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ONE HUNDRED THIRTEENTH CONGRESS

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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May 14, 2013

Ms. Lois G. Lerner
Director, Exempt Organizations Division
Internal Revenue Service
11 Constitution Avenue, NW, Room 3000
Washington, D.C. 20224

Dear Ms. Lerner:

The revelation that IRS targeted hundreds of conservative groups for additional scrutiny of their applications for tax-exempt status is startling. The actions of the IRS are unconscionable and appalling. All groups, regardless of political ideology, have the right to free speech, free expression, and equal treatment by their government. In addition to IRS's admission of serious wrongdoing, we are concerned that information you have provided to the Committee related to this matter on prior occasions was false or misleading. We write to request your immediate cooperation with the Committee's oversight of IRS's efforts to single out conservative groups applying for tax exempt status for additional, and seemingly unprecedented, scrutiny.

According to information provided to the Committee by the Treasury Inspector General for Tax Administration (TIGTA), the IRS began to single out conservative and Tea Party groups for extra scrutiny in March of 2010.¹ According to TIGTA, IRS employees used words or phrases including "Tea Party," "Patriots," "9/12," "We the People," and "Take Back the Country" to flag tax-exempt applications for extra scrutiny.² According to TIGTA, the IRS's Determinations Unit management requested its specialists be on the lookout for Tea Party applications.³ TIGTA also informed the Committee that these criteria were in place until July 2011 when you directed that the criteria be immediately changed.⁴

According to TIGTA, the criteria were changed again in January 2012 in a way that once again singled out conservative groups.⁵ TIGTA informed the Committee that the criteria changed to "Political action type organizations involved in limiting/expanding government,

¹ Telephone conference between Committee staff and the Treasury Inspector General for Tax Administration (May 10, 2013).

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

educating on the Constitution and Bill of Rights, social economic reform/movement” based on the Determinations Unit concerns that the July 2011 criteria was too generic.⁶ During May 2012, the criteria were once again changed in a way that does not appear to explicitly target conservative groups.⁷ It is troubling that between January and May of 2012, Determinations Unit staff was able to continue targeting political groups despite the fact that it had been told that such targeting was not appropriate.⁸

At a briefing on May 13, 2013, IRS officials informed Committee staff that Tea Party and other applications flagged from early 2010 to early 2012 were not appropriately read and individually considered on their merits by IRS reviewers.⁹ At the briefing, IRS officials confirmed these flagged applications were essentially placed in a state of purgatory where they often languished without action for periods as long as two years.¹⁰ IRS officials also confirmed to Committee staff that all groups with Tea Party, Patriots, 9/12, or other trigger words in their names were treated in the same inappropriate fashion by IRS. Moreover, even though you were definitely aware of the discriminatory criteria by June 2011, IRS officials at yesterday’s briefing stated that there was no discussion at any point about taking groups identified for extra scrutiny through the screening process out of the bucket of applications where they were initially placed.¹¹

Eventually, IRS would send follow-up letters to the organizations flagged for extra scrutiny. These follow-up letters made onerous requests for voluminous and sensitive information, such as names of all donors and amounts of all their donations, a list of all issues important to the groups and the groups’ position on these issues, and all e-mails sent to members of the groups.

According to IRS officials, approximately 300 groups received additional scrutiny as of May 2012. As of today, that number has grown to 471 groups.¹² Thus, it is unclear whether conservative and Tea Party groups are continuing to be targeted even today. In addition, while it appears that no IRS employees have been disciplined for their actions, IRS officials indicated that one individual involved in reviewing applications in the Cincinnati office received a promotion or “career enhancement.”¹³

The information provided to the Committee by TIGTA and IRS officials in recent days conflicts with statements you made to the Committee last year. First, during a February 24, 2012, briefing on the onerous follow-up letters received by some conservative organizations, Committee staff asked you whether the criteria for evaluating tax exempt applications changed at any point.¹⁴ You responded that the criteria had not changed.¹⁵

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ Briefing by IRS staff to Committee staff (May 13, 2013).

