. If you give money to a candidate, that is political campaign activity. The regulations should provide some bright line rules. Lois Lerner said that if you put out a regulation that says these 10 items are in, those are the only 10 items that are in. With a revenue ruling, we can say here are the facts and here is how we think about it. Elise Bean said that we are dealing with a regulation that is really old and two revenue rulings that are really old. When the issue is politics, the IRS gets creamed no matter what. Lois Lerner said that even if it is in the regulation, I still have to deal with ? Elise Bean said that a revenue ruling does not get the same deference as a regulation. Lois Lerner said you have to be cautious, not only to set rules that prevent what you can't. Catherine Barre asked whether the IRS has ever set bright line rules in a regulation. Elise Bean said she understands that a bright line test would be challenged. Nikole Flax said that the IRS likes bright line tests as they are easier to administer.

Elise Bean referred to a letter that discussed partisan activity, wanting to help party organizations and asked whether that is a social welfare organization. Nikole Flax said we could not talk about a specific organization. Lois Lerner said that section 501(c)(4) organizations benefit the community as a whole. She referred to the plumbers case, where the activity was private benefit to a particular part of the community.

Elise Bean asked about Revenue Ruling 2004-6 and Revenue Ruling 2007-41. Susan Brown explained that those rulings don't technically apply to the question of what is political campaign activity under section 501(c)(4). Ruling 2004-6 deals with what is a section 527 exempt function expenditure and Revenue Ruling 2007-41 deals with political campaign activity under section 501(c)(3). However, there is a commonality in the two rulings and these are the sort of facts and circumstances we would consider in determining whether an activity is political campaign activity. Laura Stuber asked why not do a ruling for section 501(c)(4). Catherine Barre said that would be a topic for Treasury. Nikole Flax said that we are taking steps to find out what is actually going on with section 501(c)(4) organizations, but it takes time.

Laura Stuber referred to IRS exam guidelines that use the term exclusively. Lois Lerner explained that it was quoting the statute and the regulation. We train our agents on the application of the law. Janine Cook said that an agent's RAR walks through the law. Nan Marks said that we don't break new ground in an IRM, we quote.

Elise Bean said that Senator Levin wanted to know more about the educational guide sheet we referred to in our responses. Nikole Flax said that we were trying to be

transparent. We attempted to develop a guide sheet, but we did not end up with one. What we had was an internal working draft. Lois Lerner said that we were being asked about our determinations process. Rather than providing written guidance, we ended up having technical people from DC walk through the process with the determinations people. The draft guide sheet was never finalized. Elise Bean asked whether it was one page or many. Lois Lerner said that using a guide sheet is a direction we sometimes take. In this case we had a draft and we sent it to the determinations function for comment on whether it was useful. It pretty quickly became clear that it wouldn't work. The revenue rulings are much more helpful in these situations. When dealing with section 501(c)(4) organizations, there are two questions. First, is the activity non-social welfare. If so, how much is it. Elise Bean said that Senator Levin wants to see the guide sheet. Nikole Flax said that we have procedural issues with releasing drafts.

Elise Bean asked whether certain activities would be political campaign intervention. She quoted the language of the regulation. Susan Brown said yes. Elise Bean asked whether independent expenditures would be political campaign intervention. Susan Brown said that she did not know enough about those rules. Lois Lerner said that we do not oversee that law. Nan Marks said there is a danger in applying some other agency's standard. Lois Lerner said that some of the law is different. A direct tie-in to another agency's law does not always work to our advantage. Laura Stuber asked whether the facts and circumstances works for us. Lois Lerner said yes, it is not necessarily easy and it doesn't mean we don't like bright lines, but when we start looking at consequences, it allows us to take into consideration relevant mitigating factors that a bright line test would not. Elise Bean asked whether electioneering communications would be political campaign activity. Lois Lerner said maybe and referred to Revenue Ruling 2004-6. Laura Stuber started to read from a redacted transcript of an ad. Nan Marks recognized the ad from when it aired. Lois Lerner said we could not talk about particular taxpayers. She said that when developing a section 501(c)(4) application, if it appears it might be political, we ask for transcripts.

Meeting 4/30/13

Attendees:

Capitol Hill staff

Laura Stuber (Majority Senior Counsel)

Elise Bean (Majority Staff Director and Majority Chief Counsel)

Henry Kerner (Minority Staff Director and Minority Chief Counsel)

Stephanie Hall (Minority Counsel)

Scott Wittmann (Minority Research Assistant)

Aaron Fanwick (Majority Law Clerk)

IRS

Nikole Flax

Lois Lerner

Nan Marks

Janine Cook

Susan Brown

Catherine Barre

Suzanne Sinno

Judith Kindell

Laura Stuber asked about the EO office structure. Lois Lerner explained that she oversaw three main functions. CE&O managed our website, coordinated our public speaking appearances and created our brochures and other publications. The Exam function, in addition to doing traditional exams (or audits) also had other units. One is the Review of Operations (ROO) which generally looks at public information without contacting the organization to see if there is an issue with the organization and, if so, refer it for an examination. Their work is generated from several sources. For example, if we examine an organization and they are generally compliant but there were some issues discovered during the exam, the ROO will do a follow-up to see if the organization continues to be compliant. The ROO also does the hospital community benefit reviews mandated by the ACA. The ROO also will do a post-determination review of a random sample of organizations who were recognized as exempt by the IRS. They also review organizations flagged by the Determinations function if the Determinations agent sees issues of concern when reviewing the application that are not sufficient to warrant a denial of the application. The ROO is one function of the Exempt Organization Compliance Area (EOCA). The other function of the EOCA is the Exempt Organization Compliance Unit (EOCU). The EOCU does compliance checks where they may be asking an organization for information missing from a Form 990. They also send out compliance check questionnaires, where we gather information from a large number of organizations. We have used these for hospitals, credit counseling and colleges and universities. These are not exams, so the organizations are not required to respond, but we may refer them for an exam if they do not. We generally get a very high response rate, 95% to 98%. We make the questionnaires public so that even those that don't get the questionnaires can see what we are interested in. We generally issue a public report on our findings from the questionnaire. We also may

select some organizations for exam based on information on the questionnaire, their Form 990 filings and other information. The EOCU sends out the questionnaire and may do some of the data analysis.

Henry Kerner asked how many people work in the ROO. Lois Lerner did not have the numbers but could get them. In our latest annual report we stated that there were 516 EO Exam employees. Henry Kerner asked how many questions were on the questionnaires. Lois Lerner said that it depends. We have a couple active questionnaires out now and available on our website. They are being done electronically, so that the organization only sees the questions that are relevant to them. In the C&U questionnaire, we sent it to 400 organizations and asked questions on their demographics, possible UBI activities, compensation and investment practices.

Elise Bean asked if we were looking into section 501(c)(4) organizations that were engaged in political campaign activities. Lois Lerner said that in our self-declarers questionnaire we asked about lots of things, most relating to the tax year of their most recently filed Form 990 (either 2010 or 2011). We also included a section asking about any political campaign activities in calendar year 2012, which we would not otherwise have since their 2012 Form 990 is not yet due. The questionnaire was sent to all self-declared section 501(c)(4), (5) and (6) organizations that filed Form 990. Elise Bean asked about the scope of the universe. Nikole Flax clarified that the questionnaires were only sent to organizations that filed Form 990 in 2010 or 2011 and not the organizations that filed Form 990-EZ or Form 990-N. Laura Stuber asked what the deadline for responding to the questionnaire was. Lois Lerner explained that the questionnaires were not all sent at once because the staff could not handle it, but were sent out in waves. The organizations are given 60 days to respond, but may request an extension, so it could be 90-120 days before they respond. The last of the questionnaires went out last week. Henry Kerner asked if we had received any responses yet. Lois Lerner said she was sure we had but had not checked. Henry Kerner asked about the process and whether we checked any of the answers to the questionnaire. Lois Lerner explained that we don't verify the responses, we report on what we are told by the organizations. We do select for examination organizations that appear to have issues. In the C&U study, we looked at compensation and UBI issues and selected organizations for exam based upon information on the questionnaire and their Form 990. Henry Kerner asked about checking with other organizations. Lois Lerner explained that other organizations may define things differently. We had a situation a few years ago where someone referred an organization based upon their reporting to another agency. When we looked at the information, we determined there was no issue because the other agency had a different definition. There is also the issue of the timing of the reporting. For example, the FEC has real time reporting. The reporting to the IRS looks at previous years. That is why in the self-declarers questionnaire we asked about 2012 data as we won't be getting the Forms 990 for some time. In putting together the questionnaires, we work with our Research function to ensure that we are getting information that we can apply to the universe being studied. In some instances, this will mean asking the question a little differently. They also help us ensure that we have a statistically valid sample so that we can take the

information learned and make broad statements about the universe. For the organizations we select for exam, this is not a statistically valid sample. Therefore, the observations we make based upon the exams apply only to those organizations examined. When we report on our findings, we note any trends and concerns raised as well as any next steps we will be taking. Stephanie Hall asked whether the final report would identify organizations by name, Lois Lerner said no. Henry Kerner asked whether exam and audit were the same and Lois Lerner said yes.

Elise Bean then asked about the third function in the EO Division. Lois Lerner said this was the Rulings and Agreements function. This includes the Determinations function, which processes the applications for recognition of exemption.

Elise Bean said that they were trying to get the scope of the universe they were dealing with and asked what the breakdown of the organizations that received the self-declarers questionnaire. Lois Lerner said that she did not have it, but could get it.

Lois Lerner explained that the general exam function did traditional audits. There are various sources for these audits. Some of them arise out of our projects, like the C&U project. We also are using the Form 990 data to develop risk models. We also get referrals, both internal and external. The external referrals come from the public, the press and Congress. When we receive a referral, we have a classification unit that reviews the allegation to see if there is an indication that the organization may not be in compliance. While most cases are reviewed by a single classifier, some referrals are reviewed by a committee of experienced, career civil service employees. These are the more complex or sensitive issues. If the classifier or review committee determine that there is an issue in the referral that warrants examination, they will send it to the examination function. That does not necessarily mean that an exam will be opened immediately. We must wait for the Form 990 to be filed – we audit returns, not organizations. We also need to have an agent available to work the case with the appropriate level of experience.

Laura Stuber asked if we could deny an organization an extension for filing Form 990 if we are waiting on the filing to open the audit. Lois Lerner said that we could not. The first extension is automatic and the second extension is granted if the organization has a reasonable explanation for why it needs the extra time. Lois Lerner did note that we were discovering errors in filling out Form 990. The better the information on the form, the better are case selection. We have found cases where the organization filled the form out incorrectly and were selected for exam. When we examined, we found no issue, just the error in completing the form. Had the organization filled the form out correctly, it would not have been selected for exam. Form 990 fills an important transparency role, which is improved by having more accurate information on the form.

Henry Kerner asked about the time lag for filing from the election cycle. Lois Lerner explained that is the way the law is set up. This is like all taxpayers that need extra time to complete the forms, they can get an extension of time to do so.

Henry Kerner then asked about the penalty part, what happens if there is a problem. Lois Lerner said that if the organization is generally compliant, but there was one issue, we may issue an advisory letter. Henry Kerner asked what is an advisory letter. Lois Lerner explained that an advisory letter was issued when we saw an issue, but it was not sufficient to result in a change, but might be a problem if the organization continued. We would close the exam by issuing the no change letter with advisory telling them that we were not making a change to their exempt status or tax obligations, but advising them of issues that might affect their exempt status or tax obligations in the future. We have found that, for the most part, exempt organizations are a compliant sector. They want to comply with the law. They also want to look good because of the public disclosure of the Form 990. For the most part, they fix the problems we identify.

Lois Lerner discussed some of the issues we look at. We look at compensation issues, whether the organization is paying reasonable compensation. This is not an easy calculation. For section 501(c)(3) organizations there is an excise tax that is imposed on the person receiving the excess compensation, not the organization. The managers who knowingly approved the excess compensation may also be subject to the excise tax. We might issue an advisory about the organization's compensation practices if they had excess compensation. In other cases, there might be penalties or taxes, such as the unrelated business income tax. Ultimately, no one wants revocation. However, if we do revoke the organization's exempt status, the organization that applied for and received recognition of its exempt status can rely on the determination letter if it disclosed its activities in the application, so the revocation is prospective. If the organization did not apply, or if it engaged in activities that it did not disclose in its application, the revocation may be retroactive.

Henry Kerner asked whether section 501(c)(4), (5) or (6) organizations never have to apply. Lois Lerner confirmed that they do not. Most of the applications we receive are section 501(c)(3) organizations, because those organizations are required by the statute to apply. Section 501(c)(3) organizations receive more benefits, such as tax-deductible contributions, and therefore have higher standards to meet. The section 501(c)(3) organizations use Form 1023 to apply, all other section 501(c) organizations use Form 1024.

Lois Lerner explained how we process applications. All applications received get screened by our most experienced determination agents. They quickly look at the application and determine whether the organization has provided sufficient information to determine that it meets the requirements for exemption. If so, we send the determination letter recognizing the organization's exempt status. Approximately 70% of the applications last year were screened. This is a pretty streamlined process for organizations that completely filled out the application form and there were no questions on the face of the application. If the application can't be screened, there is a second category it may fall into. If the organization basically appears okay, but there is some missing information or a minor change needed (for example, its articles of incorporation do not have the required purpose or dissolution clause). In those cases, we quickly request the needed information to finish the process. The remaining cases need to be

fully developed. These cases may have missing information, provide cursory information about their proposed activities, have inconsistencies, or raise legal questions. The cases must be assigned to a determinations agent that has the appropriate level of experience for the case. In addition, for some issues, we designate certain groups as specialists for that issue in order to promote consistency. As a result, these cases may wait for a while before being assigned to an agent to be worked. We have a tool on our website regarding how long the wait to be assigned is. We are working to improve that tool. Once a case has been assigned, the agent reviews the case and sends a letter to the organization with development questions. Most cases are handled that way. Cases involving issues of first impression are transferred to the R&A office in DC which is staffed primarily by lawyers who work in conjunction with the lawyers in the Chief Counsel's office.

The R&A office in DC consists of the Technical and Guidance functions which handle exemption applications that present unique issues, private letter ruling and technical advice requests, congressional correspondence and working with Counsel and Treasury on guidance projects. They also provide support and technical advice to the CE&O, Examinations and Determinations functions. They work closely with Counsel on issues.

Elise Bean asked if the section 501(c)(4) issue has exploded. Nikole Flax said it was fair to say it has taken a lot of time. Lois Lerner said that in the last year it felt like a lot. Elise Bean said they were trying to get a feel for the size of the issue, they expect it to be a fairly small size. She said she was glad we are doing the self-declarers questionnaire. Lois Lerner explained that the 1.5 million organizations were those filing annual Forms 990 with us. Most of those organizations are section 501(c)(3). With certain exceptions, all exempt organizations have to file annually with us, either the Form 990, the Form 990-EZ, or the Form 990-N. Elise Bean asked how many were section 501(c)(4) organizations. Lois Lerner said she did not have that number, but could get it. She explained that we receive approximately 60,000 applications every year. Henry Kerner asked how many organizations have fallen off the list. Lois Lerner said that the enactment of PPA provided the first time for us to get a sense for how many fall off. So far, approximately 500,000 organizations have had their exempt status automatically revoked for failure to file for three years.

Stephanie Hall asked how do we know about organizations that don't apply and don't file. Lois Lerner explained that we have no systemic way of knowing, but someone may refer the organization. If the organization has been holding itself out as exempt but not filing Forms 990 and then files an application, we will auto revoke the organization. Last year, in addition to the 60,000 applications we generally receive, we also received an additional 20,000 applications seeking reinstatement. That was a requirement of the law, if they were auto-revoked, they had to apply for recognition going forward. Stephanie Hall asked if we assessed taxes going back. Lois Lerner explained that the organizations may request retroactive reinstatement. We had some transition relief in the first year and provided a lower user fee for small organizations seeking reinstatement. Elise Bean asked when the first year was. Lois Lerner told her it was

2010. Elise asked for a ballpark percentage of section 501(c)(4) organizations. Lois Lerner said that SOI has that information and we would get it for them. Nikole Flax said we could get several years worth of information. Lois Lerner pointed out that not all section 501(c)(4) organizations are involved in political campaign activity.

Elise Bean said they were interested in the section 501(c)(4) organizations that reported independent expenditures to the FEC. She asked if we had any arrangements with the FEC where we got information about section 501(c)(4) organizations reporting independent expenditures. Lois Lerner asked whether the FEC would know whether an organization was a section 501(c)(4) organization. Laura Stuber said that the organization would have an FEC number. Lois Lerner said that she did not know if the FEC required organizations to identify themselves as section 501(c)(4) organizations. Elise Bean asked if the FEC were required to identify section 501(c)(4), (5) and (6) organizations, would the IRS be able to use that information in the FEC database. Lois Lerner said that there was still a timing issue with respect to the Form 990 filing. Elise Bean said that if the IRS wanted to find organizations to monitor, would this information be helpful. Lois Lerner said that the organizations were required to report on the Form 990 what they are spending. Laura Stuber said that sometimes comparing the 2010 FEC filings to the 2010 IRS filings revealed differences. Lois Lerner explained that even when comparing the same time period, there still might be differences. For example, the FEC electioneering communications rules rely on a bright line test while the IRS looks at all of the facts and circumstances. Elise Bean asked whether it would be useful to us to have the FEC identify section 501(c)(4), (5) and (6) organizations making independent expenditures and the amount of those expenditures. Nikole Flax said there was still a timing issue. Even if the organization was spending lots of money on political campaign activity, we would not know on what else the organization was spending money. These organizations may engage in political campaign activity without jeopardizing their exemption, but we have to look at their activities for the entire year. We would not know in real time whether this was an issue. Lois Lerner said that any information that we have is useful, we just want to manage expectations about the use of the information. Elise Bean asked whether we could ask the FEC to add something. Nikole Flax said that we are open to talking to them, but that decision rests with them. With respect to the differences in what was reported to the IRS and the FEC, Lois Lerner expressed concerns about how the research was done. Henry Kerner asked if that was because of the different definitions. Lois Lerner said that it was also due to the different types of information. While section 501(c) organizations would report their independent expenditures to the FEC, if they make contributions to political committees, it is the political committee that reports the information to the FEC. Both types of expenditures would need to be reported to the IRS. Nikole Flax said there was not a clean match-up for the information. Elise Bean said that it could be a good place to start. Lois Lerner said that it is always useful to have information.

Elise Bean asked what percentage of section 501(c)(4) organizations did file Form 1024. Lois Lerner said that a significant number of section 501(c)(4) organizations do apply for recognition. One of the questions we are asking in the self-declarers questionnaire is why those organizations that do not apply choose not to

do so. Elise Bean asked for a ballpark on how many section 501(c)(4) organizations file Form 1024 and what percentage file Form 990s. Lois Lerner said that anyone not compliant after three years is automatically revoked. Nan Marks noted that organizations can attempt to hide. Lois Lerner said that one of our projects is looking at skip filers – organizations that file at least once every three years, but not every year.

Stephanie Hall asked if we had noticed any difference in the desire to be compliant in section 501(c)(3) organizations versus other section 501(c) organizations, since section 501(c)(3) organizations receive more benefits. Lois Lerner noted that most of our enforcement is in the section 501(c)(3) area, but when we do look at other section 501(c) organizations, we also see a desire to be compliant with the tax rules.

Laura Stuber asked about the IRS staff focused on political campaign activity. Are there certain staff who work on these issues? Lois Lerner said that there are designated folks looking at political campaign issues in the Determinations function. We provided training to these folks and they work with technical experts in the DC office. Many cases are also coordinated with Counsel. The application process is a paper representation of what are the organization's current plans for its future activities. Once an organization has been recognized as exempt, it could change its activities and report that change on the Form 990. We have provided training on political campaign issues to the R&A function, both the Determinations staff and the staff in the DC office, and to the Examination function. In addition to the self-declarers project, we are also looking at referrals alleging political campaign activity and we are identifying potential indicators of political campaign activity on the Form 990 that we are testing. Exam agents that work on these projects were trained. For any project, the technical experts put together training on the issue.

Laura Stuber asked about the 643 examinations of section 501(c)(4) organizations that we identified in our response. Of those 643, there were 22 that reported using PIC codes that political campaign intervention was an issue in the exam. In our response, we explained the limitations of the PIC codes and said that we would have to do a manual review for more information. When the manual review was requested, the IRS declined to do so. Nikole Flax reiterated what we told them in our letter. Lois Lerner said that the PIC code could indicate they looked at the issue, but the determination could be that the issue was not present. For example, there may have been an allegation of political campaign activity, but we determined that the organization did not intervene. Elise Bean said that in less than 5% of the cases, we identified political activity as an issue, using the 22 cases as a ceiling. Nikole Flax said that the 22 was not necessarily a ceiling. Nan Marks explained that the agents identify the most important issues in the case when choosing the PIC codes. There could be cases where the agent looked at political campaign activity issues, but also had UBI, employment tax or other issues that resulted in a change that were considered more important. Nevertheless, the 22 number is pretty accurate, it is more likely to be ceiling. Elise Bean asked if they could say less than 25 cases involved political campaign activity. Nan Marks said that was probably in the right ballpark. Elise Bean asked if we had any comment on the low number of cases involving political campaign activity.

Nikole Flax noted that the numbers would not include the 2010 tax year. Elise Bean said that these cases would all be pre-*Citizens United*. Nikole Flax said that they should not look at those numbers as the current posture. Laura Stuber asked what happened to those 22 cases. Lois Lerner referred to page 3 of the November 23, 2012 letter where we discussed the revocation letters. Elise Bean asked what happened to the 22 cases. Lois Lerner explained that we track how a case closed differently from the PIC codes. Nan Marks said an example would be a case with political activity, compensation and unrelated business income issues. The case was closed no change with an advisory, but we can't relate the closing code to the PIC code. Lois Lerner said that agents would be dealing with different issues, we would not know without looking at the case files.

After the break, Lois Lerner explained that when we open cases where political campaign activity might be an issue, we do look at FEC data.

Laura Stuber asked whether it was a red flag if a group reapplies under another name. Lois Lerner said that we do ask on the Form 1023 and Form 1024 whether they had a different name or had applied before. Laura Stuber said it looked bad. Lois Lerner said that without knowing the facts, she couldn't say. There may be legitimate reasons to change the name. For example, if there is bad press about a person associated with an organization that taints the public perception of the organization, the organization may decide to end its relationship with the person and change its name. We have seen some auto-revoked organizations that try to join a group ruling rather than applying for reinstatement, but we find them.

Elise Bean asked about the interpretation of "primarily" as allowing up to 49% of other activities. Where did people get that? Judith Kindell explained that when GCMs were released to the public, one was released with some supporting background memos. In one of those memos, there was a statement that while the 51/49 was not supportable for section 501(c)(3), it was a reasonable interpretation of the section 501(c)(4) regulations. Elise Bean asked for a copy of that GCM. Laura Stuber asked if the GCM was released around the time that the IRS was considering a change to the regulations. Nan Marks explained that GCMs used to be internal documents. Tax Analysts brought a case against the IRS seeking disclosure of these internal documents which they won in the early 1980s.

Elise Bean said that on the primarily issue, everyone wants a bright line rule. Why is there no bright line guidance? Nikole Flax said that one issue is 49% of what – we have a facts and circumstances test. Lois Lerner said the real question is what is the political campaign activity. Susan Brown used an example of an organization that supports the cherry trees that has a lot of volunteers doing work with the cherry trees, but very few expenditures, most or all of which are for political campaign activity. Under the facts and circumstances test, we can look at all of the volunteer activity and determine that this is a good organization. Under a pure expenditure test, that organization would have a problem. Elise Bean agreed that looking at volunteer activity is important, but why not a percentage test. Laura Stuber noted that section 501(c)(3) has a 20% test. Susan

Brown explained that section 501(c)(3) organizations can not intervene in political campaigns, but can engage in a limited amount of lobbying. That was originally under a facts and circumstances test. Congress enacted section 501(h) to allow section 501(c)(3) organizations to elect to be subject to a pure expenditure test. With respect to the regulations, Janine Cook pointed out that we have to look to the law as a whole and that the section 501(c)(3) regulations have the same language. Lois Lerner said that they have to be careful about unintended consequences.

Elise Bean asked whether it would make sense to have a similar rule for section 501(c)(4). Susan Brown asked to clarify whether it would be for all non-exempt activity. Elise Bean said that it would be a rule for political campaign activity. Lois Lerner said that under existing rules we have to look at all non-social welfare activity.

Elise Bean asked about the primary test for section 527 organizations. Judith Kindell explained that, while the test for tax exempt status is whether the organization is organized and operated primarily to accept contributions and make expenditures for a section 527 exempt function, the way it is taxed further limits the amount of non-political campaign activity it can do. The statute excludes from taxable income certain types of income, provided they are segregated for section 527 purposes. If a section 527 organization has one fund and makes more than insubstantial non-section 527 expenditures from that fund, it is no longer segregated and all of the income to that fund is taxable income. If a section 527 organization has more than one fund and makes more than insubstantial non-section 527 expenditures from one of the funds, that fund is no longer segregated and the income to that fund is taxable, but the other funds remain segregated so the income to those funds may be excluded from taxable income. In both cases, the organization still may be primarily engaged in exempt function activities and therefore still treated as a tax-exempt section 527 organization.

Elise Bean said that if an organization was primarily engaged in political campaign activities, it had no choice but to be treated as a section 527 organization. Susan Brown said that it could be a taxable section 527 organization. Elise Bean said that if a section 501(c)(4) organization had 70% of its expenditures on political campaigns and had no volunteer activity, clearly it wouldn't qualify for section 501(c)(4) and shouldn't it be a section 527 organization. Lois Lerner said that if it meets the requirements for section 527 it would, but it would not necessarily be tax-exempt. Judith Kindell explained that certain section 527 organizations were required to notify the IRS to be treated as tax-exempt. If they did not, they were taxable organizations and all of their income was included in gross income and they could only deduct those expenses that were directly connected to earning the taxable income. Therefore, they could deduct the fundraising expenses to generate their contribution income, but could not deduct the amounts spent on their political campaign activity. Lois Lerner said that when we see that an organization is not qualified under the code section it has applied under, we tell them they are taxable. Sometimes we work with the organization to get them to the right code section. Elise Bean said that if we want to encourage them to be section 527 organizations, why don't we take the step for section 501(c)(4) organizations that fail and tell them they are a section 527 organization. Judith Kindell noted that taxable

section 527 organizations are not required to disclose their donors. Lois Lerner said that based on her days at the FEC, if the organization made mistakes, the money was already gone. Elise Bean said they were interested in preserving the integrity of the tax code. The organization should not be able to say it is just a corporation, that it is a section 527 organization. Lois Lerner said they should consider the impact of the legislation. She expects organizations will just rack up enormous expenses with no money left. Henry Kerner asked how to get to the abuse of organizations claiming section 501(c)(4) but designed to be primarily political. Lois Lerner said the system works, but not in real time. Henry Kerner noted that these organizations don't disclose donors. Lois Lerner said that if they don't meet the requirements, we can come in and revoke, but it doesn't happen timely. Nan Marks said if the concern is that the organizations engaging in this activity don't disclose donors, then the system doesn't work. Henry Kerner said that maybe the solution is to audit so many that it is financially ruinous. Nikole noted that we have budget constraints. Elise Bean suggested using the list of organizations that made independent expenditures. Lois Lerner said that it is her job to oversee it all, not just political campaign activity. Lois Lerner said that she does have other tools. When we issue compliance check questionnaires, we are very transparent about it and post the questionnaire on our website.

Elise Bean asked about section 527 disclosures. Lois Lerner explained that these were on the IRS website in a searchable database. Susan Brown said that under the primarily test, an organization could fail to qualify as a section 501(c)(3) without automatically being section 527. Henry Kerner asked whether a taxable corporation could deduct business expenses. Lois Lerner noted that she never saw a rule that stopped the money from flowing in politics, it just moved it to another venue.

Elise Bean asked how we determined what is political activity and about the law, regulations and revenue rulings. Nan Marks said that revenue rulings are the opinion of the IRS as to how the law applies to a set of facts. They are precedential, but given less preference. We respect revenue rulings, even if we made a mistake. How we do revenue rulings have changed over time, but the recent practice of fairly long standing is for IRS, Counsel and Treasury to work together with sign off from all three offices from senior levels. Elise Bean asked about exam guidance and educational material. Lois Lerner said that generally this is not precedential, but if a judge wants to use it, the judge will. Nan Marks said that regulations are the drafted product of Chief Counsel, but they are Treasury regulations and all three offices (IRS, Counsel, Treasury) work on them and they are cleared through all three offices. Regulations do get deference.

Elise Bean said that the facts and circumstances test is not in the regulations, just in revenue rulings. Where did the facts and circumstances test come from. Nikole Flax said that absent a bright line, we generally use a facts and circumstances test. Nan Marks said this is a general rule prevalent in tax law. Elise Bean asked if there is a general regulation providing for the facts and circumstances test. She said that Senator Levin thinks there should be more bright line tests. Janine Cook noted that in the section 501(c)(3) regulations it states that all facts and circumstances are to be considered. Lois Lerner said that the problem with bright line tests is that there are

always exceptions. Elise Bean said that Senator Levin worked on BCRA which provided a bright line test for electioneering communications. Nan Marks suggested we step back and look at the generic issue. When you have line drawing at the statutory level, we follow those lines. If you have a fuzzy statute, some clarification is desirable, but to what extent is it appropriate to draw bright lines.

Elise Bean said that Senator Levin believes more regulations are needed, not revenue rulings. She said that the regulations should provide if you make an independent expenditure, that is political campaign activity. If you give money to a candidate, that is political campaign activity. The regulations should provide some bright line rules. Lois Lerner said that if you put out a regulation that says these 10 items are in, those are the only 10 items that are in. With a revenue ruling, we can say here are the facts and here is how we think about it. Elise Bean said that we are dealing with a regulation that is really old and two revenue rulings that are really old. When the issue is politics, the IRS gets creamed no matter what. Lois Lerner said that even if it is in the regulation, I still have to deal with ? Elise Bean said that a revenue ruling does not get the same deference as a regulation. Lois Lerner said you have to be cautious, not only to set rules that prevent what you can't. Catherine Barre asked whether the IRS has ever set bright line rules in a regulation. Elise Bean said she understands that a bright line test would be challenged. Nikole Flax said that the IRS likes bright line tests as they are easier to administer.

Elise Bean referred to a letter that discussed partisan activity, wanting to help party organizations and asked whether that is a social welfare organization. Nikole Flax said we could not talk about a specific organization. Lois Lerner said that section 501(c)(4) organizations benefit the community as a whole. She referred to the plumbers case, where the activity was private benefit to a particular part of the community.

Elise Bean asked about Revenue Ruling 2004-6 and Revenue Ruling 2007-41. Susan Brown explained that those rulings don't technically apply to the question of what is political campaign activity under section 501(c)(4). Ruling 2004-6 deals with what is a section 527 exempt function expenditure and Revenue Ruling 2007-41 deals with political campaign activity under section 501(c)(3). However, there is a commonality in the two rulings and these are the sort of facts and circumstances we would consider in determining whether an activity is political campaign activity. Laura Stuber asked why not do a ruling for section 501(c)(4). Catherine Barre said that would be a topic for Treasury. Nikole Flax said that we are taking steps to find out what is actually going on with section 501(c)(4) organizations, but it takes time.

Laura Stuber referred to IRS exam guidelines that use the term exclusively. Lois Lerner explained that it was quoting the statute and the regulation. We train our agents on the application of the law. Janine Cook said that an agent's RAR walks through the law. Nan Marks said that we don't break new ground in an IRM, we quote.

Elise Bean said that Senator Levin wanted to know more about the educational guide sheet we referred to in our responses. Nikole Flax said that we were trying to be

transparent. We attempted to develop a guide sheet, but we did not end up with one. What we had was an internal working draft. Lois Lerner said that we were being asked about our determinations process. Rather than providing written guidance, we ended up having technical people from DC walk through the process with the determinations people. The draft guide sheet was never finalized. Elise Bean asked whether it was one page or many. Lois Lerner said that using a guide sheet is a direction we sometimes take. In this case we had a draft and we sent it to the determinations function for comment on whether it was useful. It pretty quickly became clear that it wouldn't work. The revenue rulings are much more helpful in these situations. When dealing with section 501(c)(4) organizations, there are two questions. First, is the activity non-social welfare. If so, how much is it. Elise Bean said that Senator Levin wants to see the guide sheet. Nikole Flax said that we have procedural issues with releasing drafts.

Elise Bean asked whether certain activities would be political campaign intervention. She quoted the language of the regulation. Susan Brown said yes. Elise Bean asked whether independent expenditures would be political campaign intervention. Susan Brown said that she did not know enough about those rules. Lois Lerner said that we do not oversee that law. Nan Marks said there is a danger in applying some other agency's standard. Lois Lerner said that some of the law is different. A direct tie-in to another agency's law does not always work to our advantage. Laura Stuber asked whether the facts and circumstances works for us. Lois Lerner said yes, it is not necessarily easy and it doesn't mean we don't like bright lines, but when we start looking at consequences, it allows us to take into consideration relevant mitigating factors that a bright line test would not. Elise Bean asked whether electioneering communications would be political campaign activity. Lois Lerner said maybe and referred to Revenue Ruling 2004-6. Laura Stuber started to read from a redacted transcript of an ad. Nan Marks recognized the ad from when it aired. Lois Lerner said we could not talk about particular taxpayers. She said that when developing a section 501(c)(4) application, if it appears it might be political, we ask for transcripts. Judith Kindell said there was some language in the fact sheet that preceded Revenue Ruling 2007-41 had language stating that endorsements of candidates and contributions to candidates clearly was political campaign intervention. Lois Lerner said the church pub also had a discussion of political campaign activity. Elise Bean asked for a copy of the church pub.

Elise Bean asked whether focusing on section 501(c)(4) organizations that spend large amounts of money on media services would identify those involved in political campaign activities. Lois Lerner said that there could be many reasons for media services, not all of them political campaign related. For example, the hypothetical cherry tree organization could run broadcast ads about how important it is to preserve the cherry trees. Nan Marks said that if there is nothing else raising questions, the mere fact of expenditures for media services won't raise questions. If there are other indicators, media services might be asked about. Lois Lerner said that it was not something we've seen so far.

Stephanie Hall asked whether it was easy to distinguish lobbying from political campaign intervention. Lois Lerner said that it was a facts and circumstances determination. Stephanie Hall said the organization could just tell you they are doing lobbying. Lois Lerner said that when we train our people, we tell them what we are looking at.

Laura Stuber said that ProPublica looked at several organizations that checked the box "no" on their Form 1024 regarding whether they engaged in political campaign activity but then did so. Lois Lerner said we cannot discuss particular organizations.

After the break, Judith Kindell discussed the chart provided in the March 2013 response. This chart provides an overview of the rules applicable to tax-exempt organizations engaged in advocacy, focusing on those organizations most frequently involved in advocacy. Although a business may be able to take a deduction for its membership dues to a section 501(c)(4), (5) or (6) organization, they are not allowed to take a deduction for the portion of the dues that is used for the political campaign activity and lobbying expenses that are not deductible under section 162(e). The exempt organizations are required to either notify their members of the portion of the dues that is allocable to section 162(e) or pay a proxy tax on that amount. Someone asked how many organizations notify versus pay the proxy tax and how much money does the proxy tax bring in.

Henry Kerner asked Lois Lerner how long she has been in her position. Lois Lerner said that she came to the IRS in 2001 as the Director, R&A. She became the Director, EO sometime in 2005 or 2006.

Elise Bean asked about the rules for section 501(c)(6) organizations regarding political campaign activity. Judith Kindell explained that this was set forth in a GCM. Susan Brown pointed out that there was also the section 527(f) tax that applied. Elise Bean asked for a copy of the GCM. Stephanie Hall asked about section 501(c)(5) organizations. Judith Kindell said that was also in the GCM. Stephanie Hall asked for a copy of that one as well, if different. Nikole Flax said that we asked questions of the section 501(c)(5) and (6) organizations regarding political campaign activity on the self-declarers questionnaire. Laura Stuber asked if the IRS used facts and circumstances when examining section 501(c)(6) organizations. Lois Lerner said yes, even in section 501(c)(3) organizations, we use facts and circumstances. Elise Bean noted that section 501(c)(5) organizations reported to the DOL and asked whether section 501(c)(6) organizations reported to anyone. Lois Lerner said they report on the Form 990. Laura Stuber asked about the term "advocacy organizations" and whether this was a term of art. Lois Lerner explained that this was just a term we used to describe these organizations, it was not a legal term.

Laura Stuber referred to a letter responding to a request to change the section 501(c)(4) regulations that stated the IRS would seriously consider changes, but that project did not appear on the workplan. She asked if we were part of the development of the workplan and would we be interested in changes. Lois Lerner clarified that the work

plan was the EO workplan and that this was developed by EO to prioritize its work in Exam, R&A and CE&O for the fiscal year. Nikole Flax said the Priority Guidance Plan was an IRS and Treasury document identifying the guidance projects that we are committed to working during the plan year (July 1 to June 30) and generally anticipate getting out within the year. Elise Bean asked whether we would be consulted on the plan and did we submit proposals. Nikole Flax said yes, the EO portion is a joint product of IRS, Chief Counsel and Treasury. Nan Marks said we also solicit public comments. Elise Bean asked would it be helpful to have guidance. Nikole Flax said that at this point we are gathering information. Lois Lerner said that we are cautious. We want to know what is actually going on. Some of the work we are doing will be useful in determining what next steps we take.

Elise Bean asked about section 501(c)(4) and section 527. Judith Kindell explained that tax-exempt section 527 organizations could exclude five types of income from their taxable income so long as it was segregated for exempt function use. The five types of income are contributions, membership dues and assessments, political entertainment or fundraising events that are not a regularly carried on trade or business, sale of political campaign materials that are not a regularly carried on trade or business, and bingo income. All other income, primarily investment income, is subject to tax. When section 527 was enacted, to provide parity with the section 501(c) organizations that were engaged in section 527 activity, Congress enacted section 527(f) taxing the lesser of the net investment income or the section 527 exempt function expenditures of a section 501(c) organization. Basically, they are taxed on their net investment income to the extent of their political campaign expenditures.

Elise Bean asked what happens if a section 501(c)(4) organization is denied or revoked because of a large percentage of political campaign activity. Lois Lerner said that if the organization was denied or revoked, we told them they were taxable organizations. Taxable organizations are handled by another division of the IRS. Laura Stuber referred to the 10 redacted denials we had provided in the November 23, 2012 response. Elise asked why aren't we clear that they are section 527 organizations. Nan Marks said we are not able to discuss particular cases. Henry Kerner said that it appears we are never going to give section 527 status involuntarily. Janine Cook said that it was possible that that even if not a section 527 organization, would not be able to deduct expenses due to section 162(e). Catherine Barre said that we are not section 162(e) experts and would check to see what the consequences would be.

Elise Bean asked about the application of the gift tax to donors to section 501(c)(4) organizations. Nikole Flax said her recollection was that in May 2011, we heard from some tax practitioners that the IRS was looking at the gift tax consequences for donors to section 501(c)(4) organizations. We looked at the issue in the summer of 2011 and Steve Miller put out a directive stating that we would not examine the issue while we looked at the issue and gave the public notice of any future action. At the time, there were some letters requesting information from Congress, including some section 6103. Nothing publicly has happened since then. People are looking at the issue. Reasonable people were disagreeing about what the rule is. There is no explicit

exemption for donations to section 501(c)(4) organizations. Susan Brown said that the gift tax rules provided that contributions to charities were taxable gifts, but they were deductible. Donations to section 527 organizations were excepted from the gift tax.

Laura Stuber asked about the status of the revocation notices. Lois Lerner explained there was a lengthy process when an organization is revoked. We provide a redacted copy to the organization and they have an opportunity to ask for additional redactions. We are still following up, although we do need to update the numbers as there was some misunderstanding when we got the numbers originally.

Laura Stuber asked about the ten redacted denial letters that had previously been provided. Four of the letters had a proposed denial in 2000 with the final denial in 2008. Lois Lerner said that we cannot discuss the specific cases, but there is a process. We issue the organization a proposed denial and the organization has an opportunity to explain why they believe we are wrong or to change its operations. It is an administrative process, that includes the right to go to Appeals. Stephanie Hall said that the four organizations looked to be the same, probably related and asked whether we could confirm. Lois Lerner said we cannot talk about specific cases, but there could be many reasons they looked similar. We see a number of cookie cutter applications, they could be chapters of an organization or they could just have the same attorney. Elise Bean asked if the eight years included Appeals and Lois Lerner said that we will check. Laura Stuber asked if we could get the aggregate tax paid by these ten organizations. Lois Lerner said no, but then said we would see if we could get the information and whether we could disclose it. Elise Bean asked whether the organizations were holding themselves out as tax-exempt while the application was pending. We again stated that we could not discuss particular cases, but that generally organizations would be operating while their application was pending. Laura Stuber asked what taxes were paid by the 42 organizations that were revoked. Lois Lerner said that we probably would have calculated a tax assessment when the organizations were revoked, but not sure those assessments would be tracked. We'll see what we can provide.

Laura Stuber mentioned the self-declarers project and asked whether we could make organizations file Form 1024. Lois Lerner said no. There is a specific statutory provision that requires section 501(c)(3) and certain other organizations to come in to the IRS. Elise Bean asked what we thought about the idea of requiring them to apply. Lois Lerner said that transparency is a good thing. Nan Marks said the IRS can't require it. Lois Lerner if you just require the information to be posted without an application, she'll just get calls asking about what is on them. She said we may find out from the questionnaire that the great majority of self-declarers are not involved in political campaign activity. She is just trying to manage expectations regarding the use of information and suggested waiting until we have the results of the self-declarers study. Generally speaking, organizations are not required to respond to our questionnaires although we usually have a 95%-98% response. In our recent group ruling questionnaire, we sent about 2000 questionnaires and approximately 400 have not responded. We don't know what is going to happen with the self-declarers.

Laura Stuber asked about the Form 1024 for Crossroads that was released. Nikole Flax repeated our public statement and Lois Lerner said that we can't say anything else.

Laura Stuber asked about the organizations with missing applications, how would we audit them. Nikole Flax said that if we do an exam, we would ask the organization for its Form 1024.

Laura Stuber asked for the approved applications for the League of Conservation Voters and Vote Vets. Lois Lerner said it would be helpful to have the EINs for these organizations.

Elise Bean said that some applications are processed quickly and others take years. Lois Lerner explained that sometimes it takes time, and some of those may end up being okay. The IRS does not have the authority to tell an organization that it can't hold itself out as exempt while the application is pending, even if we have sent them a proposed denial. In the end, the organization may be exempt. Elise Bean said that Senator Levin is concerned that organizations are abusing section 501(c)(4) status. Lois Lerner said that we have to follow the rules.

Laura Stuber said that section 501(c)(4) organizations don't have to publicly disclose their donor information from the Form 990, but couldn't the IRS require them to disclose donors publicly before filing Form 990. Lois Lerner said no because of the disclosure rules. Laura Stuber asked whether examiners looked at donors. Lois Lerner said that exam agents would have the Form 990, including the donor list. Elise Bean asked whether we looked at the issue of shell corporations. Lois Lerner said we might. She said that the ROO looks at all publicly available information and provides it to Exam agents. Stephanie Hall said even if section 501(c)(4) to section 501(c)(4), the IRS would know. Lois Lerner said yes. Elise Bean asked about foreign donors. Lois Lerner said that would be a CI issue and she does not know what they do. When asked about whether we provide public notice of section 501(c)(4) revocations, Lois Lerner said no. We do provide a list on our website of section 501(c)(3) revocations, but that is to notify donors that they can no longer rely on our earlier determination that the organization was eligible for tax-deductible contributions.

Laura Stuber asked about the President's proposal for transparency. Nikole Flax said that was dependent upon requiring e-filing, which is also in the proposal.

Laura Stuber asked about the EO workplan where we said we learned from past projects on political campaign activity. Lois Lerner said we have reports on our PACI project and would send them. Laura Stuber then asked about the 300 potential non-compliant organizations. Lois Lerner clarified that those cases were identified through data analytics. This is a test of whether these potential indicators do in fact indicate political campaign activity issues. Lois Lerner said they are focusing on good stuff. The more information we have, the better able we are to focus our resources. Nan Marks said that we hope to have better information after the self-declarers questionnaire responses are analyzed.

Recent section 501(c)(4) activity
DRAFT 4-21-13

So I thought I would mention a matter that came up over the last year or so concerning our determination letter process, some section 501(c)(4) organizations and their political activity. Some of this has been discussed publicly already. But I thought it would make sense to do just a couple of minutes on what we did, what we didn't do, and where we are today on the grouping of advocacy organizations in our determination letter inventory.

I will start with a summary. Centralizing advocacy cases in this area made sense. The way we centralized did not make sense. But we have taken actions to fix the errors. What we did here, along with other mistakes that were made along the way, resulted in some cases being in inventory far longer than they should have. For that I apologize.

So let me start again and provide more detail. As you know, the number of c4 applications increased significantly starting after 2010. In particular, we saw a large increase in the volume of applications from organizations that appeared to be engaged or planning to engage in advocacy activities. We did not have good enough procedures in place to effectively work these cases. You also know about the level of guidance in this area, we need more, and the factual difficulty we have parsing politics from education in these cases. Complicating matters is the sensitivity of these cases.

Our front line people in Cincinnati took steps to coordinate the handling of the uptick in cases to ensure consistency. We do this in areas where we want to promote consistency. Credit counseling is the best example of this sort of situation.

But we made a mistake here. In centralizing the cases in Cincinnati, my team placed too much reliance on the particular name of an organization, in this case, tea party or patriot, rather than looking deeper into the facts. Our Inspector General is looking at this, but I believe this to be an error, not of political vendetta, but of a mistaken desire for too much efficiency without sufficient sensitivity to the situation. We also made some errors in our development letters, asking for more than was needed. You may recall the publicity around donor lists. That resulted from insufficient guidance being provided to those working on these cases. (There was also an issue about whether we could do a guidesheet for these cases, an effort that took too long before we realized the diversity of the cases prevented success on such a document. Stm would drop but included for discussion)

Now, we have remedied this, both systemically and for the taxpayers who were impacted. I think we have done a good job of turning the situation around.

Let me walk you through.

Systemically, we will not allow the collection of cases without greater and higher level

review. So what happened here will not happen again.

With respect to the specific cases in inventory, we took a number of steps. First, we had a team review the cases to determine the necessary scope of our review. Now make no mistake, some need that review, (some have or had endorsements on their website for example)(given recent events-likely would drop parenthetical). But many did not.

We worked to move the inventory. We closed those cases that were clear and are working on those that are less certain.

With respect to what we agree may have been overbroad requests for information, we engaged in a process of an active back and forth. With respect to donor names, we informed organizations that if they could provide information requested in an alternative manner, we would work with them. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

We now have a process where each revenue agent assigned these cases works in coordination with a specific technical expert.

And we have made significant progress on these cases. Of the nearly 300 c4 advocacy cases, we have approved more than 120 to date. We have had more than 30 (?)withdrawals. And obviously some cases take longer than others depending on the issues raised including the level of political activity compared with social welfare activity. (And I will say it seems likely that we will see some denials out of this collection as well.) We hope to wrap the remaining cases up relatively soon.

So I wanted to raise this -- you and I know the IRS does make mistakes. When we do so, we need to acknowledge it and work toward a better result on pending cases. We also need to put in place safeguards to ensure the errors do not happen again. I think we have tried to do that here.

These cases will help us, along with the self declarer questionnaire, to better understand the state of play on political activities in today's environment, the gaps in guidance, and where we need to head into the future.

Recent section 501(c)(4) activity
DRAFT 4-21-13

So I think it's important to bring up a matter that came up over the last year or so concerning our determination letter process, some section 501(c)(4) organizations and their political activity. Some of this has been discussed publicly already. But I thought it would make sense to do just a couple of minutes on what we did, what we didn't do, and where we are today on the grouping of advocacy organizations in our determination letter inventory.

I will start with a summary. As you know, the number of c4 applications increased significantly starting after 2010. In particular, we saw a large increase in the volume of applications from organizations that appeared to be engaged or planning to engage in advocacy activities. We did not have good enough procedures in place to effectively work these cases. You also know about the level of guidance in this area -- we need more. There's also the factual difficulty we have of separating politics from education in these cases -- it's not always a clear area. Complicating matters is the sensitivity of these cases. Before I get into more detail, let me be clear. The IRS should have done a better job of handling the review of the c4 applications. We made mistakes, for which we deeply apologize. But these mistakes were in no way due to any political or partisan reason. They were made because of missteps in our process and insufficient sensitivity to the implications of some of our decisions. We believe we have fixed these issues, and our entire team will do a much better job going forward in this complex area. And I want to stress that our team - all career civil servants -- will continue to do their work in a fair, non-partisan manner.

So let me start again and provide more detail. Centralizing advocacy cases for review in the determination letter process made sense. The way we centralized did not make sense. But we have taken actions to fix the errors. What we did here, along with other mistakes that were made along the way, resulted in some cases being in inventory far longer than they should have. For that I apologize.

Our front-line people in Cincinnati -- who do the reviews -- took steps to coordinate the handling of the uptick in cases to ensure consistency. We take this approach in areas where we want to promote consistency. Cases involving credit counseling are the best example of this sort of situation.

Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like "tea party" or "patriot," rather than looking deeper into the facts (to determine the level of activity under the c4 guidelines.) Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe this to be an error -- not a political vendetta. The error was of a mistaken desire for too much efficiency on the applications without sufficient sensitivity to the situation.

We also made some errors in our development letters, asking for more than was

needed. You may recall the publicity around donor lists. That resulted from insufficient guidance being provided to our people working on these cases. ()

Now, we have remedied this situation --, both systemically for the IRS and for the taxpayers who were impacted. I think we have done a good job of turning the situation around to help prevent a situation like this from occurring again.

Let me walk you through the process.

Systemically, we will not allow the centralized collection of cases without greater and higher level review. So what happened here will not happen again.

With respect to the specific c4 cases in inventory, we took a number of steps to move things along. First, we had a team review the cases to determine the necessary scope of our review. Now make no mistake, some need that review, (some have or had endorsements on their website for example)(given recent events-likely would drop parenthetical). But many did not.

We worked to move the inventory. We closed those cases that were clear and are working on those that are less certain.

With respect to what we agree may have been overbroad requests for information, we engaged in a process of an active back and forth with the taxpayer. With respect to donor names, we informed organizations that if they could provide information requested in an alternative manner, we would work with them. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

We now have a process where each revenue agent assigned these cases works in coordination with a specific technical expert.

And we have made significant progress on these cases. Of the nearly 300 c4 advocacy cases, we have approved more than 120 to date. We have had more than 30 (?) withdrawals. And obviously some cases take longer than others depending on the issues raised. including the level of political activity compared with social welfare activity. Let me make another important point that shouldn't be lost in all of this. We remain committed to making sure that we properly review determinations where there are questions. And I will say it seems likely that we will see some denials out of this remaining group as well. We hope to wrap the remaining cases up relatively soon.