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ Briefing by Ms. Lois Lerner and IRS staff to Committee staff (Feb. 24, 2012).

Following the briefing, a March 8, 2012, article in *Roll Call*,¹⁶ and additional complaints from many groups, we sent you a letter on March 27, 2012, asking for information related to the reports that conservative groups applying for tax-exempt status were receiving extra scrutiny from IRS.¹⁷ During a phone call on April 4, 2012, you told Committee staff that the information IRS was requesting in the additional follow-up letters was not out of the ordinary.¹⁸ On April 26, 2012, in your first written response to our letter, you wrote that the letters to those organizations were “in the ordinary course of the application process to obtain the information as the IRS deems necessary to make a determination whether the organization meets the legal requirements for tax-exempt status.”¹⁹ At no point during this period did you inform the Committee that on February 29, 2012, you issued a 60-day extension to all groups who had received the onerous follow-up letters or that you directed that all further development letters be stopped.²⁰

In our March 27, 2012, letter we asked you to provide justification for IRS’s authority, rationale, and precedent for 16 commonly asked pieces of information that IRS asked of conservative groups in the follow-up letters which seemed beyond the scope of typical IRS inquiries. In your second written response on May 4, 2012, you provided justification for all of the 16 areas.²¹ You even provided justification for IRS’s request to targeted groups for a complete list of donors with corresponding donation amounts. During a briefing with Committee staff yesterday, IRS officials, including Nikole Flax, Chief of Staff for the Office of the IRS Commissioner, could not identify any other time during the agency’s history when IRS asked groups for a complete list of donors with corresponding donation amounts.²² According to TIGTA, however, at some point in May 2012, IRS identified seven types of information asked of conservative groups, including the donor information, in IRS’s follow-up letters that were inappropriate.²³ We are concerned that your answer to the Committee on May 4, 2012, was misleading because of the considerable overlap between the types of information we identified as problematic and the types of information IRS would subsequently identify as inappropriate. Especially troubling is the fact that in June of 2011 – nearly a year before you provided these answers to the Committee – you were briefed on the “be on the look-out” memo being used by the Determinations Unit and instructed that it be changed immediately.²⁴

¹⁵ *Id.*

¹⁶ Janie Lorber, *IRS Oversight Reignites Tea Party Ire: Agency’s Already Controversial Role Is In Dispute After Questionnaires Sent to Conservative Groups*, ROLL CALL, Mar. 8, 2012.

¹⁷ Letter from Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform & Hon. Jim Jordan, Chairman, Subcomm. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, to Ms. Lois Lerner, Director of Exempt Organizations Division, IRS (Mar. 27, 2012).

¹⁸ Telephone conference between Committee staff and Lois Lerner and IRS staff (Apr. 4, 2012).

¹⁹ Letter from Lois Lerner, Director of Exempt Organizations Division, IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform & Hon. Jim Jordan, Chairman, Subcomm. on Reg. Affairs, Stimulus Oversight & Gov’t Spending (Apr. 26, 2012).

²⁰ Briefing by IRS staff to Committee staff (May 13, 2013).

²¹ Letter from Lois Lerner, Director of Exempt Organizations Division, IRS, to Hon. Darrell Issa, Chairman, H. Comm. on Oversight and Gov’t Reform and Hon. Jim Jordan, Chairman, Subcomm. on Reg. Affairs, Stimulus Oversight & Gov’t Spending, (May 4, 2012).

²² Briefing by IRS staff to Committee staff (May 13, 2013).

²³ *Supra* note 1

²⁴ Briefing by IRS staff to Committee staff (May 13, 2013).