So I wanted to raise this situation today with you. You and I know the IRS does make mistakes. And I also think you agree that our track record shows that our decisions are based on the law – not political affiliation. When we do make mistakes, we need to acknowledge it and work toward a better result on pending cases. We also need to put in place safeguards to ensure the errors do not happen again. I think we have tried to do that here.

These cases will help us, along with the self-declarer questionnaire, to better

understand the state of play on political activities in today's environment, the gaps in guidance, and where we need to head into the future.

From: Lemons Terry L
Sent: Friday, May 03, 2013 1:39 PM
To: Eldridge Michelle L
Subject: FW: Emailing: draft c4 comments 4-18-13.doc
Attachments: draft c4 comments 4-18-13.doc

-----Original Message-----

From: Flax Nikole C
Sent: Monday, April 22, 2013 10:57 AM
To: Lemons Terry L; Miller Steven T; Vozne Jennifer L
Subject: FW: Emailing: draft c4 comments 4-18-13.doc

Sine edits/questions. I think we need the guidesheet point.

-----Original Message-----

From: Lemons Terry L
Sent: Sunday, April 21, 2013 12:46 PM
To: Miller Steven T; Flax Nikole C; Vozne Jennifer L
Subject: Fw: Emailing: draft c4 comments 4-18-13.doc

So it's close ... But I don't think it's quite there. For the people in the room at Georgetown, it's fine. But it's not clear enough for people who won't be there and will be combing through the speech afterward. Think current version will create a lot of questions coming in after the speech and actually amplify attention on the upcoming report. Think we need to frame up better – goal should be having a text that stands on its own for reporters and others coming in later and minimizing follow-up questions. (And perhaps goal should also be for reporters in the hearing room to be handed this and fold this into their stories.)

With that in mind, I've made some edits as a starting point – tried simplifying and making clearer at a couple of points. Biggest addition is paragraph three – that's where the reporters will go.

Thanks for listening;)

Sent from my BlackBerry Wireless Handheld

Recent section 501(c)(4) activity
DRAFT 4-21-13

So I think it's important to bring up a matter that came up over the last year or so concerning our determination letter process, some section 501(c)(4) organizations and their political activity. Some of this has been discussed publicly already. But I thought it would make sense to do just a couple of minutes on what we did, what we didn't do, and where we are today on the grouping of advocacy organizations in our determination letter inventory.

I will start with a summary. As you know, the number of c4 applications increased significantly starting after 2010. In particular, we saw a large increase in the volume of applications from organizations that appeared to be engaged or planning to engage in advocacy activities. We did not have good enough procedures in place to effectively work these cases. You also know about the level of guidance in this area -- we need more. There's also the factual difficulty we have of separating politics from education in these cases -- it's not always a clear area. Complicating matters is the sensitivity of these cases. Before I get into more detail, let me be clear. The IRS should have done a better job of handling the review of the c4 applications. We made mistakes, for which we deeply apologize. But these mistakes were in no way due to any political or partisan reason. They were made because of missteps in our process and insufficient sensitivity to the implications of some of our decisions. We believe we have fixed these issues, and our entire team will do a much better job going forward in this complex area. And I want to stress that our team - all career civil servants -- will continue to do their work in a fair, non-partisan manner.

So let me start again and provide more detail. Centralizing advocacy cases for review in the determination letter process made sense. Some of the ways we centralized did not make sense. But we have taken actions to fix the errors. What we did here, along with other mistakes that were made along the way, resulted in some cases being in inventory far longer than they should have. For that I apologize.

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Here's where a problem occurred. In centralizing the cases in Cincinnati, my review team placed too much reliance on the particular name of an organization; in this case, relying on names in organization titles like "tea party" or "patriot," rather than looking deeper into the facts (to determine the level of activity under the c4 guidelines.) Our Inspector General is looking at this situation, but I believe and the IRS leadership team believe this to be an error -- not a political vendetta. The error was of a mistaken desire for too much efficiency on the applications without sufficient sensitivity to the situation.

We also made some errors in our development letters, asking for more than was

needed. You may recall the publicity around donor lists. That resulted from insufficient guidance being provided to our people working on these cases. () NF: I think we need something on the guide sheet here – that is what the major hold up was.

Now, we have remedied this situation --, both systemically for the IRS and for the taxpayers who were impacted. I think we have done a good job of turning the situation around to help prevent a situation like this from occurring again.

Let me walk you through the process.

Systemically, we will not allow the centralized collection of cases without greater and higher level review. So what happened here will not happen again.

With respect to the specific c4 cases in inventory, we took a number of steps to move things along. First, we had a team review the cases to determine the necessary scope of our review. Now make no mistake, some need that review, (some have or had endorsements on their website for example)(given recent events-likely would drop parenthetical). But many did not.

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These cases will help us, along with the self-declarer questionnaire, to better understand the state of play on political activities in today's environment, the gaps in guidance, and where we need to head into the future.

From: Lerner Lois G
Sent: Tuesday, June 14, 2011 8:54 AM
To: Williams Grant; Kindell Judith E
Cc: Lemons Terry L; Eldridge Michelle L
Subject: Re: Update: Bloomberg and non-c-3 groups

My computer crashed yesterday and my Blackberry doesn't work in my office so I just saw this. Unfortunately, I am tied up until at least 12 and because Blackberry truncates, I can't see bottom of email. From what I can see--work plan was made public in Dec. As always when we do work plan, it is built around the resources we have and anticipate for the year. He seems to think resources are separate from projects. That is the point of developing a work plan--how best to allocate the resources we have. So, if I have staff to do 100 audits, you wouldn't see an increase in the # of audits--we would divide them out internally according to what we want to look at. Also, we often use the ROO to do initial research Before starting audits--they don't touch taxpayers, but can look at publicly available info about orgs. Hope this is useful. Do we need to talk when I get out of here? I am at 1111

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Williams Grant
Sent: Monday, June 13, 2011 07:14 PM
To: Lerner Lois G; Kindell Judith E
Cc: Lemons Terry L; Eldridge Michelle L
Subject: Update: Bloomberg and non-c-3 groups

Hi everyone,

Chuck Babcock of Bloomberg wrote me this (Monday) afternoon and said that tomorrow "may be" the last chance for us to respond to his questions -- it's the first time he's referred to a deadline. He followed up later by thanking us for sticking with him through his inquiries.

Below I'll paste in the key parts of his most recent messages (which you haven't seen); you'll get an idea of what he is focusing on at what may be the end of his reporting efforts. Please let me know how you'd like to handle his questions. One is about the date of the current EO Work Plan; I believe it was released to the public in December 2010?

On down below I'll paste in an e-mail message to Mr. Babcock -- which I've drafted but not yet sent -- that is based on the material that Judy provided us the other day. If you give me a final go-ahead, I'll send it to Mr. Babcock tomorrow (Tuesday) morning.

Meanwhile, I'm combing through all his questions to date to see if I've missed anything that I should re-bring to your attention. I told Mr. Babcock that I'd call him tomorrow to touch base and I'll let you know right away what he says.

Thank you,

Grant

Grant Williams
IRS National Media Relations
(202) 622-4000

MR. BABCOCK'S MOST RECENT EMAILS:

--- progress on any of my newest questions? and what btw is the date of the eo director's FY 2011 work plan that mentions "we are increasing our focus on 501c4,5 and 6 org? i asked about manpower for that. more bottom line, what evidence can you cite to show you are doing what the director said. specifics such as audits have increased from x to y? or what?

-- Checking back on progress on my queries. Like date of the 2011 work plan and evidence the irs is focusing more on c4-6s including political activity. Thanks.

-- Any news today? Running out of time. Tomorrow [Tuesday the 14th] may be last chance. Particularly need answers on evidence you can cite that EO folks taking a closer look at 501cs as work plan said, and whether any c4 or c6 has ever had exemption revoked for political activity. if so, would like details of course

-- thanks again for sticking with this.

MY DRAFT MESSAGE TO MR. BABCOCK (that I'll send to him when you give me the green light):

Hi Chuck,

Following is the IRS's response to your question about definitions of political expenditure:

One of the requirements in section 501(c)(3) is that the organization "does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office. The regulations under section 501(c)(4) track this language, providing that the "promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." The section 527 exempt function is "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors, whether or not such individual or electors are selected, nominated, elected, or appointed." A section 501(c)(4) organization that makes expenditures for a section 527 exempt function is subject to tax on the lesser of those expenditures or its net investment income.

Chuck, the article, "Election Year Issues," from the IRS's 2002 Exempt Organizations Continuing Professional Education text is available on the IRS website at <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

A copy of the document we previously provided you about the application process -- including organizations' reliance on the determination -- is attached here.

Previous year versions of IRS forms and instructions -- called "Prior Year Products" -- are available on the following page of the IRS Web site: <http://www.irs.gov/app/picklist/list/priorFormPublication.html>. Please let me know if you are not finding what you are looking for.

I'll give you a call soon today to touch base, Chuck.

Sincerely,

Grant Williams
IRS National Media Relations
(202) 622-4000

From: Lerner Lois G
Sent: Tuesday, June 14, 2011 9:40 AM
To: Kindell Judith E; Williams Grant
Cc: Lemons Terry L; Eldridge Michelle L
Subject: Re: Update: Bloomberg and non-c-3 groups

Thanks Judy

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Kindell Judith E
Sent: Tuesday, June 14, 2011 10:23 AM
To: Williams Grant; Lerner Lois G
Cc: Lemons Terry L; Eldridge Michelle L
Subject: RE: Update: Bloomberg and non-c-3 groups

The EO work plan for fiscal year 2011 was released December 15, 2010. This is the plan for use of our resources for the current fiscal year. There is no other information available concerning the projects identified in the work plan, including the 501(c)(4), (5) and (6) project.

Your write-up looks fine to me.

From: Williams Grant
Sent: Monday, June 13, 2011 7:14 PM
To: Lerner Lois G; Kindell Judith E
Cc: Lemons Terry L; Eldridge Michelle L
Subject: Update: Bloomberg and non-c-3 groups

Hi everyone,

Chuck Babcock of Bloomberg wrote me this (Monday) afternoon and said that tomorrow "may be" the last chance for us to respond to his questions -- it's the first time he's referred to a deadline. He followed up later by thanking us for sticking with him through his inquiries.

Below I'll paste in the key parts of his most recent messages (which you haven't seen); you'll get an idea of what he is focusing on at what may be the end of his reporting efforts. Please let me know how you'd like to handle his questions. One is about the date of the current EO Work Plan; I believe it was released to the public in December 2010?

On down below I'll paste in an e-mail message to Mr. Babcock -- which I've drafted but not yet sent -- that is based on the material that Judy provided us the other day. If you give me a final go-ahead, I'll send it to Mr. Babcock tomorrow (Tuesday) morning.

Meanwhile, I'm combing through all his questions to date to see if I've missed anything that I should re-bring to your attention. I told Mr. Babcock that I'd call him tomorrow to touch base and I'll let you know right away what he says.

Thank you,

Grant

Grant Williams
IRS National Media Relations
(202) 622-4000

MR. BABCOCK'S MOST RECENT EMAILS:

--- progress on any of my newest questions? and what btw is the date of the eo director's FY 2011 work plan that mentions "we are increasing our focus on 501c4,5 and 6 org? i asked about manpower for that. more bottom line, what evidence can you cite to show you are doing what the director said. specifics such as audits have increased from x to y? or what?

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-- Any news today? Running out of time. Tomorrow [Tuesday the 14th] may be last chance. Particularly need answers on evidence you can cite that EO folks taking a closer look at 501cs as work plan said, and whether any c4 or c6 has ever had exemption revoked for political activity. if so, would like details of course

-- thanks again for sticking with this.

MY DRAFT MESSAGE TO MR. BABCOCK (that I'll send to him when you give me the green light):

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Chuck, the article, "Election Year Issues," from the IRS's 2002 Exempt Organizations Continuing Professional Education text is available on the IRS website at <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

A copy of the document we previously provided you about the application process -- including organizations' reliance on the determination -- is attached here.

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I'll give you a call soon today to touch base, Chuck.

Sincerely,

Grant Williams
IRS National Media Relations
(202) 622-4000

**EO Technical
Significant Case Report
(June 30, 2011)**

- 21 open SCs

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	(b)(3)/6103	T2/Ron Shoemaker	(b)(3)/6103	4/21/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev)	(b)(3)/6103; (b)(5) AC WP; partially non-responsive	No
2.	(b)(3)/6103; (b)(5) AC; non-responsive								

								proposed denial.	
3.	(b)(3)/6103	T1/Steven Grodnitzky	(b)(3)/6103	6/08	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011 (Orig) 08/30/2011 (Rev)	<p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>[REDACTED]</p> <p>(b)(3)/6103; (b)(5) AC</p> <p>[REDACTED]</p>	Yes
4.	(b)(3)/6103		(b)(3)/6103	Cincinnati 9/22/06 EOT 11/9/06	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011 (Orig) 10/31/2011 (Rev)	(b)(3)/6103; (b)(5) AC WP	Yes

(b)(3)/6103; (b)(5) AC; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

(b)(3)/6103; (b)(5) AC WP; non-responsive

**EO Technical
Significant Case Report
(July 31, 2011)**

- 21 open SCs

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	(b)(3)/6103; (b)(5) DP AC... and (b)(3)/6103	T2/Ron Shoemaker	(b)(3)/6103 and (b)(3)/6103	4/2/2010	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull	3/31/2011 (Orig) 05/31/2011 (Rev) 07/31/2011 (Rev) 10/30/2011 (Rev)	(b)(5) AC WP; partially non-responsive	No
2.	(b)(3)/6103; (b)(5) AC; non-responsive								

<i>(b)(3)6103; (b)(5) AC; non-responsive</i>									
3.	<i>(b)(3)6103</i>	P2 Andy Megosh	<i>(b)(3)6103</i>	6/08	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011 (Orig) 08/30/2011 (Rev)	<i>(b)(3)6103; (b)(5) AC WP</i>	Yes

4.	(b)(3)/6103	P2/ Andy Megosh	(b)(3)/6103	Cincinnati 9/22/06 EOT 11/9/06	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	6/30/2011 (Orig) 10/31/2011 (Rev)	(b)(3)/6103; (b)(5) AC WP	Yes
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b(3)\6103; (b)(5) AC WP; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

b(3)\6103; (b)(5) AC WP; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

**EO Technical
Significant Case Report
(August 31, 2011)**

- 21 open SCs

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations	T2/Ron Shoemaker	(b)(3)/6103 and (b)(3)/6103	(b)(3) 6103(a)	Whether a tea party organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Chip Hull & Hilary Goehausen	(b)(3) 6103(a)	(b)(3)/6103; (b)(5) AC WP; partially non-responsive	(b)(3) 6103(a)

b(3) 6103; (b)(5) AC; non-responsive

3.	<i>(b)(3) 6103</i>	P2 Andy Megosh	<i>(b)(3) 6103</i>	<i>(b)(3) 6103(a)</i>	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	<i>(b)(3) 6103(a)</i>	<i>(b)(3) 6103; (b)(5) AC</i>	<i>(b)(3) 6103(a)</i>
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4.	(b)(3)/6103	P2/ Andy Megosh	(b)(3)/6103	(b)(3) 6103(a)	Whether HMO qualifies under § 501(c)(4) of the Code.	Justin Lowe	(b)(3) 6103(a)	(b)(3)6103; (b)(5) AC	(b)(3) 6103(a)
(b)(3)/6103; (b)(5) AC WP									

(b)(3)/6103; (b)(5) AC WP; non-responsive

b(3)16103; (b)(5) AC WP; non-responsive

b(3)§16103; (b)(5) AC WP; non-responsive

b(3)16103; (b)(5) AC WP; non-responsive

b(3)§16103; (b)(5) AC WP; non-responsive

b(3)16103; (b)(5) AC WP; non-responsive

b(3)16103; (b)(5) AC WP; non-responsive

**EO Technical
Significant Case Report
(January 31, 2012)**

- 21 open SCs

A. Open SCs:

	Name of Org/Group	Group #/Manager	EIN	Received	Issue	Tax Law Specialist	Estimated Completion Date	Status/Next action	Being Elevated to TEGE Commissioner This Month
1.	Political Advocacy Organizations (1) [Redacted] (2) [Redacted] (3) [Redacted]	T1 Steve Grodnitzky	(2) [Redacted] and (3) [Redacted]	(b)(3)/6103(a)	Whether an organization meets the requirements under section 501(c)(3) and is not involved in political intervention. Whether organization is conducting excessive political activity to deny exemption under section 501(c)(4)	Hilary Goehausen	(b)(3)/6103(a)	(b)(3)/6103(a); (b)(5) AC WP, partially non-responsive	(b)(3)/6103(a)
2.	[Redacted]								

(b)(3)/6103(a); (b)(5) AC WP

b(3)\6103; (b)(5) AC; non-responsive

b(3)6103; (b)(5) AC WP; non-responsive

b(3)\6103; (b)(5) AC; non-responsive

b(3)\6103; (b)(5) AC; non-responsive

b(3)\6103; (b)(5) AC; non-responsive

b(3)\6103; (b)(5) AC; non-responsive

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 1:28 PM
To: Eldridge Michelle L
Subject: RE: IRS statement

. The particular questions asked of an organization may vary depending on the completeness of the application, but fact intensive questions are necessary in many cases to ensure that the legal requirements are satisfied.

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Wednesday, February 29, 2012 2:24 PM
To: Lerner Lois G
Subject: FW: IRS statement

From: Patterson Dean J
Sent: Wednesday, February 29, 2012 2:11 PM
To: Eldridge Michelle L
Subject: FW: IRS statement

These seem pertinent to Alan's follow-up questions:

By law, the IRS cannot discuss any specific taxpayer situation or case. Generally however, when determining whether an organization is eligible for tax-exempt status, including 501(c)(4) social welfare organizations, all the facts and circumstances of that specific organization must be considered to determine whether it is eligible for tax-exempt status.

The promotion of social welfare does not include any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these non-exempt activities are not its primary activities.

In cases where an application for exemption under 501 (c)(4) present issues that require further development before a determination can be made, the IRS engages in a back and forth dialogue with the applicant. While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate.

Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political party affiliation or ideology.

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA**

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
Analysis of Application	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.	Application is extremely complex (e.g., involves inurement, private benefit, related entities) and significant additional documentation is required of applicant.
Factual Complexity of Issues	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.	Case development methods and procedures must be adapted to unique situations. Issues are novel and unusual and involve the largest and most complex EO's.
Application of Tax Law	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.	Tax laws or other legal issues involve points of law without precedent or with conflicting precedents. Research and analysis are necessary to establish significant similarities with related issues.
Interpersonal Skills	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.	Contacts are with officials of very large or prominent organizations and persons with national reputations in business, legal and accounting circles and others of outstanding political, social or economic influence. Considerable tact and discretion are required for resolution of issues.
Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Revised November 25, 2002

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA**

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
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Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Revised November 25, 2002

This responds to your inquiry whether the questions asked in the notice attached to the inquiry are commonly asked of organizations applying for exempt status under 501(c)(4). By law, the IRS cannot discuss any specific taxpayer situation or case. However, we can provide general information regarding review of applications for tax-exemption.

When considering whether to approve an application for tax-exempt status, the IRS must consider all the facts and circumstances of that specific organization to ensure that all statutory requirements are satisfied. The particular questions asked of organizations may vary depending on factors such as the organization's activities and the completeness of the application. Fact intensive questions are necessary in many cases to ensure that the legal requirements are satisfied. To be tax-exempt as a social welfare organization described in Internal Revenue Code (IRC) section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare.

The promotion of social welfare does not include unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, the law allows a section 501(c)(4) social welfare organization to engage in some political activities and some business activities, so long as, in the aggregate, these non-exempt activities are not its primary activities. Even where the non-exempt activities are not the primary activities, they may be taxed. Unrelated business income may be subject to tax under section 511-514, and expenditures for political activities may be subject to tax under section 527(f). For further information regarding political campaign intervention by section 501(c) organizations, see Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, and Revenue Ruling 2004-6.

Unlike 501(c)(3) organizations, 501(c)(4) organizations are not required to apply to the IRS for recognition of their tax-exempt status. Organizations may self-declare and if they meet the statutory and regulatory requirements they will be treated as tax-exempt. If they do want reliance on an IRS determination of their status, they can file an application for exemption. While the application is pending, the organization must file a Form 990, like any other tax-exempt organization, and is otherwise able to operate.

In cases where an application for exemption under 501(c)(4) present issues that require further development before a determination can be made, the IRS engages in a back and forth dialogue with the applicant. For example, if an application appears to indicate that the organization has engaged in political activities or may engage in political activities, the IRS will request additional information about those activities to determine whether they, in fact, constitute political activity. If so, the IRS will look at the rest of the organization's activities to determine whether the primary activities are social welfare activities or whether

they are non-exempt activities. In order to make this determination, the IRS must build an administrative record of the case. That record could include answers to questions, copies of documents, copies of web pages and any other relevant information.

Career civil servants make all decisions on exemption applications in a fair, impartial manner and do so without regard to political party affiliation or ideology.

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
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Revised November 25, 2002

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 6:37 PM
To: Fish David L; Paz Holly O
Subject: FW: EDS Letter 4587(modified).doc
Attachments: EDS Letter 4587(modified).doc

Importance: High

Stay tuned

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 7:36 PM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: EDS Letter 4587(modified).doc
Importance: High

This is getting ridiculous! If an org fails to provide answers to questions by the due date, we usually don't correspond with them. However, in light of the whole situation--including the short turn around date for returning the information, I suggested Holly draft **a letter to go out to the orgs clearly explaining what happens if they don't respond and giving them more time.** Note the paragraph in red at the bottom. I thought it might be useful to point out the fact that **they don't need to come in for c4 status, but it is also a bit dangerous. It could be interpreted as us giving them the OK without coming in.** Let me know how the thinking is going on this--I do think we need to send a letter clearly telling them what happens next.

From: Lerner Lois G
Sent: Monday, March 05, 2012 12:19 PM
To: Grant Joseph H
Subject: RE: EDS Letter 4587(modified).doc

Well, you missed a step. I met with Miller and Nikole Friday--before I went home with a major migraine--and we all agreed it might look like we were suggesting a way to circumvent the process. Unfortunately, adding g in the 7805b piece would only highlight that we have taken a long time. No letter has yet been Oked, so I'll keep you posted--Meanwhile, I get to talk to Senate Finance about all of this on Thursday. (-:

Lois G. Lerner

Director of Exempt Organizations

From: Grant Joseph H
Sent: Thursday, March 01, 2012 7:55 AM
To: Lerner Lois G
Subject: RE: EDS Letter 4587(modified).doc

Lois,

I too think that it may be useful to point out that they don't need to come in for c4 status. To eliminate the possibility that it could appear as if they were receiving our OK without coming in we could add an additional sentence or two describing the 7805(b) reliance concept and the benefit that it provides to those organizations that take the extra step of coming to the Service in advance. This is a service that is above and beyond that which most taxpayers get when they take actions that have potentially serious tax consequences. Thoughts?

Joseph

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 7:36 PM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: EDS Letter 4587(modified).doc
Importance: High

This is getting ridiculous! If an org fails to provide answers to questions by the due date, we usually don't correspond with them. However, in light of the whole situation--including the short turn around date for returning the information, I suggested Holly draft a letter to go out to the orgs clearly explaining what happens if they don't respond an giving them more time. Note the paragraph in red at the bottom. I thought it might be useful to point out the fact that they don't need to come in for c4 status, but it is also a bit dangerous. It could be interpreted as us giving them the OK without coming in. Let me know how the thinking is going on this--I do think we need to send a letter clearly telling them what happens next.

The questions that appear in regular text are standard template questions that need to be asked of every organization. The questions in italics highlighted in yellow are supplemental questions that may be asked in this letter or subsequent letter depending on the facts and circumstances.

Note: If the answer to a template question is in the case file, then do not ask the question.

1) Please provide the following information for your board of directors and officers:

- a) Provide all copies of your minutes from inception to the present.
- b) Provide the titles, duties, work hours, and compensation amounts of your board members and officers. If they only work for a certain time yearly, bi-yearly, or quad-yearly, please provide the periods they had (have) worked and will work. Please identify your volunteers.
- c) If you have a board member or officer who has run or will run for a public office in the near future, please describe fully. If none, please confirm by answering "None" to this question.
- d) *Describe the qualifications of your board of directors and officers. Your response may include resumes.*

2) Describe your donation, contribution, and grant expenses for each year of existence and near future years which includes the information below. If no such activity, please confirm by answering this question "None to be provided."

- a) The names of the donees, recipients, and grantees. If the donee, recipient, or grantee has run or will run for a public office, identify the office. If not, please confirm by answering this question "No."
- b) The amount of each of the donations, contributions, and grants and the dates you donated, contributed, or granted them.
- c) State how your donations, contributions, and grants fulfill your exempt purpose.

3) Provide the following for your fundraising activities:

- a) Copies of all solicitations including pamphlets, flyers and brochures your organization has made regarding fundraising.
- b) State your fundraising expenses and income for each year of existence and near future years.
- c) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

4) Provide the following information for all the events and programs (which may include meetings, forums, rallies, etc.) you have conducted and participated in from your inception to now (other than the events and programs that are questioned below separately). Please answer the following for each event:

a) The time, location, and detailed description of each event or program.

b) What was the purpose of each event or program?

c) Who was invited to speak at the event and why were they invited? Of the invitees, who actually spoke at the event?

d) Provide copies of handouts you provided to the audience, participants, and the public.

e) Provide a copy of the transcript for each speaker (you may provide in written form or electronic media format).

f) Indicate the percentage of time and resources you spent on all the events and programs in relation to 100% of all your activities.

g) Will your near future events and programs remain similar to those you have been conducting recently? If not, explain the changes in your events and programs for the near future in terms of content, time, and resources.

5) Provide the following for your publishing activities including books, CD's, DVD's, newsletters, literature, flyers, brochures, pamphlets, voter guides, and class handouts from your inception to now:

a) Copies of all the publications and/or advertising materials that you have distributed.

b) Expense amounts incurred for your publishing activities from your inception to now.

c) If you are distributing materials prepared by another organization or person, please identify.

d) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

e) Will your near future publishing activities remain similar to those you have been conducting recently? If not, explain the changes in your publishing activities for the near future in terms of content, time, and resources.

6) Enclosed is a copy of information we downloaded from your website. Because we have provided a copy of this information to you, it is available for public inspection as part of your exemption application. If you have any questions regarding this information, please let us know.

7) Have you attempted or will you attempt to influence the outcome of specific legislation? If so, provide the following:

a) Provide a list of the legislation and how you influenced the legislation.

b) Provide copies of all communications, pamphlets, advertisements, and other materials distributed by your organization regarding the legislation.

c) Provide copies of any radio, television, or internet advertisements relating to your lobbying activities.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

8) Have you or will you directly or indirectly communicate with members of legislative bodies? If so, provide copies of the written communications and the content of other forms of communications. Please include the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

9) Have you or will you directly or indirectly participate(d) or intervene(d) in any political campaign on behalf of (or opposition to) any candidate for public office including attempts to influence political campaigns through both direct and indirect support of, or opposition to, a candidate. If so, provide the following details for each of your political campaigns and interventions:

a) Please describe the nature of the political campaign or intervention in detail which may include candidate ratings or endorsements. Provide your endorsement criteria in your description.

b) Names and party affiliations of the candidates you support or oppose.

c) Date and time of the political campaign or intervention.

d) Copies of all handouts, media advertisements, pages of internet advertisements and other means (to be) provided and distributed for the political campaign or intervention.

Please provide your copies in tangible format such as CDs, DVDs, tapes, and paper. Please do not substitute them with web links.

e) If you provided or will provide funds to the candidates or the organizations that support them, provide the name of the recipient, the amount and time of the donation, and the source of the funds. Please provide this information for each of your donations.

f) Indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

10) Are you associated with any candidates for public office or any other entities such as IRC 501(c)(3), 501(c)(4) or 527 organizations? If so, provide the following:

- a) Provide the name, employer identification number, and address of the organization(s).
- b) Describe in detail the nature of the relationship(s).
- c) Do you work with those organization(s) regularly? Describe the nature of the contacts.
- d) List shared employees, volunteers, resources, office space, etc. with the organization(s).
- e) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

If not, please confirm by answering "No" to this question.

11) If you have conducted or will conduct any activities other than the ones we have already cited above (in the near future), provide answers for the following questions regarding past, present and future activities. If you have not conducted and will not conduct any other activities, please confirm by answering "No" to this question.

- a) What does the activity/service entail?
- b) Who conducts the activity/service?
- c) When and where is the activity/service conducted?
- d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

12) Please identify any advocacy communications prepared and financed by your organization. For each of those communications, provide the following information:

- a) Provide a copy of the print communication or a transcript of the broadcast communication.
- b) Provide the date when the communication was first disseminated to the public; the period of time it was made available to the public; and the frequency the communication was printed or broadcast during that period.
- c) Describe the geographic area where the communication was disseminated to the public.
- d) State whether the communication was part of an ongoing series of substantially similar advocacy communications by your organization on the same issue. If so, identify the other communications in the series with the dates those communications were first disseminated to the public.
- e) State whether the communication identifies specific legislation, or a specific event outside your organization's control, that your organization hopes to influence.

f) Describe any considerations that influenced the timing of the communication and whether those considerations were tied to events outside the control of your consideration.

g) State the total expenses used to prepare and disseminate the communication.

13) Will you, or have you conducted voter education activities, including voter registration drives, get out to vote drives, or publish or distribute voter guides (in the near future)? If so, provide the following:

a) What is or will be the location, date and time of the events?

b) Who on the organization's behalf has conducted or will conduct the voter registration or get out to vote drives?

c) Provide copies of all materials published or distributed regarding the activities, including copies of any voter guides.

d) Please indicate the percentage of time and resources you have spent or will spend conducting these activities in relation to 100% of all your activities.

14) Provide the following for all of your research and survey activities including research on the public's social and political views, surveys on the public's choice of political candidates, and exit poll surveys, but not limited to (from your inception to now):

a) The descriptions of your research and surveys.

b) Copies of your research and survey results.

c) The details on your research and survey result distributions - please include all distributions.

d) Expense amounts incurred for your research and survey related activities from your inception to now.

e) Indicate the percentage of time and resources you spend on these activities in relation to 100% of all your activities.

f) Will your near future research and survey activities remain similar to those you have been conducting recently? If not, explain the changes in your research and survey activities for the near future in terms of content, time, and resources.

15) Are you a membership organization? If so, provide the following for your membership:

a) How many members do you have currently?

b) What does your membership consist of? Are they mostly individuals? What is the percentage of the organizational members as they are part of the whole membership?

- c) Provide member application/registration form.
- d) Provide membership agreement and rules that governs members.
- e) Provide a membership fee schedule.
- f) What are the membership requirements?
- g) What services and benefits do you provide especially for members only?
- h) What are the roles and duties of your members?.

16) Describe your organization's employees, paid consultants, and any volunteers in further detail.

- a) How many employees has your organization hired? How many employees are currently employed? Describe the activities on which the employees worked. State whether the employees were full-time or part-time and whether they are seasonal. If part-time or seasonal employees, describe the dates which they were employed.
- b) How many paid consultants has your organization hired? Describe the dates which they were hired and the activities on which the consultants worked
- c) Has your organization used volunteers? If so, describe the number of volunteers used, the dates for which they were used, and the activities on which the volunteers worked.

17) Please provide updated financial data for page 5 of Form 1024 or page 9 of Form 1023 enclosed.

18) Upon review of the organization's website at www., it shows that a section of the website is accessible to members only. In order to get a better understanding of the organization's activities through its website, please provide a temporary login and password.

Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45202

Department of the Treasury

Employer Identification Number:
[NN-NNNNNNNN]

Contact Person:
[Agent Name and Number]

Toll Free Telephone Number:
1-877-829-5500

Previous Letter Date:
[Letter Date Field]

[8010]
(Automatic,
variable required)

Date:

[Organization Name]
[Address]
[Address]

Dear Applicant:

Our previous letter, copy enclosed, requested additional information about your application for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. To be tax-exempt under section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare. When determining whether an organization meets that standard, all the facts and circumstances of that specific organization must be considered.

As indicated in our previous letter, we are unable to make a final determination on your exempt status without additional information. We ask that you provide the previously requested information by [insert date]. Please contact the individual listed above if you believe that the information required to demonstrate eligibility of section 501(c)(4) status can be provided through alternative information. If you believe that information sufficient to show the sources of funding of the organization can be provided without submitting the names of individual donors, you may do so and not submit the names of individual donors at this time. It may be necessary for us to request this information in the future depending on the supplemental information that you provide. If you need additional time to provide the requested information or have other questions about our request, please contact the individual listed above. Please submit your response to us at:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

If you do not provide the additional information or receive an extension from us by [insert date], your case will be placed in suspense. You may reactivate your case by providing the requested information within 90 days of being placed in suspense. After the 90-day period has passed, we will close your case and if you wish to pursue IRS recognition of tax-exempt status you will be required to submit a new application package and new user fee payment.

Please note that if your case is closed and you determine yourself to be a section 501(c)(4) organization, you should file the appropriate Form 990-series return (Form 990-N, Form 990-EZ or Form 990).

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:
Previous Letter

From: Lerner Lois G
Sent: Tuesday, March 06, 2012 3:01 PM
To: Flax Nikole C
Subject: RE: EDS Letter 4587(modified).doc

yes

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 3:52 PM
To: Lerner Lois G
Subject: RE: EDS Letter 4587(modified).doc

are the ones in suspense bc they never responded?

From: Lerner Lois G
Sent: Tuesday, March 06, 2012 3:41 PM
To: Flax Nikole C
Subject: RE: EDS Letter 4587(modified).doc

Just FYI--there are 3 orgs that were placed in suspense before this all blew up. none have complained and they still have plenty of time before the 90 days is up. Would he want us to send the new letter to them?

We have also had some come in and ask to withdraw their applications. I'm assuming, we let them do that--as it is our regular process?

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:23 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

see what you think

From: Flax Nikole C
Sent: Thursday, March 01, 2012 4:30 PM
To: Lerner Lois G
Cc: Grant Joseph H

Subject: FW: EDS Letter 4587(modified).doc

Importance: High

Lois - I don't know if Steve would be okay with this, but see if you think the revise paragraph works. I was trying to convey the point, but in a less obvious way.

From: Lerner Lois G

Sent: Wednesday, February 29, 2012 7:36 PM

To: Flax Nikole C

Cc: Grant Joseph H

Subject: EDS Letter 4587(modified).doc

Importance: High

This is getting ridiculous! If an org fails to provide answers to questions by the due date, we usually don't correspond with them. However, in light of the whole situation--including the short turn around date for returning the information, I suggested Holly draft a letter to go out to the orgs clearly explaining what happens if they don't respond and giving them more time. Note the paragraph in red at the bottom. I thought it might be useful to point out the fact that they don't need to come in for c4 status, but it is also a bit dangerous. It could be interpreted as us giving them the OK without coming in. Let me know how the thinking is going on this--I do think we need to send a letter clearly telling them what happens next.

From: Lerner Lois G
Sent: Wednesday, March 07, 2012 2:37 PM
To: Flax Nikole C
Subject: RE: EDS Letter 4587(modified).doc

Yepp--you're right and I will.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, March 07, 2012 3:35 PM
To: Lerner Lois G
Subject: RE: EDS Letter 4587(modified).doc

I think you were going to check on the para I highlighted to see if it was standard language and also on the (b)(3) 6103...org whether the language at the end of the letter helped the expedite case (not whether it would be retroactive).

From: Lerner Lois G
Sent: Wednesday, March 07, 2012 3:32 PM
To: Flax Nikole C
Subject: RE: EDS Letter 4587(modified).doc

I would prefer 60 because we will give more time--if we give 90 they will still want more time. do you remember what I told Steve I would check with Holly and Cindy on?

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, March 07, 2012 3:02 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

revised. what do you think about the 90 days?

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:32 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

changed the language at the end

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:23 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

see what you think

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To: Lerner Lois G
Cc: Grant Joseph H
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

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Subject: EDS Letter 4587(modified).doc
Importance: High

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From: Lerner Lois G
Sent: Wednesday, March 07, 2012 2:38 PM
To: Paz Holly O
Subject: FW: EDS Letter 4587(modified).doc
Attachments: EDS Letter 4587(modified).doc

Importance: High

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:32 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

[changed the language at the end](#)

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:23 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

see what you think

From: Flax Nikole C
Sent: Thursday, March 01, 2012 4:30 PM
To: Lerner Lois G
Cc: Grant Joseph H
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

[Lois - I don't know if Steve would be okay with this, but see if you think the revise paragraph works. I was trying to convey the point, but in a less obvious way.](#)

From: Lerner Lois G
Sent: Wednesday, February 29, 2012 7:36 PM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: EDS Letter 4587(modified).doc
Importance: High

This is getting ridiculous! If an org fails to provide answers to questions by the due date, we usually don't correspond with them. However, in light of the whole situation--including the short turn around date for returning the information, I suggested Holly draft a letter to go out to the orgs clearly explaining what happens if they don't respond and giving them more time. Note the paragraph in red at the bottom. I thought it might be useful to point out the fact that they don't need to come in for c4 status, but it is also a bit dangerous. It could be interpreted as us giving them the OK without coming in. Let me know how the thinking is going on this--I do think we need to send a letter clearly telling them what happens next.

Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45202

Department of the Treasury

Employer Identification Number:
[NN-NNNNNNNN]

Contact Person:
[Agent Name and Number]

Toll Free Telephone Number:
1-877-829-5500

Previous Letter Date:
[Letter Date Field]

[8010]
(Automatic,
variable required)

Date:

[Organization Name]
[Address]
[Address]

Dear Applicant:

Our previous letter, copy enclosed, requested additional information about your application for tax-exempt status under section 501(c)(4) of the Internal Revenue Code. To be tax-exempt under section 501(c)(4), an organization must be primarily engaged in the promotion of social welfare. When determining whether an organization meets that standard, all the facts and circumstances of that specific organization must be considered.

As indicated in our previous letter, we are unable to make a final determination on your exempt status without additional information. We ask that you provide the previously requested information by [insert date]. Please contact the individual listed above if you believe that the information required to demonstrate eligibility of section 501(c)(4) status can be provided through alternative information. If you believe that information sufficient to show the sources of funding of the organization can be provided without submitting the names of individual donors, you may do so and not submit the names of individual donors at this time. It may be necessary for us to request this information in the future depending on the supplemental information that you provide. If you need additional time to provide the requested information or have other questions about our request, please contact the individual listed above. Please submit your response to us at:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

If you do not provide the additional information or receive an extension from us by [insert date], your case will be placed in suspense. You may reactivate your case by providing the requested information within 90 days of being placed in suspense. After the 90-day period has passed, we will close your case and if you wish to pursue IRS recognition of tax-exempt status you will be required to submit a new application package and new user fee payment.

Please note that if your case is closed and you hold yourself out as a section 501(c)(4) organization, you must file the appropriate Form 990-series return (Form 990-N, Form 990-EZ or Form 990).

We have sent a copy of this letter to your representative as indicated in your power of attorney.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:
Previous Letter

Internal Revenue Service

P.O. Box 2508
Cincinnati, OH 45202

Department of the Treasury

Employer Identification Number:
[NN-NNNNNNNN]

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As indicated in our previous letter, we are unable to make a final determination on your exempt status without additional information. We ask that you provide the previously requested information by [90 days]. Please contact the individual listed above if you believe that the details required to demonstrate eligibility of section 501(c)(4) status can be provided through alternative information or if you have any other concerns about specific information requested. If you need additional time to provide the requested information or have other questions, please contact the individual listed above. Please submit your response to us at:

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

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Sincerely,

Lois G. Lerner
Director, Exempt Organizations

Enclosure:
Previous Letter

From: Lerner Lois G
Sent: Monday, March 12, 2012 4:48 PM
To: Flax Nikole C
Cc: Paz Holly O
Subject: RE: EDS Letter 4587(modified).doc

Yes, we'll send to you tomorrow.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Monday, March 12, 2012 5:46 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

here it is. Is there a way to modify for those already in suspense?

From: Flax Nikole C
Sent: Thursday, March 08, 2012 9:04 AM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

This should be all comments. Preference is to also send to those in the group already in suspense (but did they already get letters telling them that??). I am not sure how this fits with the letters that you sent last night. Thanks

From: Flax Nikole C
Sent: Wednesday, March 07, 2012 3:02 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

revised. what do you think about the 90 days?

From: Flax Nikole C
Sent: Tuesday, March 06, 2012 2:32 PM
To: Lerner Lois G
Subject: FW: EDS Letter 4587(modified).doc
Importance: High

changed the language at the end

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From: Lerner Lois G
Sent: Wednesday, March 14, 2012 8:45 AM
To: Spellmann Don R; Kindell Judith E; Cook Janine; Paz Holly O; Fish David L; Megosh Andy; Lowe Justin; Brown Susan D; Marshall David L
Subject: RE: voter guide draft

I looked at it last night and have comments--I'll try to meet with my guys and pass them on

Lois G. Lerner

Director of Exempt Organizations

From: Spellmann Don R [<mailto:Don.R.Spellmann@irsounsel.treas.gov>]
Sent: Tuesday, March 13, 2012 7:14 PM
To: Kindell Judith E; Lerner Lois G; Cook Janine; Paz Holly O; Fish David L; Megosh Andy; Lowe Justin; Brown Susan D; Marshall David L
Subject: RE: voter guide draft

Thank you Judy and company for the additional thoughts. We will review and discuss in anticipation of our next meeting.

Don

From: Kindell Judith E [<mailto:Judith.E.Kindell@irs.gov>]
Sent: Tuesday, March 13, 2012 5:06 PM
To: Lerner Lois G; Cook Janine; Paz Holly O; Fish David L; Megosh Andy; Lowe Justin; Brown Susan D; Spellmann Don R; Marshall David L
Subject: FW: voter guide draft

After sending over the earlier draft, we thought some more and are proposing restructuring so that the basic guide sheet asks whether the application indicates that the org has done or intends to do the particular activity (such as voter guides), and, if so, directs the agent to the relevant subsidiary checksheet. Here is our take on the voter guides to illustrate what we are thinking about.

From: Kindell Judith E
Sent: Tuesday, March 13, 2012 2:04 PM
To: Lowe Justin; Megosh Andy; Fish David L; Paz Holly O
Subject: voter guide draft

Attached is a draft voter guide checksheet. I basically grabbed the intro text from the 2002 CPE article and did a rough cut on dividing Counsel's questions into factors that tend to show political intervention and those that tend not to. I also added some questions from FS 2006-17 and included that reference rather than RR2007-41 since we didn't actually address voter guides in the rev rul. I'd still like to put something at the end to talk about weighing the factors, but I thought I'd run what I have by you in the meantime.

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA**

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
Analysis of Application	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.	Application is extremely complex (e.g., involves inurement, private benefit, related entities) and significant additional documentation is required of applicant.
Factual Complexity of Issues	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.	Case development methods and procedures must be adapted to unique situations. Issues are novel and unusual and involve the largest and most complex EO's.
Application of Tax Law	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.	Tax laws or other legal issues involve points of law without precedent or with conflicting precedents. Research and analysis are necessary to establish significant similarities with related issues.
Interpersonal Skills	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.	Contacts are with officials of very large or prominent organizations and persons with national reputations in business, legal and accounting circles and others of outstanding political, social or economic influence. Considerable tact and discretion are required for resolution of issues.
Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Revised November 25, 2002

Internal Revenue **bulletin**

HIGHLIGHTS **OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

INCOME TAX

Rev. Rul. 2012-1, page 255.

Recurring item exception to the all events test. This ruling clarifies the treatment of certain liabilities under the recurring item exception to the economic performance requirement under section 461(h)(3) of the Code. It also addresses the application of the "not material" and "better matching" requirement of the recurring item exception in the context of a lease and a service contract each having a term of one year. The ruling distinguishes contracts for the provision of services from insurance and warranty contracts and applies the recurring item exception differently. Rev. Proc. 2011-14 modified and amplified.

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

REG-149625-10, page 279.

Proposed regulations under section 382 of the Code provide exceptions to the segregation rules, under which certain transactions may create one or more additional public groups treated as 5-percent shareholders, for certain sales of loss corporation stock to small shareholders and for certain re-

demptions of small shareholders. The regulations also provide that in certain circumstances certain entities owning the loss corporation generally will be treated as having no more than one public group.

EXEMPT ORGANIZATIONS

Rev. Proc. 2012-9, page 261.

This procedure sets forth issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428 of the Code. Rev. Proc. 2011-9 superseded.

Rev. Proc. 2012-10, page 273.

This procedure sets forth updated procedures with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the Code, operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1). Rev. Proc. 2011-10 superseded.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

Notice 2012-1, page 260.

Optional standard mileage rates for 2012. This notice announces 55.5 cents as the optional standard mileage rate for substantiating the amount of the deduction for the business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 23 cents as the optional rate for use of an automobile as a medical or moving expense for 2012. The notice also provides the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate and the maximum standard automobile cost for automobiles under a FAVR allowance. Notice 2010-88, as modified by Announcement 2011-40, is superseded.

Rev. Proc. 2012-12, page 275.

This procedure describes the procedures and standards that organizations must follow to be identified by the Service as a qualifying organization that may accredit continuing education providers under section 10.9(a)(1)(iii) of Circular 230 and the procedures and standards that individuals and entities must follow to be approved as continuing education providers under section 10.9(a)(1) of Circular 230.

Announcement 2012-2, page 285.

This announcement contains an update to Publication 1220, *Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935 and W-2G, Electronically*, revised 9-2011, concerning the filing of Form 1099-K.

Rev. Proc. 2012-9

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2012–6, last bulletin (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

Description of terms used in this revenue procedure

- .01 For purposes of this revenue procedure —
 - (1) The term “Service” means the Internal Revenue Service.
 - (2) The term “application” means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. See section 3 for information on specific forms.
 - (3) The term “EO Determinations” means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations. Applications are generally processed in the centralized EO Determinations office in Cincinnati, Ohio. However, some applications may be processed in other EO Determinations offices or referred to EO Technical.
 - (4) The term “EO Technical” means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical

advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) The term “Appeals Office” means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) The term “determination letter” means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2012-5.

(7) The term “ruling” means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

(8) The term “Code” means the Internal Revenue Code.

Updated annually

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES

Rev. Proc. 2011-9 is superseded

.01 This revenue procedure is a general update of Rev. Proc. 2011-9, 2011-2 I.R.B. 283, which is hereby superseded.

Related revenue procedures

.02 This revenue procedure supplements Rev. Proc. 2012-10, this Bulletin, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80-27, 1980-1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72-5, 1972-1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2012-4. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2012-8.

What changes have been made to Rev. Proc. 2011-9?

.03 Notable changes to Rev. Proc. 2011-9 that appear in this year’s update include —

(1) Section 3.01 clarifies that Form 8718, *User Fee for Exempt Organization Determination Letter Request*, is not a determination letter application.

(2) A reference to § 501(r) is added to section 3.03 to cover hospitals seeking exemption under § 501(c)(3).

(3) Section 4.08 is added to describe existing practice that the Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration. *See* Rev. Proc. 2012-4, section 8.01.

(4) A new item (6) is added to section 12 to reflect revocation of exemption automatically pursuant to § 6033(j) for failure to file a required annual return or notice for three consecutive years.

SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?

In general

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application along with Form 8718, *User Fee for Exempt Organization Determination Letter Request*. See Rev. Proc. 80–27. Form 8718 is not a determination letter application. Attach this form to the determination letter application.

User fee

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2012–8.

Form 1023 application

.03 An organization seeking recognition of exemption under § 501(c)(3) and § 501(e), (f), (k), (n), (q), or (r) must submit a completed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. In the case of an organization that provides credit counseling services, see § 501(q) of the Code. In the case of an organization that is a hospital and is seeking exemption under § 501(c)(3), see § 501(r) of the Code.

Form 1024 application

.04 An organization seeking recognition of exemption under § 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25) must submit a completed Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, along with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q) of the Code.

Letter application

.05 An organization seeking recognition of exemption under § 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), or (29), or under § 501(d), must submit a letter application along with Form 8718.

Form 1028 application

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028, *Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code*, along with Form 8718.

Form 8871 notice for political organizations

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at www.irs.gov/polorgs.

Requirements for a substantially completed application

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual;

(2) includes an Employer Identification Number (EIN);

(3) for organizations other than those described in § 501(c)(3), includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities; for organizations described in § 501(c)(3), see Form 1023 and Notice 1382;

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures;

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a "conformed copy" as outlined in Rev. Proc. 68-14, 1968-1 C.B. 768;

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (e.g., stamped "Filed" and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state; if a copy is submitted, the written declaration must include the date the articles were filed with the state;

(7) if the organization has adopted by-laws, includes a current copy; the by-laws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise, the by-laws must be verified as current by an authorized individual; and

(8) is accompanied by the correct user fee and Form 8718, when applicable.

Terrorist organizations not eligible to apply for recognition of exemption

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?

Exempt status must be established in application and supporting documents

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

Determination letter or ruling based solely on administrative record

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Exempt status may be recognized in advance of actual operations

.03 Exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the

Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7 of this revenue procedure.

No letter if exempt status issue in litigation or under consideration within the Service

.04 A determination letter or ruling on exempt status ordinarily will not be issued if an issue involving the organization's exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to pursue a declaratory judgment under § 7428, provided that it has exhausted its administrative remedies.

Incomplete application

.05 If an application does not contain all of the items set out in section 3.08 of this revenue procedure, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 is refiled with or remailed to the Service. If the application is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2012-8, section 10.

Even if application is complete, additional information may be required

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

Expedited handling

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling, an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) a grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate;

(2) the purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane; and

(3) there have been undue delays in issuing a determination letter or ruling caused by a Service error.

May decline to issue group exemption

.08 The Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration.

SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?

EO Determinations issues a determination letter in most cases

.01 Under the general procedures outlined in Rev. Proc. 2012-4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

Certain applications referred to EO Technical

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

Technical advice may be requested in certain cases

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2012-5, sections 4.04 and 4.05.

Technical advice must be requested in certain cases

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

SECTION 6. WITHDRAWAL OF AN APPLICATION

Application may be withdrawn prior to issuance of a determination letter or ruling

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2012-8, section 10.

§ 7428 implications of withdrawal of application under § 501(c)(3)

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?

Proposed adverse determination letter or ruling

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Code under which exemption is claimed, the Service generally will issue a proposed adverse determination letter or ruling, which will:

(1) include a detailed discussion of the Service's rationale for the denial of tax-exempt status; and

(2) advise the organization of its opportunity to appeal or protest the decision and request a conference.

Appeal of a proposed adverse determination letter issued by EO Determinations

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

Protest of a proposed adverse ruling issued by EO Technical

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2012-4, section 12, are applicable.

Final adverse determination letter or ruling where no appeal or protest is submitted

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

How EO Determinations handles an appeal of a proposed adverse determination letter

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and, if it determines that the organization qualifies for tax-exempt status, issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

Consideration by the Appeals Office

.06 The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2012-5, sections 4.04 and 4.05.