Therefore, it appears that you provided false or misleading information on four separate occasions last year in response to the Committee's oversight of IRS's treatment of conservative groups applying for tax exempt status. Providing false or misleading information to Congress is a serious matter, with potential criminal liability.²⁵ Moreover, despite repeated questions from the Committee over a year ago and despite your intimate knowledge of the situation, you failed to inform the Committee of IRS's plan, developed in early 2010, to single out conservative groups and how that plan changed over time. You also failed to inform the Committee that IRS launched its own internal review of this matter in late March 2012, or that the internal review was completed on May 3, 2012, finding significant problems in the review process and a substantial bias against conservative groups.²⁶ At no point did you or anyone else at IRS inform Congress of the results of these findings.²⁷

It is imperative that IRS provide full and complete information to Congress and the American people about the development of the agency's plan to single out conservative groups, the revisions of its plan over time, and the methods IRS employed to implement its plan. We respectfully request that you brief Committee staff about this matter tomorrow, May 15, 2013, and that you produce the following information as soon as possible, but by no later than 5:00 p.m. on May 17, 2013:

1. All documents and communications referring or relating to IRS's evaluation of applications for tax exempt status between January 1, 2009, and the present that contain the following words or phrases:

- a) Tea Party
- b) Patriot
- c) 9/12
- d) Constitution
- e) Bill of Rights
- f) Debt
- g) We the People
- h) Government Spending
- i) America a better place to live
- j) Take back the country

2. All documents and communications between January 1, 2009, and the present referring or relating to processes, procedures, or criteria for evaluating applications for tax exempt status, including but not limited to all documents between or among Lois Lerner, Steve

²⁵ See 18 U.S.C. § 1001, which states in pertinent part:

[W]hoever, in any matter within the jurisdiction of the executive, legislative, or judicial branch of the Government of the United States, knowingly and willfully . . . makes any materially false, fictitious, or fraudulent statement or representation; or makes or uses any false writing or document knowing the same to contain any materially false, fictitious, or fraudulent statement or entry shall be fined under this title, imprisoned not more than 5 years. . . .

²⁶ Briefing by IRS staff to Committee staff (May 13, 2013).

²⁷ *Id.*

Ms. Lois Lerner
May 14, 2013
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Miller, and Douglas Shulman. For purposes of this request, the Committee is not seeking information about any specific entity's application for tax exempt status at this time.

When producing documents to the Committee, please deliver production sets to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building. The Committee prefers, if possible, to receive all documents in electronic format.

The Committee on Oversight and Government Reform is the principal oversight committee of the House of Representatives and may at "any time" investigate "any matter" as set forth in House Rule X. An attachment to this letter provides additional information about responding to the Committee's request.

If you have any questions about this request, please contact Christopher Hixon or Brian Blase the Committee Staff at (202) 225-5074. Thank you for your attention to this matter.

Sincerely,



Darrell Issa
Chairman



Jim Jordan
Chairman
Subcommittee on Economic Growth,
Job Creation, and Regulatory Affairs

Enclosure

cc: The Honorable Elijah E. Cummings, Ranking Minority Member

The Honorable Matthew A. Cartwright, Ranking Minority Member
Subcommittee on Economic Growth, Job Creation and Regulatory Affairs

JW1559-000168

ONE HUNDRED THIRTEENTH CONGRESS
Congress of the United States
House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515-6143

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Minority (202) 225-5051

Responding to Committee Document Requests

1. In complying with this request, you are required to produce all responsive documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, and representatives acting on your behalf. You should also produce documents that you have a legal right to obtain, that you have a right to copy or to which you have access, as well as documents that you have placed in the temporary possession, custody, or control of any third party. Requested records, documents, data or information should not be destroyed, modified, removed, transferred or otherwise made inaccessible to the Committee.
2. In the event that any entity, organization or individual denoted in this request has been, or is also known by any other name than that herein denoted, the request shall be read also to include that alternative identification.
3. The Committee's preference is to receive documents in electronic form (i.e., CD, memory stick, or thumb drive) in lieu of paper productions.
4. Documents produced in electronic format should also be organized, identified, and indexed electronically.
5. Electronic document productions should be prepared according to the following standards:
 - (a) The production should consist of single page Tagged Image File ("TIF"), files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
 - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
 - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
 - (d) All electronic documents produced to the Committee should include the following fields of metadata specific to each document;

BEGDOC, ENDDOC, TEXT, BEGATTACH, ENDATTACH,
PAGECOUNT, CUSTODIAN, RECORDTYPE, DATE, TIME, SENTDATE,
SENTTIME, BEGINDATE, BEGINTIME, ENDDATE, ENDTIME, AUTHOR, FROM,

CC, TO, BCC, SUBJECT, TITLE, FILENAME, FILEEXT, FILESIZE, DATECREATED, TIMECREATED, DATELASTMOD, TIMELASTMOD, INTMSGID, INTMSGHEADER, NATIVELINK, INTFILPATH, EXCEPTION, BEGATTACH.

6. Documents produced to the Committee should include an index describing the contents of the production. To the extent more than one CD, hard drive, memory stick, thumb drive, box or folder is produced, each CD, hard drive, memory stick, thumb drive, box or folder should contain an index describing its contents.
7. Documents produced in response to this request shall be produced together with copies of file labels, dividers or identifying markers with which they were associated when the request was served.
8. When you produce documents, you should identify the paragraph in the Committee's schedule to which the documents respond.
9. It shall not be a basis for refusal to produce documents that any other person or entity also possesses non-identical or identical copies of the same documents.
10. If any of the requested information is only reasonably available in machine-readable form (such as on a computer server, hard drive, or computer backup tape), you should consult with the Committee staff to determine the appropriate format in which to produce the information.
11. If compliance with the request cannot be made in full by the specified return date, compliance shall be made to the extent possible by that date. An explanation of why full compliance is not possible shall be provided along with any partial production.
12. In the event that a document is withheld on the basis of privilege, provide a privilege log containing the following information concerning any such document: (a) the privilege asserted; (b) the type of document; (c) the general subject matter; (d) the date, author and addressee; and (e) the relationship of the author and addressee to each other.
13. If any document responsive to this request was, but no longer is, in your possession, custody, or control, identify the document (stating its date, author, subject and recipients) and explain the circumstances under which the document ceased to be in your possession, custody, or control.
14. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you are required to produce all documents which would be responsive as if the date or other descriptive detail were correct.
15. Unless otherwise specified, the time period covered by this request is from January 1, 2009 to the present.
16. This request is continuing in nature and applies to any newly-discovered information. Any record, document, compilation of data or information, not produced because it has not been

located or discovered by the return date, shall be produced immediately upon subsequent location or discovery.

17. All documents shall be Bates-stamped sequentially and produced sequentially.
18. Two sets of documents shall be delivered, one set to the Majority Staff and one set to the Minority Staff. When documents are produced to the Committee, production sets shall be delivered to the Majority Staff in Room 2157 of the Rayburn House Office Building and the Minority Staff in Room 2471 of the Rayburn House Office Building.
19. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee.

Schedule Definitions

1. The term “document” means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records, notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, inter-office and intra-office communications, electronic mail (e-mail), contracts, cables, notations of any type of conversation, telephone call, meeting or other communication, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto), and graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, microfiche, microfilm, videotape, recordings and motion pictures), and electronic, mechanical, and electric records or representations of any kind (including, without limitation, tapes, cassettes, disks, and recordings) and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term “communication” means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether in a meeting, by telephone, facsimile, email (desktop or mobile device), text message, instant message, MMS or SMS message, regular mail, telexes, releases, or otherwise.

3. The terms “and” and “or” shall be construed broadly and either conjunctively or disjunctively to bring within the scope of this request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
4. The terms “person” or “persons” mean natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures, proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, or other units thereof.
5. The term “identify,” when used in a question about individuals, means to provide the following information: (a) the individual's complete name and title; and (b) the individual's business address and phone number.
6. The term “referring or relating,” with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with or is pertinent to that subject in any manner whatsoever.
7. The term “employee” means agent, borrowed employee, casual employee, consultant, contractor, de facto employee, independent contractor, joint adventurer, loaned employee, part-time employee, permanent employee, provisional employee, subcontractor, or any other type of service provider.