If a protest of a proposed adverse ruling is submitted to EO Technical

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

An appeal or protest may be withdrawn

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

Appeal or protest and conference rights not applicable in certain situations

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

Disclosure of applications, supporting documents, and favorable determination letters or rulings

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued, are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus, if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*. Organizations should ensure that applications and supporting documents do not include unnecessary personal identifying information (such as bank account numbers or social security numbers) that could result in identity theft or other adverse consequences if publicly disclosed.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, see Publication 557, *Tax-Exempt Status for Your Organization*.

Disclosure of adverse determination letters or rulings

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released pursuant to § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. See § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). See § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

Disclosure to State officials of information about § 501(c)(3) applicants

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL

Determination letters may be reviewed by EO Technical to assure uniformity

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

Procedures for cases where EO Technical takes exception to a determination letter

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice, and the procedures in Rev. Proc. 2012-5 will be followed.

**SECTION 10. DECLARATORY
JUDGMENT PROVISIONS OF
§ 7428**

**Actual controversy involving
certain issues**

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

**Exhaustion of administrative
remedies**

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 under § 501(c)(3) pursuant to section 3.08 of this revenue procedure, or the request for a determination of foundation status pursuant to Rev. Proc. 2012-10, this Bulletin, or its successor;

(2) in appropriate cases, requesting relief pursuant to Treas. Reg. § 301.9100-1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax;

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7 of this revenue procedure.

**Not earlier than 270 days after
seeking determination**

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling, and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

**Service must have reasonable time
to act on an appeal or protest**

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest, as the case may be.

**Final determination to which
§ 7428 applies**

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

**SECTION 11. EFFECT OF
DETERMINATION LETTER
OR RULING RECOGNIZING
EXEMPTION**

Effective date of exemption

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under § 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

Reliance on determination letter or ruling

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization, or a change in the applicable law. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. See section 12.01.

SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

A determination letter or ruling recognizing exemption may be revoked or modified: (1) by a notice to the taxpayer to whom the determination letter or ruling was issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the Supreme Court of the United States; (4) by the issuance of temporary or final regulations; (5) by the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin; or (6) automatically, pursuant to § 6033(j), for failure to file a required annual return or notice for three consecutive years.

Revocation or modification of a determination letter or ruling may be retroactive

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2012-4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (see sections 13 and 14 of Rev. Proc. 2012-4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

Appeal and conference procedures in the case of revocation or modification of exempt status letter

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of this revenue procedure, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal

Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status*.

**SECTION 13. EFFECT
ON OTHER REVENUE
PROCEDURES**

Rev. Proc. 2011-9 is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective January 9, 2012.

**SECTION 15. PAPERWORK
REDUCTION ACT**

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Mr. Dave Rifkin and Mr. Matt Perdoni of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829-5500 (a toll-free call), or send an e-mail to tege.eo@irs.gov and include "Question about Rev. Proc. 2012-9" in the subject line.

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: *

*
*
*
*

Employer Identification Number:

XX-XXXXXXX

Person to Contact – Group #:

Specialist Name - XXXX

ID# XXXXXXXX

Contact Telephone Numbers:

XXX-XXX-XXXX Phone

XXX-XXX-XXXX Fax (859-669-3783 for TEDS)

Cases)

Response Due Date:

*

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.
- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Name

EIN

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

*****DELETE IF NOT A 501(c)(3) APPLICATION*****

In addition, if you don't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

*****DELETE IF NO POWER OF ATTORNEY*****

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Specialist Name
Exempt Organizations Specialist

Enclosure: Information Request
Application Identification Sheet

Letter 1312 (Rev. 05-2011)

Additional Information Requested:

Name

EIN

*

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

Selective:

(EDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: Specialist Name
Room XXXX
Group XXXX

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: Specialist Name
Room XXXX
Group XXXX

(TEDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 12192
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
201 Rivercenter Blvd
ATTN: Extracting Stop 312
Covington, KY 41011

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA**

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
Analysis of Application	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.	Application is extremely complex (e.g., involves inurement, private benefit, related entities) and significant additional documentation is required of applicant.
Factual Complexity of Issues	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.	Case development methods and procedures must be adapted to unique situations. Issues are novel and unusual and involve the largest and most complex EO's.
Application of Tax Law	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.	Tax laws or other legal issues involve points of law without precedent or with conflicting precedents. Research and analysis are necessary to establish significant similarities with related issues.
Interpersonal Skills	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.	Contacts are with officials of very large or prominent organizations and persons with national reputations in business, legal and accounting circles and others of outstanding political, social or economic influence. Considerable tact and discretion are required for resolution of issues.
Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Revised November 25, 2002

Internal Revenue **bulletin**

HIGHLIGHTS **OF THIS ISSUE**

These synopses are intended only as aids to the reader in identifying the subject matter covered. They may not be relied upon as authoritative interpretations.

SPECIAL ANNOUNCEMENT

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

INCOME TAX

Rev. Rul. 2012-1, page 255.

Recurring item exception to the all events test. This ruling clarifies the treatment of certain liabilities under the recurring item exception to the economic performance requirement under section 461(h)(3) of the Code. It also addresses the application of the "not material" and "better matching" requirement of the recurring item exception in the context of a lease and a service contract each having a term of one year. The ruling distinguishes contracts for the provision of services from insurance and warranty contracts and applies the recurring item exception differently. Rev. Proc. 2011-14 modified and amplified.

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

REG-149625-10, page 279.

Proposed regulations under section 382 of the Code provide exceptions to the segregation rules, under which certain transactions may create one or more additional public groups treated as 5-percent shareholders, for certain sales of loss corporation stock to small shareholders and for certain re-

demptions of small shareholders. The regulations also provide that in certain circumstances certain entities owning the loss corporation generally will be treated as having no more than one public group.

EXEMPT ORGANIZATIONS

Rev. Proc. 2012-9, page 261.

This procedure sets forth issuing determination letters and rulings on the exempt status of organizations under sections 501 and 521 of the Code. The procedures also apply to the revocation and modification of determination letters or rulings, and provide guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under section 7428 of the Code. Rev. Proc. 2011-9 superseded.

Rev. Proc. 2012-10, page 273.

This procedure sets forth updated procedures with respect to issuing rulings and determination letters on private foundation status under § 509(a) of the Code, operating foundation status under § 4942(j)(3), and exempt operating foundation status under § 4940(d)(2), of organizations exempt from Federal income tax under § 501(c)(3). This procedure also applies to the issuance of determination letters on the foundation status under § 509(a)(3) of nonexempt charitable trusts described in § 4947(a)(1). Rev. Proc. 2011-10 superseded.

(Continued on the next page)

Finding Lists begin on page ii.



Department of the Treasury
Internal Revenue Service

ADMINISTRATIVE

T.D. 9559, page 252.

Final regulations amend the user fee regulations and establish a new user fee for individuals to take the registered tax return preparer competency examination.

Notice 2012-1, page 260.

Optional standard mileage rates for 2012. This notice announces 55.5 cents as the optional standard mileage rate for substantiating the amount of the deduction for the business use of an automobile, 14 cents as the optional rate for use of an automobile as a charitable contribution, and 23 cents as the optional rate for use of an automobile as a medical or moving expense for 2012. The notice also provides the amount a taxpayer must use in calculating reductions to basis for depreciation taken under the business standard mileage rate and the maximum standard automobile cost for automobiles under a FAVR allowance. Notice 2010-88, as modified by Announcement 2011-40, is superseded.

Rev. Proc. 2012-12, page 275.

This procedure describes the procedures and standards that organizations must follow to be identified by the Service as a qualifying organization that may accredit continuing education providers under section 10.9(a)(1)(iii) of Circular 230 and the procedures and standards that individuals and entities must follow to be approved as continuing education providers under section 10.9(a)(1) of Circular 230.

Announcement 2012-2, page 285.

This announcement contains an update to Publication 1220, *Specifications for Filing Forms 1097, 1098, 1099, 3921, 3922, 5498, 8935 and W-2G, Electronically*, revised 9-2011, concerning the filing of Form 1099-K.

Rev. Proc. 2012-9

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SECTION 1. WHAT IS THE PURPOSE OF THIS REVENUE PROCEDURE?

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of organizations under §§ 501 and 521 of the Internal Revenue Code other than those subject to Rev. Proc. 2012–6, last bulletin (relating to pension, profit-sharing, stock bonus, annuity, and employee stock ownership plans). Generally, the Service issues these determination letters and rulings in response to applications for recognition of exemption from Federal income tax. These procedures also apply to revocation or modification of determination letters or rulings. This revenue procedure also provides guidance on the exhaustion of administrative remedies for purposes of declaratory judgment under § 7428 of the Code.

Description of terms used in this revenue procedure

- .01 For purposes of this revenue procedure —
 - (1) The term “Service” means the Internal Revenue Service.
 - (2) The term “application” means the appropriate form or letter that an organization must file or submit to the Service for recognition of exemption from Federal income tax under the applicable section of the Internal Revenue Code. See section 3 for information on specific forms.
 - (3) The term “EO Determinations” means the office of the Service that is primarily responsible for processing initial applications for tax-exempt status. It includes the main EO Determinations office located in Cincinnati, Ohio, and other field offices that are under the direction and control of the Manager, EO Determinations. Applications are generally processed in the centralized EO Determinations office in Cincinnati, Ohio. However, some applications may be processed in other EO Determinations offices or referred to EO Technical.
 - (4) The term “EO Technical” means the office of the Service that is primarily responsible for issuing letter rulings to taxpayers on exempt organization matters, and for providing technical

advice or technical assistance to other offices of the Service on exempt organization matters. The EO Technical office is located in Washington, DC.

(5) The term “Appeals Office” means any office under the direction and control of the Chief, Appeals. The purpose of the Appeals Office is to resolve tax controversies, without litigation, on a fair and impartial basis. The Appeals Office is independent of EO Determinations and EO Technical.

(6) The term “determination letter” means a written statement issued by EO Determinations or an Appeals Office in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521. This includes a written statement issued by EO Determinations or an Appeals Office on the basis of advice secured from EO Technical pursuant to the procedures prescribed herein and in Rev. Proc. 2012-5.

(7) The term “ruling” means a written statement issued by EO Technical in response to an application for recognition of exemption from Federal income tax under §§ 501 and 521.

(8) The term “Code” means the Internal Revenue Code.

Updated annually

.02 This revenue procedure is updated annually, but may be modified or amplified during the year.

SECTION 2. NATURE OF CHANGES AND RELATED REVENUE PROCEDURES

Rev. Proc. 2011-9 is superseded

.01 This revenue procedure is a general update of Rev. Proc. 2011-9, 2011-2 I.R.B. 283, which is hereby superseded.

Related revenue procedures

.02 This revenue procedure supplements Rev. Proc. 2012-10, this Bulletin, with respect to the effects of § 7428 of the Code on the classification of organizations under §§ 509(a) and 4942(j)(3). Rev. Proc. 80-27, 1980-1 C.B. 677, sets forth procedures under which exemption may be recognized on a group basis for subordinate organizations affiliated with and under the general supervision and control of a central organization. Rev. Proc. 72-5, 1972-1 C.B. 709, provides information for religious and apostolic organizations seeking recognition of exemption under § 501(d). General procedures for requests for a determination letter or ruling are provided in Rev. Proc. 2012-4. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2012-8.

What changes have been made to Rev. Proc. 2011-9?

.03 Notable changes to Rev. Proc. 2011-9 that appear in this year’s update include —

(1) Section 3.01 clarifies that Form 8718, *User Fee for Exempt Organization Determination Letter Request*, is not a determination letter application.

(2) A reference to § 501(r) is added to section 3.03 to cover hospitals seeking exemption under § 501(c)(3).

(3) Section 4.08 is added to describe existing practice that the Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration. *See* Rev. Proc. 2012-4, section 8.01.

(4) A new item (6) is added to section 12 to reflect revocation of exemption automatically pursuant to § 6033(j) for failure to file a required annual return or notice for three consecutive years.

SECTION 3. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS?

In general

.01 An organization seeking recognition of exempt status under § 501 or § 521 is required to submit the appropriate application. In the case of a numbered application form, the current version of the form must be submitted. A central organization that has previously received recognition of its own exemption can request a group exemption letter by submitting a letter application along with Form 8718, *User Fee for Exempt Organization Determination Letter Request*. See Rev. Proc. 80–27. Form 8718 is not a determination letter application. Attach this form to the determination letter application.

User fee

.02 An application must be submitted with the correct user fee, as set forth in Rev. Proc. 2012–8.

Form 1023 application

.03 An organization seeking recognition of exemption under § 501(c)(3) and § 501(e), (f), (k), (n), (q), or (r) must submit a completed Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*. In the case of an organization that provides credit counseling services, see § 501(q) of the Code. In the case of an organization that is a hospital and is seeking exemption under § 501(c)(3), see § 501(r) of the Code.

Form 1024 application

.04 An organization seeking recognition of exemption under § 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25) must submit a completed Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, along with Form 8718. In the case of an organization that provides credit counseling services and seeks recognition of exemption under § 501(c)(4), see § 501(q) of the Code.

Letter application

.05 An organization seeking recognition of exemption under § 501(c)(11), (14), (16), (18), (21), (22), (23), (26), (27), (28), or (29), or under § 501(d), must submit a letter application along with Form 8718.

Form 1028 application

.06 An organization seeking recognition of exemption under § 521 must submit a completed Form 1028, *Application for Recognition of Exemption Under Section 521 of the Internal Revenue Code*, along with Form 8718.

Form 8871 notice for political organizations

.07 A political party, a campaign committee for a candidate for federal, state or local office, and a political action committee are all political organizations subject to tax under § 527. To be tax-exempt, a political organization may be required to notify the Service that it is to be treated as a § 527 organization by electronically filing Form 8871, *Political Organization Notice of Section 527 Status*. For details, go to the IRS website at www.irs.gov/polorgs.

Requirements for a substantially completed application

.08 A substantially completed application, including a letter application, is one that:

(1) is signed by an authorized individual;

(2) includes an Employer Identification Number (EIN);

(3) for organizations other than those described in § 501(c)(3), includes a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the organization was in existence, if less than four years), and if the organization has not yet commenced operations or has not completed one accounting period, a proposed budget for two full accounting periods and a current statement of assets and liabilities; for organizations described in § 501(c)(3), see Form 1023 and Notice 1382;

(4) includes a detailed narrative statement of proposed activities, including each of the fundraising activities of a § 501(c)(3) organization, and a narrative description of anticipated receipts and contemplated expenditures;

(5) includes a copy of the organizing or enabling document that is signed by a principal officer or is accompanied by a written declaration signed by an authorized individual certifying that the document is a complete and accurate copy of the original or otherwise meets the requirements of a "conformed copy" as outlined in Rev. Proc. 68-14, 1968-1 C.B. 768;

(6) if the organizing or enabling document is in the form of articles of incorporation, includes evidence that it was filed with and approved by an appropriate state official (e.g., stamped "Filed" and dated by the Secretary of State); alternatively, a copy of the articles of incorporation may be submitted if accompanied by a written declaration signed by an authorized individual that the copy is a complete and accurate copy of the original copy that was filed with and approved by the state; if a copy is submitted, the written declaration must include the date the articles were filed with the state;

(7) if the organization has adopted by-laws, includes a current copy; the by-laws need not be signed if submitted as an attachment to the application for recognition of exemption; otherwise, the by-laws must be verified as current by an authorized individual; and

(8) is accompanied by the correct user fee and Form 8718, when applicable.

Terrorist organizations not eligible to apply for recognition of exemption

.09 An organization that is identified or designated as a terrorist organization within the meaning of § 501(p)(2) of the Code is not eligible to apply for recognition of exemption.

SECTION 4. WHAT ARE THE STANDARDS FOR ISSUING A DETERMINATION LETTER OR RULING ON EXEMPT STATUS?

Exempt status must be established in application and supporting documents

.01 A favorable determination letter or ruling will be issued to an organization only if its application and supporting documents establish that it meets the particular requirements of the section under which exemption from Federal income tax is claimed.

Determination letter or ruling based solely on administrative record

.02 A determination letter or ruling on exempt status is issued based solely upon the facts and representations contained in the administrative record.

(1) The applicant is responsible for the accuracy of any factual representations contained in the application.

(2) Any oral representation of additional facts or modification of facts as represented or alleged in the application must be reduced to writing over the signature of an officer or director of the taxpayer under a penalties of perjury statement.

(3) The failure to disclose a material fact or misrepresentation of a material fact on the application may adversely affect the reliance that would otherwise be obtained through issuance by the Service of a favorable determination letter or ruling.

Exempt status may be recognized in advance of actual operations

.03 Exempt status may be recognized in advance of the organization's operations if the proposed activities are described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements for exemption pursuant to the section of the Code under which exemption is claimed.

(1) A mere restatement of exempt purposes or a statement that proposed activities will be in furtherance of such purposes will not satisfy this requirement.

(2) The organization must fully describe all of the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activities, the anticipated sources of receipts, and the nature of contemplated expenditures.

(3) Where the organization cannot demonstrate to the satisfaction of the Service that it qualifies for exemption pursuant to the section of the Code under which exemption is claimed, the

Service will generally issue a proposed adverse determination letter or ruling. *See also* section 7 of this revenue procedure.

No letter if exempt status issue in litigation or under consideration within the Service

.04 A determination letter or ruling on exempt status ordinarily will not be issued if an issue involving the organization's exempt status under § 501 or § 521 is pending in litigation, is under consideration within the Service, or if issuance of a determination letter or ruling is not in the interest of sound tax administration. If the Service declines to issue a determination or ruling to an organization seeking exempt status under § 501(c)(3), the organization may be able to pursue a declaratory judgment under § 7428, provided that it has exhausted its administrative remedies.

Incomplete application

.05 If an application does not contain all of the items set out in section 3.08 of this revenue procedure, the Service may return it to the applicant for completion.

(1) In lieu of returning an incomplete application, the Service may retain the application and request additional information needed for a substantially completed application.

(2) In the case of an application under § 501(c)(3) that is returned incomplete, the 270-day period referred to in § 7428(b)(2) will not be considered as starting until the date a substantially completed Form 1023 is refiled with or remailed to the Service. If the application is mailed to the Service and a postmark is not evident, the 270-day period will start to run on the date the Service actually receives the substantially completed Form 1023. The same rules apply for purposes of the notice requirement of § 508.

(3) Generally, the user fee will not be refunded if an incomplete application is filed. *See* Rev. Proc. 2012-8, section 10.

Even if application is complete, additional information may be required

.06 Even though an application is substantially complete, the Service may request additional information before issuing a determination letter or ruling.

(1) If the application involves an issue where contrary authorities exist, an applicant's failure to disclose and distinguish contrary authorities may result in requests for additional information, which could delay final action on the application.

(2) In the case of an application under § 501(c)(3), the period of time beginning on the date the Service requests additional information until the date the information is submitted to the Service will not be counted for purposes of the 270-day period referred to in § 7428(b)(2).

Expedited handling

.07 Applications are normally processed in the order of receipt by the Service. However, expedited handling of an application may be approved where a request is made in writing and contains a compelling reason for processing the application ahead of others. Upon approval of a request for expedited handling, an application will be considered out of its normal order. This does not mean the application will be immediately approved or denied. Circumstances generally warranting expedited processing include:

(1) a grant to the applicant is pending and the failure to secure the grant may have an adverse impact on the organization's ability to continue to operate;

(2) the purpose of the newly created organization is to provide disaster relief to victims of emergencies such as flood and hurricane; and

(3) there have been undue delays in issuing a determination letter or ruling caused by a Service error.

May decline to issue group exemption

.08 The Service may decline to issue a group exemption letter when appropriate in the interest of sound tax administration.

SECTION 5. WHAT OFFICES ISSUE AN EXEMPT STATUS DETERMINATION LETTER OR RULING?

EO Determinations issues a determination letter in most cases

.01 Under the general procedures outlined in Rev. Proc. 2012-4, EO Determinations is authorized to issue determination letters on applications for exempt status under §§ 501 and 521.

Certain applications referred to EO Technical

.02 EO Determinations will refer to EO Technical those applications that present issues which are not specifically covered by statute or regulations, or by a ruling, opinion, or court decision published in the Internal Revenue Bulletin. In addition, EO Determinations will refer those applications that have been specifically reserved by revenue procedure or by other official Service instructions for handling by EO Technical for purposes of establishing uniformity or centralized control of designated categories of cases. EO Technical will notify the applicant organization upon receipt of a referred application, and will consider each such application and issue a ruling directly to the organization.

Technical advice may be requested in certain cases

.03 If at any time during the course of consideration of an exemption application by EO Determinations the organization believes that its case involves an issue on which there is no published precedent, or there has been non-uniformity in the Service's handling of similar cases, the organization may request that EO Determinations either refer the application to EO Technical or seek technical advice from EO Technical. *See* Rev. Proc. 2012-5, sections 4.04 and 4.05.

Technical advice must be requested in certain cases

.04 If EO Determinations proposes to recognize the exemption of an organization to which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations must seek technical advice from EO Technical before issuing a determination letter. This does not apply where EO Technical issued an adverse ruling and the organization subsequently made changes to its purposes, activities, or operations to remove the basis for which exempt status was denied.

SECTION 6. WITHDRAWAL OF AN APPLICATION

Application may be withdrawn prior to issuance of a determination letter or ruling

.01 An application may be withdrawn upon the written request of an authorized individual at any time prior to the issuance of a determination letter or ruling. Therefore, an application may not be withdrawn after the issuance of a proposed adverse determination letter or ruling.

(1) When an application is withdrawn, the Service will retain the application and all supporting documents. The Service may consider the information submitted in connection with the withdrawn request in a subsequent examination of the organization.

(2) Generally, the user fee will not be refunded if an application is withdrawn. *See* Rev. Proc. 2012-8, section 10.

§ 7428 implications of withdrawal of application under § 501(c)(3)

.02 The Service will not consider the withdrawal of an application under § 501(c)(3) as either a failure to make a determination within the meaning of § 7428(a)(2) or as an exhaustion of administrative remedies within the meaning of § 7428(b)(2).

SECTION 7. WHAT ARE THE PROCEDURES WHEN EXEMPT STATUS IS DENIED?

Proposed adverse determination letter or ruling

.01 If EO Determinations or EO Technical reaches the conclusion that the organization does not satisfy the requirements for exempt status pursuant to the section of the Code under which exemption is claimed, the Service generally will issue a proposed adverse determination letter or ruling, which will:

(1) include a detailed discussion of the Service's rationale for the denial of tax-exempt status; and

(2) advise the organization of its opportunity to appeal or protest the decision and request a conference.

Appeal of a proposed adverse determination letter issued by EO Determinations

.02 A proposed adverse determination letter issued by EO Determinations will advise the organization of its opportunity to appeal the determination by requesting Appeals Office consideration. To do this, the organization must submit a statement of the facts, law and arguments in support of its position within 30 days from the date of the adverse determination letter. The organization must also state whether it wishes an Appeals Office conference. Any determination letter issued on the basis of technical advice from EO Technical may not be appealed to the Appeals Office on issues that were the subject of the technical advice.

Protest of a proposed adverse ruling issued by EO Technical

.03 A proposed adverse ruling issued by EO Technical will advise the organization of its opportunity to file a protest statement within 30 days and to request a conference. If a conference is requested, the conference procedures outlined in Rev. Proc. 2012-4, section 12, are applicable.

Final adverse determination letter or ruling where no appeal or protest is submitted

.04 If an organization does not submit a timely appeal of a proposed adverse determination letter issued by EO Determinations, or a timely protest of a proposed adverse ruling issued by EO Technical, a final adverse determination letter or ruling will be issued to the organization. The final adverse letter or ruling will provide information about the filing of tax returns and the disclosure of the proposed and final adverse letters or rulings.

How EO Determinations handles an appeal of a proposed adverse determination letter

.05 If an organization submits an appeal of the proposed adverse determination letter, EO Determinations will first review the appeal, and, if it determines that the organization qualifies for tax-exempt status, issue a favorable exempt status determination letter. If EO Determinations maintains its adverse position after reviewing the appeal, it will forward the appeal and the exemption application case file to the Appeals Office.

Consideration by the Appeals Office

.06 The Appeals Office will consider the organization's appeal. If the Appeals Office agrees with the proposed adverse determination, it will either issue a final adverse determination or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, the Appeals Office will either issue a final adverse determination letter or a favorable determination letter. If the Appeals Office believes that an exemption or private foundation status issue is not covered by published precedent or that there is non-uniformity, the Appeals Office must request technical advice from EO Technical in accordance with Rev. Proc. 2012-5, sections 4.04 and 4.05.

If a protest of a proposed adverse ruling is submitted to EO Technical

.07 If an organization submits a protest of a proposed adverse exempt status ruling, EO Technical will review the protest statement. If the protest convinces EO Technical that the organization qualifies for tax-exempt status, a favorable ruling will be issued. If EO Technical maintains its adverse position after reviewing the protest, it will either issue a final adverse ruling or, if a conference was requested, contact the organization to schedule a conference. At the end of the conference process, which may involve the submission of additional information, EO Technical will either issue a final adverse ruling or a favorable exempt status ruling.

An appeal or protest may be withdrawn

.08 An organization may withdraw its appeal or protest before the Service issues a final adverse determination letter or ruling. Upon receipt of the withdrawal request, the Service will complete the processing of the case in the same manner as if no appeal or protest was received.

Appeal or protest and conference rights not applicable in certain situations

.09 The opportunity to appeal or protest a proposed adverse determination letter or ruling and the conference rights described above are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

SECTION 8. DISCLOSURE OF APPLICATIONS AND DETERMINATION LETTERS AND RULINGS

Sections 6104 and 6110 of the Code provide rules for the disclosure of applications, including supporting documents, and determination letters and rulings.

Disclosure of applications, supporting documents, and favorable determination letters or rulings

.01 The applications, any supporting documents, and the favorable determination letter or ruling issued, are available for public inspection under § 6104(a)(1) of the Code. However, there are certain limited disclosure exceptions for a trade secret, patent, process, style of work, or apparatus, if the Service determines that the disclosure of the information would adversely affect the organization.

(1) The Service is required to make the applications, supporting documents, and favorable determination letters or rulings available upon request. The public can request this information by submitting Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*. Organizations should ensure that applications and supporting documents do not include unnecessary personal identifying information (such as bank account numbers or social security numbers) that could result in identity theft or other adverse consequences if publicly disclosed.

(2) The exempt organization is required to make its exemption application, supporting documents, and determination letter or ruling available for public inspection without charge. For more information about the exempt organization's disclosure obligations, see Publication 557, *Tax-Exempt Status for Your Organization*.

Disclosure of adverse determination letters or rulings

.02 The Service is required to make adverse determination letters and rulings available for public inspection under § 6110 of the Code. Upon issuance of the final adverse determination letter or ruling to an organization, both the proposed adverse determination letter or ruling and the final adverse determination letter or ruling will be released pursuant to § 6110.

(1) These documents are made available to the public after the deletion of names, addresses, and any other information that might identify the taxpayer. See § 6110(c) for other specific disclosure exemptions.

(2) The final adverse determination letter or ruling will enclose Notice 437, *Notice of Intention to Disclose*, and redacted copies of the final and proposed adverse determination letters or rulings. Notice 437 provides instructions if the organization disagrees with the deletions proposed by the Service.

Disclosure to State officials when the Service refuses to recognize exemption under § 501(c)(3)

.03 The Service may notify the appropriate State officials of a refusal to recognize an organization as tax-exempt under § 501(c)(3). See § 6104(c) of the Code. The notice to the State officials may include a copy of a proposed or final adverse determination letter or ruling the Service issued to the organization. In addition, upon request by the appropriate State official, the Service may make available for inspection and copying the exemption application and other information relating to the Service's determination on exempt status.

Disclosure to State officials of information about § 501(c)(3) applicants

.04 The Service may disclose to State officials the name, address, and identification number of any organization that has applied for recognition of exemption under § 501(c)(3).

SECTION 9. REVIEW OF DETERMINATION LETTERS BY EO TECHNICAL

Determination letters may be reviewed by EO Technical to assure uniformity

.01 Determination letters issued by EO Determinations may be reviewed by EO Technical, or the Office of the Associate Chief Counsel (Passthroughs and Special Industries) (for cases under § 521), to assure uniform application of the statutes or regulations, or rulings, court opinions, or decisions published in the Internal Revenue Bulletin.

Procedures for cases where EO Technical takes exception to a determination letter

.02 If EO Technical takes exception to a determination letter issued by EO Determinations, the manager of EO Determinations will be advised. If EO Determinations notifies the organization of the exception taken, and the organization disagrees with the exception, the file will be returned to EO Technical. The referral to EO Technical will be treated as a request for technical advice, and the procedures in Rev. Proc. 2012-5 will be followed.

**SECTION 10. DECLARATORY
JUDGMENT PROVISIONS OF
§ 7428**

**Actual controversy involving
certain issues**

.01 Generally, a declaratory judgment proceeding under § 7428 of the Code can be filed in the United States Tax Court, the United States Court of Federal Claims, or the district court of the United States for the District of Columbia with respect to an actual controversy involving a determination by the Service or a failure of the Service to make a determination with respect to the initial or continuing qualification or classification of an organization under § 501(c)(3) (charitable, educational, etc.); § 170(c)(2) (deductibility of contributions); § 509(a) (private foundation status); § 4942(j)(3) (operating foundation status); or § 521 (farmers cooperatives).

**Exhaustion of administrative
remedies**

.02 Before filing a declaratory judgment action, an organization must exhaust its administrative remedies by taking, in a timely manner, all reasonable steps to secure a determination from the Service. These include:

(1) the filing of a substantially completed application Form 1023 under § 501(c)(3) pursuant to section 3.08 of this revenue procedure, or the request for a determination of foundation status pursuant to Rev. Proc. 2012-10, this Bulletin, or its successor;

(2) in appropriate cases, requesting relief pursuant to Treas. Reg. § 301.9100-1 of the Procedure and Administration Regulations regarding the extension of time for making an election or application for relief from tax;

(3) the timely submission of all additional information requested by the Service to perfect an exemption application or request for determination of private foundation status; and

(4) exhaustion of all administrative appeals available within the Service pursuant to section 7 of this revenue procedure.

**Not earlier than 270 days after
seeking determination**

.03 An organization will in no event be deemed to have exhausted its administrative remedies prior to the earlier of:

(1) the completion of the steps in section 10.02, and the sending by the Service by certified or registered mail of a final determination letter or ruling; or

(2) the expiration of the 270-day period described in § 7428(b)(2) in a case where the Service has not issued a final determination letter or ruling, and the organization has taken, in a timely manner, all reasonable steps to secure a determination letter or ruling.

**Service must have reasonable time
to act on an appeal or protest**

.04 The steps described in section 10.02 will not be considered completed until the Service has had a reasonable time to act upon an appeal or protest, as the case may be.

**Final determination to which
§ 7428 applies**

.05 A final determination to which § 7428 of the Code applies is a determination letter or ruling, sent by certified or registered mail, which holds that the organization is not described in § 501(c)(3) or § 170(c)(2), is a public charity described in a part of § 509 or § 170(b)(1)(A) other than the part under which the organization requested classification, is not a private foundation as defined in § 4942(j)(3), or is a private foundation and not a public charity described in a part of § 509 or § 170(b)(1)(A).

**SECTION 11. EFFECT OF
DETERMINATION LETTER
OR RULING RECOGNIZING
EXEMPTION**

Effective date of exemption

.01 A determination letter or ruling recognizing exemption is usually effective as of the date of formation of an organization if its purposes and activities prior to the date of the determination letter or ruling were consistent with the requirements for exemption. However, special rules under § 508(a) of the Code may apply to an organization applying for exemption under § 501(c)(3), and special rules under § 505(c) may apply to an organization applying for exemption under § 501(c)(9), (17), or (20).

(1) If the Service requires the organization to alter its activities or make substantive amendments to its enabling instrument, the exemption will be effective as of the date specified in a determination letter or ruling.

(2) If the Service requires the organization to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the date of formation. Examples of nonsubstantive amendments include correction of a clerical error in the enabling instrument or the addition of a dissolution clause where the activities of the organization prior to the determination letter or ruling are consistent with the requirements for exemption.

Reliance on determination letter or ruling

.02 A determination letter or ruling recognizing exemption may not be relied upon if there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of the organization, or a change in the applicable law. Also, a determination letter or ruling may not be relied upon if it was based on any inaccurate material factual representations. See section 12.01.

SECTION 12. REVOCATION OR MODIFICATION OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

A determination letter or ruling recognizing exemption may be revoked or modified: (1) by a notice to the taxpayer to whom the determination letter or ruling was issued; (2) by enactment of legislation or ratification of a tax treaty; (3) by a decision of the Supreme Court of the United States; (4) by the issuance of temporary or final regulations; (5) by the issuance of a revenue ruling, revenue procedure, or other statement published in the Internal Revenue Bulletin; or (6) automatically, pursuant to § 6033(j), for failure to file a required annual return or notice for three consecutive years.

Revocation or modification of a determination letter or ruling may be retroactive

.01 The revocation or modification of a determination letter or ruling recognizing exemption may be retroactive if there has been a change in the applicable law, the organization omitted or misstated a material fact, operated in a manner materially different from that originally represented, or, in the case of organizations to which § 503 of the Code applies, engaged in a prohibited transaction with the purpose of diverting corpus or income of the organization from its exempt purpose and such transaction involved a substantial part of the corpus or income of such organization. In certain cases an organization may seek relief from retroactive revocation or modification of a determination letter or ruling under § 7805(b). Requests for § 7805(b) relief are subject to the procedures set forth in Rev. Proc. 2012-4.

(1) Where there is a material change, inconsistent with exemption, in the character, the purpose, or the method of operation of an organization, revocation or modification will ordinarily take effect as of the date of such material change.

(2) In the case where a determination letter or ruling is issued in error or is no longer in accord with the Service's position and § 7805(b) relief is granted (see sections 13 and 14 of Rev. Proc. 2012-4), ordinarily, the revocation or modification will be effective not earlier than the date when the Service modifies or revokes the original determination letter or ruling.

Appeal and conference procedures in the case of revocation or modification of exempt status letter

.02 In the case of a revocation or modification of a determination letter or ruling, the appeal and conference procedures are generally the same as set out in section 7 of this revenue procedure, including the right of the organization to request that EO Determinations or the Appeals Office seek technical advice from EO Technical. However, appeal and conference rights are not applicable to matters where delay would be prejudicial to the interests of the Service (such as in cases involving fraud, jeopardy, the imminence of the expiration of the statute of limitations, or where immediate action is necessary to protect the interests of the Government).

(1) If the case involves an exempt status issue on which EO Technical had issued a previous contrary ruling or technical advice, EO Determinations generally must seek technical advice from EO Technical.

(2) EO Determinations does not have to seek technical advice if the prior ruling or technical advice has been revoked by subsequent contrary published precedent or if the proposed revocation involves a subordinate unit of an organization that holds a group exemption letter issued by EO Technical, the EO Technical ruling or technical advice was issued under the Internal

Revenue Code of 1939 or prior revenue acts, or if the ruling was issued in response to Form 4653, *Notification Concerning Foundation Status*.

**SECTION 13. EFFECT
ON OTHER REVENUE
PROCEDURES**

Rev. Proc. 2011-9 is superseded.

SECTION 14. EFFECTIVE DATE

This revenue procedure is effective January 9, 2012.

**SECTION 15. PAPERWORK
REDUCTION ACT**

The collection of information for a letter application under section 3.05 of this revenue procedure has been reviewed and approved by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act (44 U.S.C. § 3507) under control number 1545-2080. All other collections of information under this revenue procedure have been approved under separate OMB control numbers.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid OMB control number.

The collection of this information is required if an organization wants to be recognized as tax-exempt by the Service. We need the information to determine whether the organization meets the legal requirements for tax-exempt status. In addition, this information will be used to help the Service delete certain information from the text of an adverse determination letter or ruling before it is made available for public inspection, as required by § 6110.

The time needed to complete and file a letter application will vary depending on individual circumstances. The estimated average time is 10 hours.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. The rules governing the confidentiality of letter applications are covered in § 6104.

DRAFTING INFORMATION

The principal authors of this revenue procedure are Mr. Dave Rifkin and Mr. Matt Perdoni of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, please contact the TE/GE Customer Service office at (877) 829-5500 (a toll-free call), or send an e-mail to tege.eo@irs.gov and include "Question about Rev. Proc. 2012-9" in the subject line.

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: *

*
*
*
*

Employer Identification Number:

XX-XXXXXXX

Person to Contact – Group #:

Specialist Name - XXXX

ID# XXXXXXXX

Contact Telephone Numbers:

XXX-XXX-XXXX Phone

XXX-XXX-XXXX Fax (859-669-3783 for TEDS)

Cases)

Response Due Date:

*

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.
- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Name

EIN

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

*****DELETE IF NOT A 501(c)(3) APPLICATION*****

In addition, if you don't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

*****DELETE IF NO POWER OF ATTORNEY*****

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Specialist Name
Exempt Organizations Specialist

Enclosure: Information Request
Application Identification Sheet

Letter 1312 (Rev. 05-2011)

Additional Information Requested:

Name

EIN

*

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

Selective:

(EDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: Specialist Name
Room XXXX
Group XXXX

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: Specialist Name
Room XXXX
Group XXXX

(TEDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 12192
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
201 Rivercenter Blvd
ATTN: Extracting Stop 312
Covington, KY 41011

The quick recap is that Don/Susan/David sent back two weeks ago [REDACTED]

(b)(5) AC

[REDACTED] Lois, you expressed your strong preference for something that would be more helpful to those working the applications --an understandable goal--and the team has been working on that model for a week or two.

We talked Friday about the latest draft. I think it is helpful [REDACTED]

(b)(5) AC

SHould we set up a time to discuss just us? Don't want to discourage your team that has been working hard on this. Lois, I know you've had some discussions with STEve and I think were giong to share the revised doc with Nikole at some point. Have you talked with them further? It might be helpful to get their reaction before the team spends more time finetuning the current draft. Happy to arrange time to talk. Thanks ladies.

Janine

From: Lowe Justin [mailto:Justin.Lowe@irs.gov]
Sent: Wednesday, March 21, 2012 11:07 AM
To: Lowe Justin; Brown Susan D; Spellmann Don R; Marshall David L
Cc: Kindell Judith E; Megosh Andy; Goehausen Hilary
Subject: RE: Updated guidesheet
Importance: High

Okay, attached are clean and redline versions of the latest guidesheet, reflecting comments from yesterday's meeting.

From: Lowe Justin
Sent: Monday, March 19, 2012 10:48 AM
To: Brown Susan D; Spellmann Don R; Marshall David L
Cc: Kindell Judith E; Megosh Andy; Goehausen Hilary
Subject: Updated guidesheet

Attached is a guidesheet reflecting the changes we discussed at the meeting on Friday. I've begun going through and sourcing all of the language, but haven't finished yet: I wanted to get this over to you in time to look it over for the meeting this afternoon.

From: Lerner Lois G
Sent: Wednesday, April 18, 2012 12:10 PM
To: Flax Nikole C; Urban Joseph J; Marks Nancy J
Subject: RE: Bennet - 501c4 political v8 Holly (2012-29539) (2).doc

I'm good either way

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, April 18, 2012 12:44 PM
To: Lerner Lois G; Urban Joseph J; Marks Nancy J
Subject: RE: Bennet - 501c4 political v8 Holly (2012-29539) (2).doc

Just thought if we are talking about what we are doing re enforcement of c4s, that part of the work plan may be relevant (but realize is much more than just political). Just wanted to raise it for people to consider.

From: Lerner Lois G
Sent: Wednesday, April 18, 2012 12:19 PM
To: Flax Nikole C; Urban Joseph J; Marks Nancy J
Subject: RE: Bennet - 501c4 political v8 Holly (2012-29539) (2).doc

Well, depend on how precise you want to get. I think it is correct though. The referral committee reviews both referrals coming in and the cases we have pulled based on the risk models. As to the other project--interesting thought. They may or may not even know there are orgs that hold themselves out. I think the reg says you have to apply to be recognized--perhaps leaving the impression that they all come in. Instead, it just means you don't have reliance unless you've come in. Not sure it relates to his concern directly. Would you be wanting to do it to show that we are looking at orgs outside the application context to ensure they are complying too?

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Wednesday, April 18, 2012 12:05 PM
To: Lerner Lois G; Urban Joseph J; Marks Nancy J
Subject: RE: Bennet - 501c4 political v8 Holly (2012-29539) (2).doc

one other question - is the stuff in the work plan re c4s that hold themselves out relevant here too?

From: Flax Nikole C

Sent: Tuesday, April 17, 2012 9:33 PM

To: Lerner Lois G; Urban Joseph J; Marks Nancy J

Subject: FW: Bennet - 501c4 political v8 Holly (2012-29539) (2).doc

It isn't clear yet who will sign (could be CC, Joseph or Lois), but can you take a quick look at the edits? Is the statement re the committee correct? Thanks

From: Lerner Lois G
Sent: Wednesday, April 25, 2012 10:58 AM
To: Flax Nikole C
Subject: Current Process and An issue regarding the letter.

First--you asked us to put together something regarding (b)(5) AC. Because it was late, my guys contacted a field Counsel person in CA at the end of the day yesterday. They got some language and ran it by HQ Counsel this morning.

[REDACTED]
[REDACTED] (b)(5)/AC [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED] (b)(5)/AC --I actually think they are right, but I'm hearing that you want one in there. Can you help a bit with what you're looking for--is it a statement that says they only look at the admin record or is it that they use preponderance of the evidence and give the agency some deference?? Don't know what we can get you, but need to understand what you're looking for.

Second--with regard to the review process:

For Cases handled by DC R&A:

IRM 7.29.3.7--For 501(c)(3) applications ONLY--because they have 7428 rights that enable them to immediately challenge an adverse determination in court. The short description of the process is:

R & A goes through its own review process and issues a proposed adverse. The TP can come in for a conference of right and provide additional information and arguments. If after that, R & A still believes the determination should be adverse, it prepares a final adverse, which goes through the R & A review process. Before sending it out, R & A must receive concurrence from Counsel.

All other 501(c) applications would not have the extra step of Counsel concurrence. They must pay the tax deficiency and then go to court to seek a refund.

For Cases handled by Cincinnati Determinations:

IRM 7.20.5.6.1

Determs. Specialist completes the case and it goes through the Determ. review process. If it is a proposed adverse, IRM 7.20.6.6 says that Quality review must thoroughly review ALL proposed adverse before the letter can be mailed. So, it looks like all proposed adverse cases go through Quality. Absent Quality reaching out to R & A, there is no process for DC being involved in reviewing these cases. I think the theory here is that the TP goes to Appeals for another bite at the apple before Counsel would have to defend cases in court.

I'm thinking there is a resource component to this thinking. If Counsel has to review a significant number of these, (usually in the 100s per year) that would slow the process down enormously. I might add that the review could prevent a poor analysis from going adverse, but wouldn't assist the development process because it occurs after the fact.

Leis J. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, May 09, 2012 8:18 AM
To: Megosh Andy
Subject: Re: correspondence requesting guidance in c4 political activity area

THanks
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Megosh Andy
Sent: Wednesday, May 09, 2012 08:47 AM
To: Lerner Lois G
Subject: RE: correspondence requesting guidance in c4 political activity area

Lois,

Here's the proposed language to address the three correspondence. The language was cut and pasted from the Schumer letter that Counsel sent out. Only change - Replaced "Tax Exempts / Government Entities" with "IRS Office of Cheif Counsel." I'm attaching the Schumer response and a draft response of one of the three outstanding letters.

The IRS is aware of the current public interest in this issue. These regulations have been in place since 1959. We will consider proposed changes in this area as we work with the IRS Office of Chief Counsel and the Treasury Department's Office of Tax Policy to identify tax issues that should be addressed through regulations and other published guidance.

Andy

From: Lerner Lois G
Sent: Wednesday, May 09, 2012 8:37 AM
To: Megosh Andy
Subject: Re: correspondence requesting guidance in c4 political activity area

No. I explained that we have to respond to everything we get. I see her this morning and will ask if they are OK with what it says. Please send me the language

Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Megosh Andy
Sent: Wednesday, May 09, 2012 08:12 AM
To: Lerner Lois G
Subject: FW: correspondence requesting guidance in c4 political activity area

I'm not sure what we want to do here. We normally respond to all letters and have previously responded to general requests for guidance. We currently have three overdue correspondence requesting guidance in the c4 political activity area. I can get extensions.

Andy

From: Flax Nikole C
Sent: Friday, May 04, 2012 9:38 AM
To: Lerner Lois G
Cc: Megosh Andy
Subject: RE: correspondence requesting guidance

I don't think anyone needs to respond. Isn't this just someone from the public?

From: Lerner Lois G
Sent: Friday, May 04, 2012 9:36 AM
To: Flax Nikole C
Cc: Megosh Andy
Subject: Re: correspondence requesting guidance

So should we send to Counsel? Right now it is I tracked for us
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Friday, May 04, 2012 08:07 AM
To: Lerner Lois G
Subject: RE: correspondence requesting guidance

This is the one that I don't think we need to respond to.

From: Lerner Lois G
Sent: Wednesday, May 02, 2012 11:44 AM
To: Flax Nikole C
Subject: FW: correspondence requesting guidance

Let me know whether you want to send all three to Counsel

Lois G. Lerner

Director of Exempt Organizations

From: Megosh Andy
Sent: Wednesday, May 02, 2012 10:48 AM
To: Lerner Lois G
Subject: correspondence requesting guidance

Lois,

Here is the incoming and draft outgoing for 2012-30710.

There are two other controls with the same issue - 2012-30503 and 2012-30512.

Andy



[//www.irs.gov/charities/article/0,,id=232771,00.htm](http://www.irs.gov/charities/article/0,,id=232771,00.htm) DEPARTMENT OF THE
TREASURY
INTERNAL REVENUE SERVICE

WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

May 17, 2012

MEMORANDUM FOR MANAGER, EO DETERMINATIONS

FROM: Holly Paz
Director, EO Rulings and Agreements

SUBJECT: Be On the Look Out (BOLO) Spreadsheet

The purpose of this memorandum is to set forth the procedures to be used with regard to the Be On the Look Out (BOLO) spreadsheet.

Abusive Transactions and Fraud Issues, Emerging Issues, and Coordinated Processing¹ cases will all be tracked on a single combined Be On the Look Out (BOLO) spreadsheet.

- (a) The spreadsheet is maintained to enable EO Determinations specialists to be informed about the current status of abusive transactions and fraud issues, emerging issues, coordination, and watch issues, and to process cases in a consistent manner.
- (b) Abusive Transactions and Fraud Issues, Emerging Issues, and Coordinated Processing will each occupy a separate tab of the spreadsheet.
- (c) A fourth tab, the "Watch List" will list recent developments such as changes in the law, current events, or specific issues that EO Determinations management believes has the potential to impact the filing of applications.

The Emerging Issues coordinator will maintain the combined spreadsheet including:

- (a) Creating original entries for new emerging issues and entering them on the appropriate tab of the spreadsheet.
- (b) Creating original entries for new coordinated processing cases and entering them on the appropriate tab of the spreadsheet.
- (c) Receiving issue updates from the abusive transaction and fraud group and

¹ Coordinated Processing cases are cases that present similar issues and thus are to be handled by a single team or group in order to facilitate consistency.

2

entering them on the appropriate tab of the spreadsheet.

(d) Receiving "Watch List" updates from senior management and entering them on the appropriate tab of the spreadsheet.

(e) Updating the spreadsheet as necessary.

All original entries and updates to the BOLO must be approved by the group manager of the Emerging Issues Coordinator. The group manager of the Emerging Issues Coordinator must obtain the approval of the Manager, EO Determinations to all original entries and updates to the BOLO. The Manager, EO Determinations must obtain the approval of the Director, EO Rulings & Agreements to all original entries and updates to the BOLO.

Only after the approval of the group manager of the Emerging Issues Coordinator, the Manager, EO Determinations and Director, EO Rulings & Agreements have been obtained will EO Determinations groups be notified of new or updated Watch List items, Potential Abusive Transaction and Fraud Issues, Emerging Issues, and Coordinated Processing cases through single e-mail alerts. The Emerging Issues coordinator is responsible for issuing all e-mail alerts after all of the required approvals have been obtained.

The most recent updated copy of the spreadsheet will be posted on the EO Determinations shared drive folder.

The content of this memorandum will be incorporated in IRM 7.20.4.

From: Lerner Lois G
Sent: Thursday, May 17, 2012 4:41 PM
To: Marks Nancy J; Light Sharon P; Kindell Judith E; Paz Holly O; Thomas Cindy M
Subject: RE: potential revised BOLO language

I made the same comment but Holly pointed out that for private benefit--the standard is excess. So, whereas we can say you need significant political activity to look because we are looking at what the primary activity is--I'm not sure we can use other than the standard to describe the private benefit--thoughts?

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, May 17, 2012 5:23 PM
To: Light Sharon P; Kindell Judith E; Paz Holly O; Lerner Lois G; Thomas Cindy M
Subject: RE: potential revised BOLO language

I think Sharon is right significant is a more helpful guideline although excess is not wrong.

From: Light Sharon P
Sent: Thursday, May 17, 2012 5:11 PM
To: Kindell Judith E; Paz Holly O; Lerner Lois G; Marks Nancy J; Thomas Cindy M
Subject: RE: potential revised BOLO language

I might drop out "excess." I think a significant amount of private benefit makes more sense.

From: Kindell Judith E
Sent: Thursday, May 17, 2012 5:01 PM
To: Paz Holly O; Lerner Lois G; Marks Nancy J; Light Sharon P; Thomas Cindy M
Subject: RE: potential revised BOLO language

Looks fine to me

From: Paz Holly O
Sent: Thursday, May 17, 2012 4:59 PM
To: Lerner Lois G; Marks Nancy J; Kindell Judith E; Light Sharon P; Thomas Cindy M
Subject: RE: potential revised BOLO language

I would like your thoughts on the language below. I would like this language to replace the current advocacy org language on the BOLO as well as the separate references to ACORN successors and Occupy groups.

501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention or excess private benefit to organizations or individuals. Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria.

From: Marks Nancy J
Sent: Thursday, May 17, 2012 10:21 PM
To: Paz Holly O; Lerner Lois G
Cc: Light Sharon P
Subject: Re: next steps

Thanks.

Sent using BlackBerry

From: Paz Holly O
Sent: Thursday, May 17, 2012 11:07 PM
To: Lerner Lois G; Marks Nancy J
Cc: Light Sharon P
Subject: RE: next steps

Quality reviews the closing docs such as the favorable letter as well as the application file. The combined 2-day numbers are below. I will ask Donna how many she thinks Quality can handle. The favorables that QA is not reviewing can go out next week. Just need to script out call to the applicants telling them it is coming and draft educational language insert language for favorable letter.

Added to yesterday,

that's a total of:

24

approvals

12 focused

development

10 general

development

11

denials

From: Lerner Lois G

Sent: Thursday, May 17, 2012 6:34 PM

To: Paz Holly O; Marks

Nancy J

Cc: Light Sharon P

Subject: RE: next

steps

I think we should be finalizing the closing docs while quality is reviewing to save time. If there are 7, then lets start with half--3. As we go along we can adjust down once we are comfortable that everyone is on the right track. Having said that--we need to talk to Donna about what they can handle--we do not want to review to hold these up too long--we need to get some out next week.

Lois G.

Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, May

17, 2012 5:52 PM
To: Lerner Lois G; Marks Nancy J
Cc: Light

Sharon P
Subject: Re: next steps

I

mean how many in each bucket as they are now constituted. So out of 7 approvals (yesterday's numbers) - how many go to Quality. I think we wanted to keep the normal process as much as possible so since these are mandatory review cases we wanted sample of open cases to go to QA even though dc folks may have already reviewed in bucketing.

Sent from my

BlackBerry Wireless Device

From: Lerner

Lois G
Sent: Thursday, May 17, 2012 05:36 PM
To: Paz Holly

O; Marks Nancy J
Cc: Light Sharon P
Subject: RE: next

steps

Well, as to the number that go to quality, do you mean

approvals denials or the 4 buckets? As we want to get some of these out,

I'm not sure we can come up with numbers for a whole bucket. Do you think

we'd get the letter faster if DC person took a

crack?

Lois G.

Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, May

17, 2012 5:33 PM
To: Lerner Lois G; Marks Nancy J
Cc: Light

Sharon P
Subject: Fw: next steps

We

need to figure out asap what we will say to the orgs getting approvals but have not responded to development letter. As to the who, I am thinking Faye and Jodi, two Determs specialists on the team who are not bucketing. I think they could follow the script but would confirm w Cindy. Also need to decide how many cases in each bucket go to Quality. Will get updated bucket numbers tonight or tomorrow morning.

Sent from my BlackBerry

Wireless Device

From: Light

Sharon P

Sent: Thursday, May 17, 2012 05:15 PM

To: Paz

Holly O

Cc: Thomas Cindy M

Subject: next steps

Holly -- Cindy and I

agreed that we will give her four stacks of cases (corresponding to the four buckets). As I understand it, the first cases to be worked are the approvals. The open question is who will be calling the orgs that have not responded to their development letters but will suddenly be getting an approval.

sharon

From: Lerner Lois G
Sent: Monday, May 21, 2012 9:55 AM
To: Stevens Margo
Cc: Witter Kirsten N
Subject: RE: (b)(5) AC Donor Information

Thanks guys--I appreciate this.

Lois G. Lerner

Director of Exempt Organizations

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Monday, May 21, 2012 10:50 AM
To: Lerner Lois G
Cc: Witter Kirsten N
Subject: (b)(5) AC Donor Information

Lois, I wanted to get back with you with respect to your question whether TEGE could return to those organizations from whom donor names were solicited in questionnaires following their submission of applications for recognition of their tax exempt status (under 501(c)(4)), now that TEGE has reviewed those files and determined that such information was not needed across-the-board and not used in making the agency's determination on exempt status. As you noted, [REDACTED]

[REDACTED]
(b)(5) AC

[REDACTED]
(b)(5) AC

Thus, I wanted to touch base with Kirsten Witter, GLS, with respect to any Federal Records Act ("FRA") implications of a decision by TEGE to [REDACTED] (b)(5) AC. Kirsten, and Beth Levine of her branch, called me this morning. Based upon our understanding of what occurred here, they have advised me that the [REDACTED]

[REDACTED]
(b)(5) AC

Accordingly, it would seem to follow that, [REDACTED] (b)(5) AC

Thanks to Kirsten and Beth for their quick analysis and response back, so that I could provide you what I think is good news.

Margo L. Stevens
Deputy Associate Chief Counsel for Legislation & Privacy
Procedure & Administration
Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Lerner Lois G
Sent: Monday, May 21, 2012 9:57 AM
To: Paz Holly O
Cc: Flax Nikole C; Marks Nancy J; Grant Joseph H
Subject: FW: (b)(5) AC Donor Information

Looks like we can (b)(5) AC. We'll need a carefully drafted letter to describe what we are doing. Perhaps best to send it past Disclosure.

Lois G. Lerner

Director of Exempt Organizations

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Monday, May 21, 2012 10:50 AM
To: Lerner Lois G
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Deputy Associate Chief Counsel for Legislation & Privacy
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Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Judson Victoria A <Victoria.A.Judson@irscounsel.treas.gov>
Sent: Monday, May 21, 2012 1:36 PM
To: Lerner Lois G
Cc: Cook Janine
Subject: Re: Hatch Staff

Yes, Lois. I have been concerned that the question came to us from Cathy and I couldn't figure it out when I heard it was coming from you via leg. affairs. We didn't want them going off solo and wanted a better idea of what you needed.

Sent using BlackBerry

From: Cook Janine
To: Lerner Lois G
Cc: Judson Victoria A
Sent: Mon May 21 14:32:20 2012
Subject: RE: Hatch Staff

That's our concern. [REDACTED] (b)(5) AC Cathy Barre said they asked you this question on a call. Do you recall getting the question? Wonder if the question is getting confused with the questions Joseph responded to below?

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Monday, May 21, 2012 2:18 PM
To: Cook Janine
Cc: Judson Victoria A
Subject: RE: Hatch Staff

I would say you need to be very careful responding to that--we probably have responded "around it" in numerous Congressional. Let me check with Nikole to see whether the expectation is for you or us to respond.

Lois G. Lerner

Director of Exempt Organizations

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]
Sent: Monday, May 21, 2012 1:14 PM
To: Lerner Lois G
Cc: Judson Victoria A
Subject: RE: Hatch Staff

THanks Lois. Seems like we were forwarded a THIRD question not talked about below: **the statutory authority to ASK for donor names for c4 applicants.** The questions below are about not disclosing the names.

Please confirm whether you want us to handle getting an answer to this question back to Cathy or whether you think you covered it separately.

Thanks.

From: Barre Catherine M
Sent: Friday, May 18, 2012 12:25 PM
To: Grant Joseph H
Cc: Flax Nikole C; Davis Jonathan M (Wash DC); Lerner Lois G
Subject: RE: Hatch Staff

Thanks, Joseph. I think I should go back on this with a conversation rather than a written response. I will touch base with Nikole and Jonathan on this as well.

Cathy

From: Grant Joseph H
Sent: Thursday, May 17, 2012 9:45 AM
To: Barre Catherine M
Cc: Flax Nikole C; Davis Jonathan M (Wash DC); Lerner Lois G
Subject: RE: Hatch Staff

Cathy,

- 1) *What is the IRS process with respect to the 990 schedule B – is there a document identification number placed on the schedule B by the IRS?*

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When an IRS employee utilizes the OL-SEIN system to fill the request for a Form 990 filing a watermark identifying the employee who accessed and printed the filing from the IRS database is provided on every page of the filing. The watermark provided on the image is one of the elements of the OL-SEIN audit trail.

- 2) *Does the IRS share 990 Schedule B information with any party such as, under an exchange of information with the State taxing authorities?*

I am not sure if this is should be considered an "exchange agreement" but TE/GE Submission Processing Program (SPP) provides the Form 990 images including the Schedule B to Criminal Investigation in connection with their anti-terrorism work.

I hope this helps. Please let me know if TE/GE can provide you with any further assistance in this matter.

Thanks as always - Joseph

From: Barre Catherine M
Sent: Thursday, May 17, 2012 8:45 AM
To: Grant Joseph H
Subject: FW: Hatch Staff

Any status on the answers to these questions?

Thanks.

From: Barre Catherine M
Sent: Monday, May 14, 2012 4:40 PM
To: Grant Joseph H
Cc: Flax Nikole C; Davis Jonathan M (Wash DC); Stevens Margo
Subject: Hatch Staff

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- 1) What is the IRS process with respect to the 990 schedule B – is there a document identification number placed on the schedule B by the IRS?
- 2) Does the IRS share 990 Schedule B information with any party such as, under an exchange of information with the State taxing authorities?

Thanks.

Cathy

From: Lerner Lois G
Sent: Monday, May 21, 2012 1:40 PM
To: Cook Janine
Subject: Re: Hatch Staff

I was on the phone with them I think what we wanted from Counsel was a [REDACTED]

[REDACTED]
(b)(5) AC

Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Cook Janine [<mailto:Janine.Cook@irs.counsel.treas.gov>]
Sent: Monday, May 21, 2012 02:32 PM
To: Lerner Lois G
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Thanks.

Cathy

From: Lerner Lois G
Sent: Monday, May 21, 2012 3:19 PM
To: Cook Janine
Subject: RE: Hatch Staff

Can I get what you gave Cathy for future reference? Thanks

Lois G. Lerner

Director of Exempt Organizations

From: Cook Janine [mailto:Janine.Cook@irs.counsel.treas.gov]
Sent: Monday, May 21, 2012 4:08 PM
To: Lerner Lois G; Flax Nikole C; Barre Catherine M
Cc: Judson Victoria A
Subject: RE: Hatch Staff

If this is all you were looking to provide, CC:PA provided an answer about general authority to Cathy last week. Our staff here is looking to see if there is anything else to offer up and we will copy everyone on the response; will try and do so by tomorrow. Thanks for the additional background regarding everybody's involvement and what is still needed here.

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Monday, May 21, 2012 2:46 PM
To: Flax Nikole C; Barre Catherine M
Cc: Cook Janine; Judson Victoria A
Subject: Re: Hatch Staff

Recall we were looking for some general statement that the Secretary has authority to ask for information necessary to administer the tax laws. What gives us authority to ask for info on 990 and 1023/4? We thought perhaps P and A?

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Monday, May 21, 2012 02:38 PM
To: Lerner Lois G; Barre Catherine M
Subject: Re: Hatch Staff

I am confused - where are the cc questions coming from?

From: Lerner Lois G
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To: Flax Nikole C; Barre Catherine M
Cc: Grant Joseph H
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the event we want the response to look like what we've said on the topic in our other Congressionals?

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Thanks.

Cathy

From: Lerner Lois G
Sent: Monday, May 21, 2012 3:59 PM
To: Barre Catherine M; Flax Nikole C
Subject: RE: Hatch Staff

It's OK--we're all just trained to keep the other office apprised--especially if an inconsistency could occur. Can I get the general cite you got from P &A?

Lois G. Lerner

Director of Exempt Organizations

From: Barre Catherine M
Sent: Monday, May 21, 2012 4:57 PM
To: Lerner Lois G; Flax Nikole C
Subject: RE: Hatch Staff

Sorry, I have been behind getting back to you on this. This whole email chain is a round trip of the question that Hatch staff raised on our call – what is the statutory authority for asking for the names with respect to the c4 applications.

I went to P&A and they have sent me something general. They suggested that I also go to tege counsel, so I did. That was my downfall. The TEGE counsel chain email has been nonstop.

From: Lerner Lois G
Sent: Monday, May 21, 2012 2:46 PM
To: Flax Nikole C; Barre Catherine M
Subject: Re: Hatch Staff

Yep
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Monday, May 21, 2012 02:42 PM
To: Lerner Lois G; Barre Catherine M
Subject: Re: Hatch Staff

Or is this the question related to our authority to ask questions related to the rules for tax exemption?

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Thanks.

Cathy

(b)(5)/AC

From: Barre Catherine M [<mailto:Catherine.M.Barre@irs.gov>]
Sent: Wednesday, May 16, 2012 3:35 PM
To: Munroe David
Cc: Lerner Lois G; Flax Nikole C; Cook Jeannie M; McField Terri; Kindell Judith E; Schneiderman Henry S
Subject: FW: EO Coordinator on (c)(4) questions

I contacted Terri McField for her assistance in reaching out to counsel on a statutory authority issue that has been raised related to a c4 congressional staff inquiry. I had already raised the same issue with Lois but, we agreed that counsel, most likely P&A, could be helpful.

If counsel has helpful insight on this issue please come back to Terri and to me.

Thanks.

Cathy Barré

From: Kindell Judith E
Sent: Wednesday, May 16, 2012 03:14 PM
To: Munroe David
Cc: Cook Janine; Lerner Lois G
Subject: RE: EO Coordinator on (c)(4) questions

Lois has been actively involved in all of the responses.

From: Munroe David [<mailto:David.Munroe@IRSCOUNSEL.TREAS.GOV>]
Sent: Wednesday, May 16, 2012 2:58 PM
To: Kindell Judith E
Cc: Cook Janine
Subject: EO Coordinator on (c)(4) questions

Someone on the CC's staff called us regarding a (c)(4) question on the statutory authority to require donor names during the application process. The person had been contacted by Leg Affairs. Was wondering who in your office is coordinating the (c)(4) Congressional questions. It seems to us the Leg Affairs person should be talking to that person so everything is coming through 1 channel. Can you please let us know who that person in EO would be. Thanks. Dave 622-4799

From: Paz Holly O
Sent: Tuesday, May 22, 2012 5:06 PM
To: Lerner Lois G
Subject: Re: potential revised BOLO language

Yes

-----Original Message-----

From: Lerner Lois G
To: Paz Holly O
Subject: RE: potential revised BOLO language
Sent: May 22, 2012 6:05 PM

I would take off the "typical" before advocacy issues--are you good with that?

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Tuesday, May 22, 2012 3:38 PM
To: Lerner Lois G
Subject: FW: potential revised BOLO language

Here is a revised version of the new advocacy org BOLO language. It reflects comments from Sharon, Judy, Nan and Cindy:

501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention (raising questions as to exempt purpose and/or excess private benefit). Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria.

Please let me know if you are OK with the new language.

Thanks.

From: Paz Holly O
Sent: Thursday, May 17, 2012 4:59 PM
To: Lerner Lois G; Marks Nancy J; Kindell Judith E; Light Sharon P; Thomas Cindy M
Subject: RE: potential revised BOLO language

I would like your thoughts on the language below. I would like this language to replace the current advocacy org language on the BOLO as well as the separate references to ACORN successors and Occupy groups.

501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention or excess private benefit to organizations or individuals. Note: typical advocacy type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet these criteria.

-----Original Message Truncated-----

Sent from my BlackBerry Wireless Device

From: Lerner Lois G
Sent: Thursday, May 24, 2012 12:28 PM
To: Paz Holly O; Fish David L
Subject: FW: (b)(5) AC Donor Information

See her email below--hope that helps in figuring out what to say?

Lois G. Lerner

Director of Exempt Organizations

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Monday, May 21, 2012 11:43 AM
To: Lerner Lois G
Subject: RE: (b)(5) AC Donor Information

Standing by --

Margo L. Stevens
Deputy Associate Chief Counsel for Legislation & Privacy
Procedure & Administration
Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Monday, May 21, 2012 10:58 AM
To: Stevens Margo
Subject: RE: (b)(5) AC Donor Information

Once we have a draft letter to send with the information, I'd appreciate it if you could provide your "sage" comments. Stay tuned

Lois G. Lerner

Director of Exempt Organizations

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Monday, May 21, 2012 10:50 AM
To: Lerner Lois G
Cc: Witter Kirsten N
Subject: (b)(5) AC Donor Information

Lois, I wanted to get back with you with respect to your question whether TEGE could return to those organizations from whom donor names were solicited in questionnaires following their submission of applications for recognition of their tax exempt status (under 501(c)(4)), now that TEGE has reviewed those files and determined that such information was not needed across-the-board and not used in making the agency's determination on exempt status. As you noted, [REDACTED]

[REDACTED]
(b)(5) AC

[REDACTED]
(b)(5) AC

Thus, I wanted to touch base with Kirsten Witter, GLS, with respect to any Federal Records Act ("FRA") implications of a decision by TEGE to [REDACTED] (b)(5) AC [REDACTED]. Kirsten, and Beth Levine of her branch, called me this morning. Based upon our understanding of what occurred here, they have advised me that the [REDACTED]

(b)(5) AC

Accordingly, it would seem to follow that, [REDACTED]

(b)(5) AC

Thanks to Kirsten and Beth for their quick analysis and response back, so that I could provide you what I think is good news.

Margo L. Stevens
Deputy Associate Chief Counsel for Legislation & Privacy
Procedure & Administration
Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Lerner Lois G
Sent: Friday, June 08, 2012 4:13 PM
To: Paz Holly O; Thomas Cindy M
Subject: RE: advocacy cases - next steps

Do we need to hold up on these calls until we know whether they are getting auto-revoked-- that info could be included in the call?

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Friday, June 08, 2012 11:33 AM
To: Miller Steven T; Flax Nikole C
Cc: Lerner Lois G
Subject: FW: advocacy cases - next steps

FYI.

From: Paz Holly O
Sent: Thursday, June 07, 2012 4:59 PM
To: Thomas Cindy M; (b)(6); (b)(7)(C)
Cc: Lerner Lois G; Light Sharon P
Subject: advocacy cases - next steps

Please share this email with your folks who are involved in this process.

Set forth below is a summary of the bucketing results. This email outlines the next steps to be taken with regard to each bucket.

83 c/3s bucketed:

16 approval
16 limited development
23 general development
28 likely denial

199 c/4s bucketed:

65 approval
48 limited development
56 general development
30 likely denial

Bucket 1:

C4s

(b)(6); (b)(7)(C) will make calls to all c4 applicants who were sent development letters but have not yet responded before favorable determination letters are sent using the script already provided. (b)(6); (b)(7)(C) will send the favorable c4 determinations using the letter already provided.

C3s

(b)(6); (b)(7)(C) will make calls to make calls to all c3 applicants who were sent development letters but have not yet responded before favorable determination letters are sent. The phone script already provided will be modified accordingly by (b)(6); (b)(7)(C). (b)(6); (b)(7)(C) will send the favorable c3 determinations. Addendum 1 to the c4 letter will be added to our standard favorable c3 letter. The second addendum to the c4 letter referencing the section of the pub re: political activity is not necessary.

Donor Information

C3s and c4s that provided names of their donors in response to an additional information request from the IRS will be sent a letter (to be sent in a separate email) indicating that the request was made in error and **we have destroyed that information**. This applies to applicants that provided the information in response to a development request specifically requesting a list of all donors, a development request to detail all sources of revenue or any other additional development request by the IRS. It does not apply to organizations that provided this information in their application. In cases meeting this criteria, this letter must be sent before the favorable determination is sent.

Quality Review

In light of the small number of disagreed cases, Quality will now shift from 100% mandatory review of c4s to reviewing one of every 10 c4 cases in bucket 1. All c3s will be sent to Quality, but this will be reduced to a sampling based on the results of the review. Disagreed cases will be discussed by QA, the individuals who completed the bucketing worksheets and/or reconciliation sheet, and (b)(6); (b)... to reach a mutual decision re: the appropriate action on the case. The Determs bucketer will get the complete file back from (b)(6); (b)... so they can discuss with the DC bucketer. If a mutual decision cannot be reached, the case will be elevated to me for decision.

Bucket 2:

(b)(6); (b)(7)(C) will draft the development letters consisting of the questions listed by the bucketers on the bucketing worksheets. Each letter is to be reviewed by (b)(6); (b)(7)(C) before it is sent based on the following partnering:

(b)(6); (b)(7)(C) (all c/3 cases)

(b)(6); (b)(7)(C) (c/4 cases)

(b)(6); (b)(7)(C) (c/4 cases)

(b)(6); (b)(7)(C) should consult with (b)(6)... if they have any questions.

Caveat: In light of the size of the files and the time it would take to get another specialist familiar with the files, (b)(3)/6103 and (b)(3)/6103 will remain assigned to (b)(6); (b)... He will send the development letters for those (b)(6)... cases to (b)(6);... for review.

The DC reviewer will provide any comments or a response indicating no comments within 2 business days. If a response is not received within two business days, the drafter of the development letter should notify (b)(6); (b)...

If an applicant was previously sent a development letter but has not yet responded, the individual assigned to write the development letter will first call the applicant to direct them to disregard the prior development letter and that a new letter will be coming (modifying phone script provided for bucket 1 cases). The new development letter should also contain such a statement (language can be pulled from first addendum to favorable c4 letter).

The assigned Determinations specialist should email the assigned DC reviewer the development letter. In reviewing the letter, the DC reviewer will look at the application on TEDS , the bucketing worksheets (and reconciliation worksheet, if applicable) and the organization's website (if available).

Quality will review the the cases once a response has been received and the Determinations specialist has reached a decision on the case - just like a regular mandatory review case. Initially, all bucket 2 cases will be sent to Quality, but this will be reduced to a sampling based on the results of the review. I will send a message to the team when we are ready to shift to a sampling review.

Bucket 3:

Same as bucket 2 except the individual assigned the case will have to draft the questions. Bucket 2 cases should be started before bucket 3 cases. Given the number of c3s in this bucket, c3 cases may have to be assigned to more than one person.

Bucket 4:

Cindy will send me the 10 oldest c4 cases. (b)(6); (b)(7)(C) will draft a development letter for each case. (b)(6); (b)(7)(C) will review the development letter. (b)(6); (b)(7)(C) will send the development letter to (b)(6); (b)(7)... who will assign the case to either (b)(6); (b)(7)(C) -whichever is available at that time. (b)(6); (b)(7)(C) will send the development letters and coordinate with (b)(6); (b)(7)(C) on reviewing the responses.

(b)(6); (b)... is in the process of determining whether c3s in this bucket could qualify under c4 and, if so, is contacting the applicant to inform them that we do not believe they qualify under c3 but may under c4 and instruct them to submit 1024 if they are interested in pursuing c4 status.

Bucketing Going Forward:

(b)(6); (b)(7)(C) will each review and bucket all new receipts that meet the definition of advocacy case on the BOLO and send their bucketing worksheets to (b)(6); (b)... (b)(6); (b)... will be involved in any reconciliation discussions needed if (b)(6); (b)(7)(C) (b)(6); (b)... place cases in different buckets.

Tracking Going Forward:

(b)(6); (b)(7)... will be responsible for tracking the advocacy cases going forward. He will use a spreadsheet that combines the original tracking sheet created by Determinations and the spreadsheet created by (b)(6); (b)... and may modify it to add new columns as cases move through the process. Everyone should notify (b)(6)... when a case is sent to their manager for closing.

From: Lerner Lois G
Sent: Monday, June 18, 2012 4:46 PM
To: Megosh Andy; Park Nalee; Williams Melinda G
Cc: Paz Holly O
Subject: FW: E0's- letter to Comissioner cited is dated today per Senate Finance Committee Website (<http://www.finance.senate.gov/newsroom/ranking/release/?id=16db8888-3c42-4e08-a203-f7d8e5b6428f>)

This is coming--much can be taken from other responses. But, I need to get the take of those above me re whether we tell them we aren't making the info public.

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Monday, June 18, 2012 4:34 PM
To: Lerner Lois G; Paz Holly O; Fish David L; Urban Joseph J; Grant Joseph H; Medina Moises C; Ingram Sarah H; Marks Nancy J
Cc: Marx Dawn R
Subject: FW: E0's- letter to Comissioner cited is dated today per Senate Finance Committee Website (<http://www.finance.senate.gov/newsroom/ranking/release/?id=16db8888-3c42-4e08-a203-f7d8e5b6428f>)

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Cressman William M
Sent: Monday, June 18, 2012 3:45 PM
To: Lemons Terry L; Eldridge Michelle L
Cc: Zarin Roberta B; Kerns Chris D
Subject: E0's- letter to Comissioner cited is dated today per Senate Finance Committee Website (<http://www.finance.senate.gov/newsroom/ranking/release/?id=16db8888-3c42-4e08-a203-f7d8e5b6428f>)

FYI

Bill Cressman (Badge # 1000212378)
Ch., Field Media Relations Branch (C&L)
Office: 215-861-1550 Cell: 215-519-5413

From: Kerns Chris D
Sent: Monday, June 18, 2012 3:30 PM

To: Cressman William M

Subject: E0's- letter to Commissioner cited is dated today per Senate Finance Committee Website
(<http://www.finance.senate.gov/newsroom/ranking/release/?id=16db8888-3c42-4e08-a203-f7d8e5b6428f>)

<http://www.washingtontimes.com/blog/watercooler/2012/jun/18/picket-senators-irs-congress-has-made-privacy-rule/>

Washington Times
6/18/12

PICKET: PICKET: Senators to IRS - Congress has made privacy the rule not the exception

Eleven Republican Senators on U.S. Senate Committee on Finance [sent](#) a [letter](#) to the Internal Revenue Service (IRS) citing concerns over privacy protections and requested additional information regarding the agency's request of private donor information from organizations seeking tax exempt status. :

According to the committee's website, "Earlier in the year, twelve GOP Senators called on the IRS to prevent politics from playing a role in any action taken on non-profit 501(c)(4) organizations after several groups applying for the status received excessive follow-up inquiries from the agency. The IRS responded giving assurances their actions were not for political gain, however the issue of privacy protections was not addressed."

Below is the full text of the letter:

*Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230*

Dear Commissioner Shulman:

On March 14, 2012, we wrote to you with a number of questions regarding the procedures the Internal Revenue Service ("IRS") uses when evaluating organizations that apply for tax-exempt status. We appreciate the thoroughness of your response to our inquiries. However, we remain concerned that the IRS is requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors.

Prior Congresses have passed legislation with bipartisan support to ensure the privacy of donors who give to charitable organizations. While the annual tax returns of certain charitable organizations have long been required to be made available for public review, the 91st Congress denied the Secretary of the Treasury the authority to disclose the names and addresses of financial contributors from these returns. In addition, the 100th Congress created a specific statutory exception for disclosure of names and addresses of financial contributors, when they expanded public inspection of certain annual returns, reports, and applications for exemption of certain tax exempt organizations. In using nearly identical legislative language to create these exceptions from disclosure, both Congresses made strong legislative pronouncements that their

goal was to protect the privacy of donor information. In addition, the same commitment to privacy is evident in the requirement that taxpayers be given the opportunity to obtain redaction of identifying information before related IRS private letter rulings, technical advice memoranda, and Chief Counsel Advice memoranda are made public. Through these various expressions, Congress has made privacy the rule, and not the exception.

It is important to note the value that is placed on protecting the privacy of individuals and organizations that choose to donate funds to charitable organizations. The privacy interests of donors is widely recognized and valued. Various public policy initiatives have rightly encouraged donations to social welfare organizations, and these efforts are threatened when private information about donors is not adequately protected. A list of donors who have given money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.

As we mentioned in our March 14 letter, it is our understanding that the IRS asked several organizations who applied for tax-exempt status to provide the names of individuals who had made donations (regardless of dollar amount) to those organizations, as well as the names of individuals who are expected to make donations in the future. The Form 1024 exemption application asks applicants for sources of financing but does not ask for names and addresses. It is our understanding that specific donor information — names and addresses — are not provided on Form 1024.

Yet, by requesting through correspondence, after the filing of a Form 1024, that organizations applying for tax exempt status provide names of donors, the IRS sets in motion an outcome wherein donor information that would be protected and redacted by one provision of the Internal Revenue Code (“Code”) which provides an exception from disclosure, would be made available for public inspection by a separate provision of the Code relating to inspection of applications for tax exemption. Such an outcome is clearly at odds with the express intent of Congress to maintain the privacy of donors. Even if not prohibited by law, the actions of IRS are an inappropriate circumvention of the policy of donor privacy embedded in the Code.

When the IRS requests specific donor information through a follow up letter as part of the exemption application process, it ensures that this highly sensitive donor information will be included in the administrative record. This presents a serious privacy problem: if the IRS approves the organization’s application for tax-exempt status, then section 6104 of the Code requires the associated administrative record – including the identity of donors if included therein — to be made available for public review at the national office of the Internal Revenue Service. This is completely at odds with the treatment of the same donor information when it is viewed at the principal office of the tax-exempt organization. The Code specifically states that the names and addresses of donors are not required to be available for public inspection when viewed at this physical location. Given that donor information is redacted on annual tax returns of tax-exempt organizations, redacted on denied tax-exempt applications, redacted on successful tax-exempt applications (when viewed at the organization’s principal office), and not required to be provided on the Form 1024, it is disconcerting that donor information would be reviewable, or at the very least not be redacted, on successful tax-exempt applications viewed at the national office of the IRS.

In order to better understand the background on these recent requests for confidential donor information and the authority of the Internal Revenue Service to make these requests, we respectfully request that you provide answers to the following questions:

- 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?*
- 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011.*
- 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applicants?*
- 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of these letters contains passages which specifically request names of donors.*
 - a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?*
 - b) Which IRS officials provided authority and approval for the questions requesting donor names?*
 - c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?*
- 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?*
- 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?*
- 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?*
- 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?*

Thank you for your prompt attention to this matter.

Sincerely,

*HATCH
CORNYN
KYL
ALEXANDER
MCCONNELL
ENZI
PAUL
HUTCHISON
CORKER
THUNE
ROBERTS*

For Immediate Release
June 18, 2012

Contact:

[Julia Lawless](#), [Antonia Ferrier](#), 202.224.4515

Senators to IRS: Congress has Made Privacy the Rule, Not the Exception

In letter, Lawmakers Call on IRS Commissioner Shulman to Preserve Privacy Protections for Non-Profit Organizations

WASHINGTON – Citing concerns over privacy protections, 11 Senators today pressed the Internal Revenue Service (IRS) for additional answers on the agency’s decision to request confidential donor information from organizations applying for tax exempt status. In a letter led by U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, the lawmakers said such action circumvented current statutory privacy protections and questioned the targeting of groups specifically seeking the approval or renewal of a tax-exempt designation under section 501(c)(4).

“Congress has made privacy the rule, and not the exception,” wrote the Senators. “A list of donors who have given money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.”

Joining Hatch on the letter are Senators Mitch McConnell (R-Ky.), Mike Enzi (R-Wyo.), Lamar Alexander (R-Tenn.), John Cornyn (Texas), Kay Bailey Hutchison (R-Texas), Jon Kyl (R-Ariz.), Bob Corker (R-Tenn.), Pat Roberts (R-Kan.), John Thune (R-S.D.), and Rand Paul (R-Ky.)

Earlier this year, a dozen Republican Senators called on the IRS to prevent politics from playing a role in any action taken on non-profit 501(c)(4) organizations after several groups applying for the status received excessive follow-up inquiries from the agency. The IRS responded giving assurances their actions were not for political gain, however the issue of privacy protections was not addressed.

Below is the full text of the letter:

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

On March 14, 2012, we wrote to you with a number of questions regarding the procedures the Internal Revenue Service (“IRS”) uses when evaluating organizations that apply for tax-exempt status. We appreciate the thoroughness of your response to our inquiries. However, we remain concerned that the IRS is requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors.

Prior Congresses have passed legislation with bipartisan support to ensure the privacy of donors who give to charitable organizations. While the annual tax returns of certain charitable organizations have long been required to be made available for public review, the 91st Congress denied the Secretary of the Treasury the authority to disclose the names and addresses of financial contributors from these returns. In addition, the 100th Congress created a specific statutory exception for disclosure of names and addresses of financial contributors, when they expanded public inspection of certain annual returns, reports, and applications for exemption of certain tax exempt organizations. In using nearly identical legislative language to create these exceptions from disclosure, both Congresses made strong legislative pronouncements that their goal was to protect the privacy of donor information. In addition, the same commitment to privacy is evident in the requirement that taxpayers be given the opportunity to obtain redaction of identifying information before related IRS private letter rulings, technical advice memoranda, and Chief Counsel Advice memoranda are made public. Through these various expressions, Congress has made privacy the rule, and not the exception.

It is important to note the value that is placed on protecting the privacy of individuals and organizations that choose to donate funds to charitable organizations. The privacy interests of donors is widely recognized and valued. Various public policy initiatives have rightly encouraged donations to social welfare organizations, and these efforts are threatened when private information about donors is not adequately protected. A list of donors who have given money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.

As we mentioned in our March 14 letter, it is our understanding that the IRS asked several organizations who applied for tax-exempt status to provide the names of individuals who had made donations (regardless of dollar amount) to those organizations, as well as the names of individuals who are expected to make donations in the future. The Form 1024 exemption application asks applicants for sources of financing but does not ask for names and addresses. It is our understanding that specific donor information — names and addresses — are not provided on Form 1024.

Yet, by requesting through correspondence, after the filing of a Form 1024, that organizations applying for tax exempt status provide names of donors, the IRS sets in motion an outcome wherein donor information that

would be protected and redacted by one provision of the Internal Revenue Code (“Code”) which provides an exception from disclosure, would be made available for public inspection by a separate provision of the Code relating to inspection of applications for tax exemption. Such an outcome is clearly at odds with the express intent of Congress to maintain the privacy of donors. Even if not prohibited by law, the actions of IRS are an inappropriate circumvention of the policy of donor privacy embedded in the Code.

When the IRS requests specific donor information through a follow up letter as part of the exemption application process, it ensures that this highly sensitive donor information will be included in the administrative record. This presents a serious privacy problem: if the IRS approves the organization’s application for tax-exempt status, then section 6104 of the Code requires the associated administrative record – including the identity of donors if included therein — to be made available for public review at the national office of the Internal Revenue Service. This is completely at odds with the treatment of the same donor information when it is viewed at the principal office of the tax-exempt organization. The Code specifically states that the names and addresses of donors are not required to be available for public inspection when viewed at this physical location. Given that donor information is redacted on annual tax returns of tax-exempt organizations, redacted on denied tax-exempt applications, redacted on successful tax-exempt applications (when viewed at the organization’s principal office), and not required to be provided on the Form 1024, it is disconcerting that donor information would be reviewable, or at the very least not be redacted, on successful tax-exempt applications viewed at the national office of the IRS.

In order to better understand the background on these recent requests for confidential donor information and the authority of the Internal Revenue Service to make these requests, we respectfully request that you provide answers to the following questions:

1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?
2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011.
3. Is the Exempt Organizations technical office involved in all such information requests of exemption applicants?
4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of these letters contains passages which specifically request names of donors.
 - a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?
 - b) Which IRS officials provided authority and approval for the questions requesting donor names?
 - c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?
5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?
6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?

Thank you for your prompt attention to this matter.

Sincerely,

HATCH
CORNBYN
KYL
ALEXANDER
MCCONNELL
ENZI
PAUL
HUTCHISON
CORKER
THUNE
ROBERTS

###

TAB	e-trak Control	Correspondent	Incoming Date	Outgoing Date	Comment
	2012-25922	Bousanty	10/6/2011	11/18/2011 3/12/2012	(b)(3) 6103(a)
	2012-29539	Bennet, etal (7)	2/14/2012	4/26/2012	
	2012-30021	Bousanty	3/1/2012	3/23/2012 4/26/2012	
	2012-30090	Flores (Rep.)	3/7/2012		
	2012-30116	Democracy 21 **	3/9/2012		
	2012-30234	Hatch, etal (12)	3/14/2012	4/26/2012	
	2012-30240	Rutkowski **	3/8/2012		
	2012-30251	(b)(3) IRC 6103(a)	2/29/2012		
	2012-30293	Rutkowski **	3/14/2012	4/17/2012	
	2012-30298	Forbes (Rep.)	3/13/2012		
	2012-30390	CREW **	3/8/2012		
	2012-30468	Schumer, etal (7)	3/9/2012	4/25/2012	
	2012-30473	Lungren (Rep.)	3/8/2012		
	2012-30474	Schmdt	3/20/2012	5/9/2012	
	2012-30503	Democracy 21 **	7/27/2011 3/22/2012		
	2012-30512	Alliance for Justice Action Campaign **	3/16/2012		
	2012-30552	Kingsley, Elizabeth **	3/19/2012	4/18/2012	
	2012-30672	Issa, Jordan	3/19/2012	4/26/2012 5/4/2012	
	2012-30710	Rutkowski **	3/22/2012		
	2012-30721	Lugar	3/15/2012	5/1/2012	
	2012-30794	Levin	3/30/2012	6/4/2012	



	2012-30950	Marchant (Rep.)	3/28/2012		(b)(3) 6103(a)
	2012-31070	Welch, etal (32)	3/28/2012	6/14/2012	
	2012-31425	Rutkowski **	4/17/2012		
	2012-31474	Flores, etal (48)	4/23/2012	6/14/2012	
	2012-31486	Democracy 21 **	4/17/2012		
	2012-31597	Drescher, Paul **	4/23/2012	5/1/2012	
	2012-31894	Camp (Rep.)	5/18/2012		
	2012-32702	Wertheimer, Fred **	5/29/2012		
	2012-32813	Groen, Karen **	6/6/2012		
	2012-32884	Smith (Rep.)	6/7/2012		
	2012-32895	Lockshin, Matt **	6/7/2012		
	2012-32925	Sloan, Melanie **	6/8/2012		
	2012-33118	Levin (Sen.)	6/14/2012		
	2012-33220	Hatch (Sen.), etal (11)	6/18/2012		
**	Non-congressional letter to Commissioner				

c4pol
c4pol

CAMP

TAB	DATE	TYPE
1	3-Jun-11	Incoming
2	1-Jul-11	Outgoing
3	3-Jun-11	Incoming
4	1-Jul-11	Outgoing
5	7-Jul-11	Outgoing
6	25-Jul-11	Outgoing
7	28-Jul-11	Outgoing
8	11-Aug-11	Outgoing
9	18-Oct-11	Outgoing
10	3-Nov-11	Outgoing
11	21-Dec-11	Outgoing
12	6-Jan-12	Outgoing

From: Paz Holly O
Sent: Wednesday, June 27, 2012 8:04 AM
To: Lerner Lois G
Subject: Fw: (b)(5)/AC donor names

Heads up (hopefully this gets to you before Joe does).

Sent from my BlackBerry Wireless Device

From: Paz Holly O
Sent: Wednesday, June 27, 2012 09:02 AM
To: Fish David L
Cc: Light Sharon P
Subject: Re: (b)(5)/AC donor names

Thanks for the heads up. The decision was made by Steve, based on advice from P and A.

Sent from my BlackBerry Wireless Device

From: Fish David L
Sent: Wednesday, June 27, 2012 08:59 AM
To: Paz Holly O
Cc: Light Sharon P
Subject: (b)(5)/AC donor names

Sarah was apparently

not aware of the decision to (b)(5)/AC

(b)(5)/AC Joe Urban had actually started a secret research project

on whether we could, consistent with 6104, argue that [REDACTED]

[REDACTED] (b)(5)/AC [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Joe was quite

agitated yesterday when I told him what we were doing. (He was involved when the initial question was raised, but we didn't continue reading him in). At one point he started saying that this was a decision for Steve Miller--I told him we were already doing it, and that I didn't know whether Lois had already talked to Nikole about this.

Would not be

surprised if he already started working on Lois.

From: Paz Holly O
Sent: Thursday, June 28, 2012 3:21 PM
To: Lerner Lois G
Subject: FW: donor info letter.doc

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Tuesday, June 05, 2012 8:51 AM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: donor info letter.doc

Lois -- both GLS and PA are fine with your decision [REDACTED] (b)(5)/AC

Margo L. Stevens
Deputy Associate Chief Counsel for Legislation & Privacy
Procedure & Administration
Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Monday, June 04, 2012 4:12 PM
To: Stevens Margo
Cc: Paz Holly O
Subject: FW: donor info letter.doc
Importance: High

Can you please take a look--she forwarded it to me last week, but I just saw it. See Holly's note about [REDACTED] (b)(5)/AC --thoughts? Thanks!

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Friday, June 01, 2012 9:48 AM
To: Lerner Lois G; Marks Nancy J
Cc: Fish David L
Subject: FW: donor info letter.doc

Attached is the letter to applicants that sent us donor info in response to our requests. David and I believe that it is preferable to [REDACTED]

[REDACTED] (b)(5)/AC [REDACTED]

(b)(5)/AC

[REDACTED] . Lois, I believe you said you would clear this letter with Margo. Is that correct?

Thanks,

Holly

From: Lerner Lois G
Sent: Thursday, June 28, 2012 3:36 PM
To: Flax Nikole C
Cc: Paz Holly O
Subject: RE: (b)(5)/AC Donor Information

Yep--checking as we speak

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, June 28, 2012 4:35 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: (b)(5)/AC Donor Information

Thanks - please check to see if we used yet and then we should discuss whether to change if even possible.

From: Lerner Lois G
Sent: Thursday, June 28, 2012 4:30 PM
To: Flax Nikole C
Cc: Paz Holly O
Subject: FW: (b)(5)/AC Donor Information
Importance: High

Sorry--we took you down a slightly wrong path. David's email was slightly different. Margo's rationale is that (b)(5)/AC --which is closer to what Miller would probably feel comfortable saying. I've asked Holly to make sure we have actually sent some of these out--if not we could change verbiage. Before we go there though, we need to think of ramifications--would that mean we would be setting a precedent for (b)(5)/AC Lots of work I wouldn't want to take on generally.

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, June 28, 2012 4:23 PM
To: Lerner Lois G
Subject: FW: (b)(5)/AC Donor Information

Scratch my prior email - here is her rationale.

From: Stevens Margo [<mailto:Margo.L.Stevens@IRSCOUNSEL.TREAS.GOV>]
Sent: Monday, May 21, 2012 10:50 AM
To: Lerner Lois G
Cc: Witter Kirsten N
Subject: (b)(5)/AC Donor Information

Lois, I wanted to get back with you with respect to your question whether TEGE could return to those organizations from whom donor names were solicited in questionnaires following their submission of applications for recognition of their tax exempt status (under 501(c)(4)), now that TEGE has reviewed those files and determined that such information was not needed across-the-board and not used in making the agency's determination on exempt status. As you noted, [REDACTED]

[REDACTED]
(b)(5)/AC
[REDACTED]

[REDACTED]
(b)(5)/AC
[REDACTED]

Thus, I wanted to touch base with Kirsten Witter, GLS, with respect to any Federal Records Act ("FRA") implications of a decision by TEGE to [REDACTED] (b)(5)/AC. Kirsten, and Beth Levine of her branch, called me this morning. Based upon our understanding of what occurred here, they have advised me that the [REDACTED]

[REDACTED]
(b)(5)/AC
[REDACTED]

Accordingly, it would seem to follow that, [REDACTED]

(b)(5)/AC
[REDACTED]

Thanks to Kirsten and Beth for their quick analysis and response back, so that I could provide you what I think is good news.

Margo L. Stevens
Deputy Associate Chief Counsel for Legislation & Privacy
Procedure & Administration
Telephone: (202) 622-3400 Fax: (202) 622-6292

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 9:46 AM
To: Paz Holly O
Subject: RE: Emailing: c4 talking points 7-16-12.doc

good

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----

From: Paz Holly O
Sent: Tuesday, July 17, 2012 10:44 AM
To: Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

That is who I am checking with.

-----Original Message-----

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 10:42 AM
To: Paz Holly O; Flax Nikole C
Subject: RE: Emailing: c4 talking points 7-16-12.doc

Contact Nalee--she knows all about the response.

Lois G. Lerner
Director of Exempt Organizations

-----Original Message-----

From: Paz Holly O
Sent: Tuesday, July 17, 2012 10:08 AM
To: Flax Nikole C; Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

The SOI numbers I was looking at were closures (that's all SOI has that is relevant to this question). I think the numbers in Boustany response must be receipts. I am checking and will get back to you.

-----Original Message-----

From: Flax Nikole C
Sent: Tuesday, July 17, 2012 9:21 AM
To: Paz Holly O; Lerner Lois G
Subject: RE: Emailing: c4 talking points 7-16-12.doc

On the point whether there was an increase in c4 applications - in the Boustany response we show that applications did increase. Looks like the figures are different from what you pulled from SOI so we need to track this down as I think it is an important point.

From Boustany- c4 applications

2008 - 1410

2009 - 1571

2010 - 1591

2011 - 2242

2012 - 1715 (through April 1, 2012 -- if this pace stands all year would be a significant increase)

-----Original Message-----

From: Paz Holly O

Sent: Tuesday, July 17, 2012 7:23 AM

To: Flax Nikole C; Lerner Lois G

Subject: Emailing: c4 talking points 7-16-12.doc

I have added some edits and comments to Lois'. I am checking on numbers and will get back to you ASAP.

From: Williams Melinda G
Sent: Tuesday, July 17, 2012 10:47 AM
To: Lerner Lois G; Fish David L
Cc: Megosh Andy; Park Nalee
Subject: RE: Hatch letter
Attachments: RE: Hatch Congressional follow up letter 7-12-12.doc

Andy sent out the latest draft on Saturday. I'm attaching that email.

We are still looking into whether there is statutory code authority that gives the IRS authority to request actual donor names. We have not located anything in the Code that provides for this or even the more general authority of allowing the IRS to require additional information as necessary for a determination of whether an organization is tax-exempt. We do not believe that there is anything in the Code for this and that it is just found in the regulations. Section 501(a) simply provides that an organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503. The regulations under section 1.501(a)-1 then provides the authority for requiring the application and asking for additional information.

I'm continuing to look though to make sure we aren't missing anything.

Melinda

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 11:34 AM
To: Fish David L; Williams Melinda G
Subject: Hatch letter
Importance: High

Do I have another version of this--my email has been screwy since Friday--thanks

Lois G. Lerner

Director of Exempt Organizations

From: Megosh Andy
Sent: Saturday, July 14, 2012 3:17 PM
To: Williams Melinda G; Fish David L; Lerner Lois G
Cc: Holiat Peter A
Subject: RE: Hatch Congressional follow up letter 7-12-12.doc
Attachments: Hatch Congressional follow up letter 7-14-12.doc

Here is the latest draft of Hatch. I did not add the statutory language Lois is looking for in question 1 - I didn't find statutory authority in the Code. I've asked Melinda and Nalee to take a look.

I found some of the follow language from the Issa question 7 letter, and I added to what we already had in the draft for a possible response to question 1.

To establish tax exemption, the organization must meet the statutory requirements of the particular section of the Internal Revenue Code under which exemption is sought. Whether an organization meets the statutory requirements of section 501(c)(4) depends upon all of the facts and circumstances, and no one factor is determinative. As set forth in Revenue Procedure 2012-9, the applicant has the burden of establishing that it meets the particular requirements of the statute and regulations under which it seeks exemption through information in its application and supporting materials. Section 1.501(a)-1(a)(3) of the regulations provide that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Andy

From: Lerner Lois G
Sent: Friday, July 13, 2012 5:49 PM
To: Megosh Andy
Cc: Fish David L; Williams Melinda G; Lerner Lois G
Subject: Hatch Congressional follow up letter 7-12-12.doc

Can you put the IRM stuff in this version--it has my changes in it

From: Lerner Lois G
Sent: Wednesday, July 18, 2012 5:47 PM
To: Williams Melinda G; Fish David L; Park Nalee
Cc: Megosh Andy
Subject: RE: Hatch letter

Importance: High

I will look at this tomorrow. I am back Friday and would like to sit down and finalize because I'm gone next week. Can we meet at 12--feel free to bring lunch

Lois G. Lerner

Director of Exempt Organizations

From: Williams Melinda G
Sent: Tuesday, July 17, 2012 11:47 AM
To: Lerner Lois G; Fish David L
Cc: Megosh Andy; Park Nalee
Subject: RE: Hatch letter

Andy sent out the latest draft on Saturday. I'm attaching that email.

We are still looking into whether there is statutory code authority that gives the IRS authority to request actual donor names. We have not located anything in the Code that provides for this or even the more general authority of allowing the IRS to require additional information as necessary for a determination of whether an organization is tax-exempt. We do not believe that there is anything in the Code for this and that it is just found in the regulations. Section 501(a) simply provides that an organization described in subsection (c) or (d) or section 401(a) shall be exempt from taxation under this subtitle unless such exemption is denied under section 502 or 503. The regulations under section 1.501(a)-1 then provides the authority for requiring the application and asking for additional information.

I'm continuing to look though to make sure we aren't missing anything.

Melinda

From: Lerner Lois G
Sent: Tuesday, July 17, 2012 11:34 AM
To: Fish David L; Williams Melinda G
Subject: Hatch letter
Importance: High

Do I have another version of this--my email has been screwy since Friday--thanks

Lois G. Lerner

Director of Exempt Organizations

From: Urban Joseph J
Sent: Wednesday, July 25, 2012 12:12 PM
Subject: :: Hearing notes

Steve's portion of the hearing did not amount to much. Some general questions on a number of areas (referral committee, UBIT, application process, why we changed the 990, etc.) A few (c)(4) questions. Boustanty tried to keep this as a (c)(3) hearing. On most all of the areas addressed, there was no real substantive follow-up. The real issue for debate at the hearing was the size of the IRS budget. Dems: The cuts are keeping the IRS from doing its job, right Steve? More people more audits; less people less audits, right Steve? Repubs: If you are getting by now, what would you do with more resources anyway? And what is the ideal number of resources?

If you want to know all of the questions asked and all of Steve's answers, let me know. I took notes. Total time in the witness chair: 52 minutes, which included his oral, and the openers by Boustanty and Lewis.

The real hard questions were asked of Steve by the tax press after the hearing. I will be interested in seeing how the press will report on them. The best question, and answer, was the last one, by DF. Steve, will you be the next Commissioner? Ans: NO! NO! NO! NO!. Now that would be a great headline in BNA tomorrow.

Steve promised the Committee that we would get back on two matters - referral committee and social welfare. Both issues were addressed in our congressional correspondence. I briefed Holly on this, and Justin and I will get together with NaLee to put something together that we can serve up to Nikole.

From: Flax Nikole C
Sent: Thursday, August 02, 2012 11:06 AM
To: Mistr Christine R; Lerner Lois G
Cc: Page Christopher M
Subject: Hatch letter
Attachments: Hatch Congressional follow up letter 8-1-12.doc; Hatch Congressional follow up letter 8-1-12 clean.doc

Wanted you to have

the latest (clean and track changes) since I will be out after today.

Christy, I will ask that additional comments come to you and you can loop back

with EO. Lois, I made a few changes so let me know of any issues (but

there may be more changes so you may want to wait). We are not going to

mention **the return of names**.

July __, 2012

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
U.S. Senate
Washington, D.C. 20515

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are aware, the rules relating to disclosure of taxpayer information are provided statutorily in the Internal Revenue Code.

Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?

Section 7805 of the Internal Revenue Code provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.¹

¹ IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the applicant has not fully answered the questions, the detail provided is insufficient to make a determination, or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, we would have to manually review each file. We are available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?

No. As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. On occasion, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff.

Question 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of those letters contains passages which specifically request names of donors.

- a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. The IRM does not require additional review prior to the agent sending the questions out to the applicant.

b) Which IRS officials provided authority and approval for the questions requesting donor names?

See response to a), above.

c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. Pursuant to normal operating procedures, the IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believe that requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, we would have to conduct a manual review of each file. We are available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. We advise applicant organizations that if they believe that requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-4725.

Sincerely,

Joseph H. Grant [??]
Acting Commissioner

Enclosures

July __, 2012

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
U.S. Senate
Washington, D.C. 20515

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are aware, the rules relating to disclosure of taxpayer information are provided statutorily in the Internal Revenue Code.

Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?

Section 7805 of the Internal Revenue Code provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.¹

¹ IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the applicant has not fully answered the questions, the detail provided is insufficient to make a determination, or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, we would have to manually review each file. We are available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?

No. As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. On occasion, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff.

Question 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of those letters contains passages which specifically request names of donors.

- a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. The IRM does not require additional review prior to the agent sending the questions out to the applicant.

b) Which IRS officials provided authority and approval for the questions requesting donor names?

See response to a), above.

c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. Pursuant to normal operating procedures, the IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believe that requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

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Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. We advise applicant organizations that if they believe that requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-4725.

Sincerely,

Joseph H. Grant
Acting Commissioner

Enclosures

August __, 2012

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
U.S. Senate
Washington, D.C. 20515

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you may be aware, the rules relating to disclosure of taxpayer information are provided statutorily in the Internal Revenue Code.

Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?

Section 7805 of the Internal Revenue Code provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit