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From: Cook Janine
Sent: Thursday, May 09, 2013 7:22 PM
To: Kindell Judith E; Brown Susan D
Subject: FW: Thanks for Your Support!
Attachments: Meeting notes 4-30-13 with JC.docx

Judy, did you send these along? You responded "sure" so I wasn't sure what that meant. I haven't had a chance to get back to them this afternoon. Your notes are so detailed that I'm sure you didn't miss much, if anything. In the draft above, I had a few edits that are in track changes; You'll want to look at those and finalize before sending to Nikole.

Since these are detailed, Nikole might want something more summary in fashion. We can help with that if you want.

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

From: Cook Janine
Sent: Thursday, May 09, 2013 1:06 PM
To: Kindell Judith E
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

didn't get too far. Do you want to see if Nikole needs these now in draft?

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]
Sent: Thursday, May 09, 2013 11:46 AM
To: Cook Janine
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

Here is the latest version of my notes.

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

From: Cook Janine [mailto:Janine.Cook@irscounsel.treas.gov]
Sent: Thursday, May 09, 2013 9:15 AM
To: Kindell Judith E
Subject: RE: Thanks for Your Support!

now i'm running behind. Have meeting at 10 and will turn to this at 11.

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]
Sent: Wednesday, May 08, 2013 5:11 PM
To: Cook Janine
Subject: RE: Thanks for Your Support!

I'm still slogging my way through (still getting sidetracked), but I thought I would share what I have so far.

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

From: Cook Janine [mailto:Janine.Cook@irs.counsel.treas.gov]
Sent: Wednesday, May 08, 2013 8:56 AM
To: Kindell Judith E
Subject: Re: Thanks for Your Support!

I understand. :)

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]
Sent: Wednesday, May 08, 2013 08:30 AM
To: Cook Janine
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

I'm sorry - I meant to finish up my notes yesterday but got sidetracked. I'm working on them now and will get them to you as soon as possible.

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

From: Kindell Judith E
Sent: Tuesday, May 07, 2013 8:50 AM
To: Cook Janine
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

I'm still finishing them up, but I will as soon as I finish.

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

From: Cook Janine [mailto:Janine.Cook@irs.counsel.treas.gov]
Sent: Tuesday, May 07, 2013 8:45 AM
To: Kindell Judith E
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

Judy, if you want to send your notes to me first, I can do a quick scan of my 14 pages and see if I have anything to add before sending to Nikole?

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]
Sent: Tuesday, May 07, 2013 12:33 AM
To: Barre Catherine M; Cook Janine
Cc: Flax Nikole C
Subject: Re: Thanks for Your Support!

Yes

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

From: Barre Catherine M
Sent: Monday, May 06, 2013 11:05 PM Eastern Standard Time
To: Kindell Judith E; Cook Janine
Cc: Flax Nikole C
Subject: RE: Thanks for Your Support!

Today Steve asked if he could get set of meeting notes by late Wednesday or Thursday. Is that possible?

Thanks

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

From: Kindell Judith E

Sent: Wednesday, May 01, 2013 4:29 PM

To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne

Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M

Subject: RE: Thanks for Your Support!

I will circulate my notes once I get them typed up, but in the meantime, I thought I would circulate our to -do list. Lois and I talked last night about getting the info and I have included our thoughts on who would get it. Let me know if I have missed anything.

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

From: Cook Janine [mailto:Janine.Cook@irscounsel.treas.gov]

Sent: Wednesday, May 01, 2013 12:48 PM

To: Lerner Lois G; Flax Nikole C; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

14 pages worth....

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

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]

Sent: Wednesday, May 01, 2013 12:20 PM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I didn't. I know Judy and Nan took some --not sure they are comprehensive. I'm guessing Janine also had some

Lois G. Lerner

Director of Exempt Organizations

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

From: Flax Nikole C

Sent: Wednesday, May 01, 2013 12:16 PM

To: Lerner Lois G; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I thought it went well. Did anyone take good notes that we can type up for Steve? We will also set up some time to talk him thorough the discussion before his hearing.

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

From: Lerner Lois G

Sent: Wednesday, May 01, 2013 10:26 AM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: Thanks for Your Support!

Yesterday's marathon went well thanks to "the village." Glad to have all of you as part of that village.
Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

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From: Flax Nikole C
Sent: Thursday, May 09, 2013 3:28 PM
To: Lemons Terry L (Terry.L.Lemons@irs.gov); Eldridge Michelle L (MICHELLE.L.ELDRIDGE@irs.gov)
Subject: FW: data question

See figures below. Number of approvals is slightly higher as well.

From: Paz Holly O
Sent: Thursday, May 09, 2013 4:26 PM
To: Flax Nikole C; Lerner Lois G
Subject: RE: data question

Increase in section 501c4 applications
2008 - 1410
2009 - 1571
2010 - 1591
2011 - 2242
2012 - 3398
2013 - 2,092 (through March 26, 2013)

From: Flax Nikole C
Sent: Thursday, May 09, 2013 4:21 PM
To: Lerner Lois G; Paz Holly O
Subject: Re: data question

Right - this is fine - just need the application numbers.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 04:01 PM Eastern Standard Time
To: Paz Holly O; Flax Nikole C
Subject: RE: data question

Don't think we need that--we're focusing on the 300--so don't kill your self

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, May 09, 2013 3:30 PM
To: Lerner Lois G; Flax Nikole C
Subject: RE: data question

136 c4 approvals as of 5/9/13

23 c4 withdrawn (I think the reference to 30 must have been to all withdrawn apps - c3 and c4 as that number now stands at 37)

Will get back to you as to total number of c4 apps shortly. Have a meeting I have to do.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 2:32 PM
To: Flax Nikole C; Paz Holly O
Subject: RE: data question

Have sent Cindy the question

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, May 09, 2013 2:30 PM
To: Lerner Lois G; Paz Holly O
Subject: RE: data question

Yes

From: Lerner Lois G
Sent: Thursday, May 09, 2013 2:23 PM
To: Flax Nikole C; Paz Holly O
Subject: RE: data question

I assume you want you want to know about whether the 120 or 30 have increased, not whether we've received more applications

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, May 09, 2013 1:59 PM
To: Paz Holly O; Lerner Lois G
Subject: data question

Is the following the most recent or has there been any movement we should recognize. Thanks

- Of the approximately 300 section 501(c)(4) advocacy cases, more than 120 have been approved and nearly 30 have withdrawn.

From: Grodnitzky Steven
Sent: Monday, May 13, 2013 8:38 AM
To: Goehausen Hilary; Cundiff Susan M
Subject: FW: Action: May SCRs due COB 05/17/2013
Attachments: SCR April 2013 Advocacy Orgs.doc; SCR April 2013 (b)(3)/6103 SCR April 2013 (b)(3)/6103 SCR April 2013 (b)(3)/6103 SCR April 2013 (b)(3)/6103 SCR April 2013 HMOs PPOs Related Health Care Orgs.doc; SCR April 2013 (b)(3)/6103 SCR April 2013 Medical Marijuana.doc; SCR April 2013 Newspaper Cases.doc; SCR April 2013 (b)(3)/6103 SCR April 2013 Pooled Trust Cases.doc; SCR April 2013 (b)(3)/6103 SCR April 2013 (b)(3)/6103 SCR April 2013 (b)(3)/6103

Importance: High

Please complete the SCRs by COB Wednesday, May 15th. Thank you.

From: Trilli Darla J
Sent: Friday, May 10, 2013 3:18 PM
To: Grodnitzky Steven; Shoemaker Ronald J; Lieber Theodore R; Salins Mary J; Biss Meghan R; Megosh Andy; Thomas Cindy M
Cc: Trilli Darla J
Subject: Action: May SCRs due COB 05/17/2013
Importance: High

SCRs for May updates.

Need these updated by COB Friday, May 17, 2013. I apologize for the short turnaround.

Mike is taking leave starting the 22nd and our meeting with Holly to go over these is at 10am on the 21st.

Thanks, Darla

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CASE NAME: HMOs, PPOs, or similar type health care organizations. TIN/EIN: POA: None	TAX PERIODS: 2006 and forward EARLIEST STATUTE DATE:
FUNCTION REPORTING: POD: Washington, D.C.	INITIAL REPORT X FOLLOW-UP REPORT FINAL REPORT
SENSITIVE CASE CRITERIA: Likely to attract media or Congressional attention Unique or novel issue Affects large number of taxpayers Potentially involves large dollars (\$10M or greater) Other (explain in Case Summary)	
FORM TYPE(S): (1) Form 1023 (2) Form 1024	START DATE: 1/26/2013
POTENTIAL DOLLARS INVOLVED (IF > \$10M) : Unknown	CRIMINAL REFERRAL? Unknown IF YES, WHEN? Freeze Code TC 914 (Yes or No)
CASE OR ISSUE SUMMARY: The following organizations applied for recognition of exemption under either section 501(c)(3) to further a charitable purpose , or section 501(c)(4) to promote social welfare . They include HMOs, PPOs, or organizations engaging in similar health care activities. EOD transfers the applications directly to EO Technical and they are worked in Washington. Due to the sensitive nature of issues associated with these organizations, the cases are coordinated with TEGE Counsel.	
CURRENT SIGNIFICANT ACTIONS ON CASE: A. <u>Applications for Exemption – Open Cases</u> (1) <i>b(3)\6103; non-responsive</i> 501(c)(3) [REDACTED] <i>b(3)\6103; non-responsive</i> (2) <i>b(3)\6103; non-responsive</i> 501(c)(3) <i>b(3)\6103; non-responsive</i> (3) <i>b(3)\6103; non-responsive</i> 501(c)(3) <i>b(3)\6103; non-responsive</i> (4) <i>(b)(3)/6103</i> 501(c)(4) – [REDACTED] <i>(b)(3)/6103</i> (5) <i>(b)(3)/6103</i> 501(c)(4) [REDACTED] <i>(b)(3)/6103</i> (6) <i>(b)(3)/6103</i> 501(c)(4) <i>(b)(3)/6103</i>	

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(14)	b(3)\6103; non-responsive 501(c)(3) b(3)\6103; non-responsive								
B. Applications for Exemption – Closed Cases – All favorable									
(1)	b(3)\6103; non-responsive 501(c)(3) b(3)\6103; non-responsive								
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BARRIERS TO RESOLUTION, IF ANY:									
SUBMITTED BY: Steven Grodnitzky SE:T:EO:RA:T:1	MANAGER: MICHAEL SETO, SE:T:EO:RA								
DATE: March 24, 2013									

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From: Kindell Judith E
Sent: Sunday, May 12, 2013 9:44 PM
To: Marks Nancy J
Subject: Fw: Thanks for Your Support!
Attachments: Meeting notes 4-30-13.docx

Sorry, I got a little distracted

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

From: Kindell Judith E
Sent: Thursday, May 09, 2013 11:45 AM Eastern Standard Time
To: Cook Janine
Cc: Brown Susan D <Susan.D.Brown@irsounsel.treas.gov>
Subject: RE: Thanks for Your Support!

Here is the latest version of my notes.

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

From: Cook Janine [<mailto:Janine.Cook@irsounsel.treas.gov>]
Sent: Thursday, May 09, 2013 9:15 AM
To: Kindell Judith E
Subject: RE: Thanks for Your Support!

now i'm running behind. Have meeting at 10 and will turn to this at 11.

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

From: Kindell Judith E [<mailto:Judith.E.Kindell@irs.gov>]
Sent: Wednesday, May 08, 2013 5:11 PM
To: Cook Janine
Subject: RE: Thanks for Your Support!

I'm still slogging my way through (still getting sidetracked), but I thought I would share what I have so far.

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

From: Cook Janine [<mailto:Janine.Cook@irsounsel.treas.gov>]
Sent: Wednesday, May 08, 2013 8:56 AM
To: Kindell Judith E
Subject: Re: Thanks for Your Support!

I understand. :)

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

From: Kindell Judith E [<mailto:Judith.E.Kindell@irs.gov>]
Sent: Wednesday, May 08, 2013 08:30 AM
To: Cook Janine
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

I'm sorry - I meant to finish up my notes yesterday but got sidetracked. I'm working on them now and will get them to you as soon as possible.

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

From: Kindell Judith E
Sent: Tuesday, May 07, 2013 8:50 AM
To: Cook Janine
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

I'm still finishing them up, but I will as soon as I finish.

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

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]
Sent: Tuesday, May 07, 2013 8:45 AM
To: Kindell Judith E
Cc: Brown Susan D
Subject: RE: Thanks for Your Support!

Judy, if you want to send your notes to me first, I can do a quick scan of my 14 pages and see if I have any thing to add before sending to Nikole?

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

From: Kindell Judith E [<mailto:Judith.E.Kindell@irs.gov>]
Sent: Tuesday, May 07, 2013 12:33 AM
To: Barre Catherine M; Cook Janine
Cc: Flax Nikole C
Subject: Re: Thanks for Your Support!

Yes

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

From: Barre Catherine M
Sent: Monday, May 06, 2013 11:05 PM Eastern Standard Time
To: Kindell Judith E; Cook Janine
Cc: Flax Nikole C
Subject: RE: Thanks for Your Support!

Today Steve asked if he could get set of meeting notes by late Wednesday or Thursday. Is that possible?

Thanks

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

From: Kindell Judith E
Sent: Wednesday, May 01, 2013 4:29 PM
To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne
Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M
Subject: RE: Thanks for Your Support!

I will circulate my notes once I get them typed up, but in the meantime, I thought I would circulate our to -do list. Lois and I talked last night about getting the info and I have included our thoughts on who would get it. Let me know if I have missed anything.

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

From: Cook Janine [mailto:Janine.Cook@irscounsel.treas.gov]

Sent: Wednesday, May 01, 2013 12:48 PM

To: Lerner Lois G; Flax Nikole C; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

14 pages worth....

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

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]

Sent: Wednesday, May 01, 2013 12:20 PM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I didn't. I know Judy and Nan took some --not sure they are comprehensive. I'm guessing Janine also had some

Lois G. Lerner

Director of Exempt Organizations

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

From: Flax Nikole C

Sent: Wednesday, May 01, 2013 12:16 PM

To: Lerner Lois G; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I thought it went well. Did anyone take good notes that we can type up for Steve? We will also set up some time to talk him thorough the discussion before his hearing.

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

From: Lerner Lois G

Sent: Wednesday, May 01, 2013 10:26 AM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: Thanks for Your Support!

Yesterday's marathon went well thanks to "the village." Glad to have all of you as part of that village.

Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

(b)(5) DP

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From: Lerner Lois G
Sent: Thursday, May 26, 2011 5:18 PM
To: Paz Holly O; Fish David L
Subject: FW: C 4

Importance: High

I'm told Chip Hull is heading up the up--scaring me--can I get a briefing?

Lois G. Lerner

Director, Exempt Organizations

From: Lerner Lois G
Sent: Thursday, May 26, 2011 5:45 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Paz Holly O
Subject: RE: C 4

(b)(3)/6103

Lois G. Lerner

Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was [REDACTED] and the other

(b)(3)/6103

Nan

From: Lerner Lois G
Sent: Thursday, June 02, 2011 4:47 PM
To: Downing Nanette M
Cc: Grant Joseph H
Subject: RE: C 4

Yep--and it will probably be happening more. While the application is pending, they do need to file, (b)(3)/6103 So we need a process

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, June 02, 2011 2:54 PM
To: Lerner Lois G
Cc: Grant Joseph H
Subject: RE: C 4

I think we need to discuss this. We do not currently have anything in place when the org has a pending exemption. What if the exemption never finalizes or is denied? How would we know or track that. As of right now, any org that is not exempt we send to SBSE because they should be filing some type of return. I think this may be a brand new arena for us in exam or classification.

From: Lerner Lois G
Sent: Tuesday, May 31, 2011 4:03 PM
To: Downing Nanette M
Cc: Grant Joseph H
Subject: RE: C 4

[REDACTED]

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Tuesday, May 31, 2011 4:50 PM
To: Lerner Lois G
Cc: Grant Joseph H
Subject: RE: C 4

If they are not exempt we send over to SBSE as they would be an 1120 filer.

From: Lerner Lois G
Sent: Tuesday, May 31, 2011 2:33 PM
To: Downing Nanette M
Cc: Grant Joseph H
Subject: RE: C 4

Sorry-- I was just trying to figure out what is where.

(b)(3)/6103

What happens when you get a referral on an org that hasn't been approved or filed?

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Monday, May 30, 2011 7:26 PM
To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Seto Michael C; Fish David L; Kindell Judith E
Subject: RE: C 4

shoot me an email if you want me to join the last bit of the conversation. Otherwise I will just wait to hear from you about this.

From: Lerner Lois G
Sent: Friday, May 27, 2011 5:27 PM
To: Downing Nanette M; Grant Joseph H
Cc: Urban Joseph J; Fish David L; Seto Michael C; Fish David L; Kindell Judith E
Subject: RE: C 4

(b)(3)/6103

Nan--

we may not need you for the first part, but will want to talk to you also at some point

Lois G. Lerner
Director, Exempt Organizations

From: Downing Nanette M
Sent: Thursday, May 26, 2011 3:55 PM

To: Lerner Lois G; Grant Joseph H
Cc: Urban Joseph J; Fish David L
Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was [REDACTED] and the other

[REDACTED]
(b)(3)/6103

Nan

!

From: Lerner Lois G
Sent: Tuesday, June 07, 2011 1:43 PM
To: Williams Grant; Kindell Judith E
Cc: Lemons Terry L; Burke Anthony; Eldridge Michelle L
Subject: RE: checking in on any answers you may have, and perhaps a few

OK--I'm getting a little tired of this guy.

Judy will provide:

1. the two statutory definitions of political expenditure. The 501(c)(3) language, which is tracked in the regs for (c)(4)s, and the 527 definition which applies to (c)(4)s through the 527(f) tax --a tax on investment income to the extent a c4 has political expenditures.
2. the link to the 2002 CPE text that discusses political campaign activity for c3s, 4s, 5s and 6s.
3. A repetition of her previous answer as to what you get if you apply for c4 rather than self declare.

As to how does the IRS definition of political activity or expense match or differ from those that trigger reporting requirements to the FEC, I'm not answering that. I'll give him my definition and he'll need to compare that with the FEC definition--we can't and shouldn't speak to how the FEC sees it.

As to the 2007 990 and line 81 instructions --we don't have that--you guys may be able to find it on the Forms and Pubs page.

Lois G. Lerner
Director, Exempt Organizations

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

From: CHARLES BABCOCK, BLOOMBERG/ NEWSROOM: [<mailto:cbabcock1@bloomberg.net>]
Sent: Tuesday, June 07, 2011 10:59 AM
To: Williams Grant
Subject: checking in on any answers you may have, and perhaps a few

checking in on any answers you may have, and perhaps a few bottom line questions that will help us both cut through the details: 1. how does the IRS define political expenditures? (as it worded question 81 up thru 2007 form 990 --and btw i'd like a copy of the "line 81 instructions" which i cant find on website) 2. how does the IRS definition of political activity or expense match or differ from those that trigger reporting requirements to the FEC? 3. what benefits does the c4,5,6 exemption bestow on an applicant? (i.e. if you dont require them to even file a 1024, why does anyone apply? is there some

tangible tax exemption?)

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,

(b)(5) DP

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.

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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,

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

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--- progress on any of my newest questions? and
what btw is the date of the eo director's FY 2011 work plan
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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,

(b)(5) DP

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

Sincerely,

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

From: Seto Michael C
Sent: Friday, July 15, 2011 4:21 PM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Letourneau Diane L
Cc: Neuhart Paige; Trilli Darla J; Paz Holly O
Subject: SCR Report for June
Attachments: SCR Report Table June 2011.doc

Summary of SCR cases

An Item of interest:

(b)(3)/6103

**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		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)			(b)(3)/6103	
2.									

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

(b)(3)/6103 & (b)(5)/DP

From: Keith Frank
Sent: Tuesday, July 19, 2011 12:25 PM
To: Eldridge Michelle L; Lemons Terry L; Lerner Lois G; Grant Joseph H; Flax Nikole C
Cc: Burke Anthony; Williams Grant
Subject: RE: New York Times -- Stephanie Strom -- c4s/determination letters

As I understand it, we could not be trying to send a message by releasing these because their release is required under IRC 6110.

From: Eldridge Michelle L
Sent: Tuesday, July 19, 2011 12:06 PM
To: Keith Frank; Lemons Terry L; Lerner Lois G; Grant Joseph H; Flax Nikole C
Cc: Burke Anthony; Williams Grant
Subject: FW: New York Times -- Stephanie Strom -- c4s/determination letters

FYI--We have heard back from Stephanie Strom with more details on her story, and her questions as it relates to some (c)4 determination letters. Here are two of the three determination letters she references. She is asking for answers today--not sure if that is her firm deadline or not...

The link to 201128034 is: <http://www.irs.gov/pub/irs-wd/1128034.pdf>
The link to 201128035 is: <http://www.irs.gov/pub/irs-wd/1128035.pdf>

I'm attaching the two e-mails relating to Stephanie's inbound from today and yesterday with her questions. Please advise on how you wish to handle. Thanks. --Michelle

From: Strom, Stephanie [<mailto:ssstrom@nytimes.com>]
Sent: Tuesday, July 19, 2011 10:59 AM
To: Williams Grant
Subject: RE: Hi Stephanie

So, I'm working on a story about the three determination letters related to c4s that were released last Thursday. Not surprisingly, there's pretty intense speculation about who they might be and whether the I.R.S. is trying to send a "message" with the release -- I know, I know, you all can't say ANYTHING about any of that.

What I'm trying to get a grip on is what c4s are required to do in terms of filing for I.R.S. approval of tax exemption. I know there is a form, 1024, for them to use, but I was talking with Lois awhile back, and she said that c4s in fact do not have to seek approval. They can set themselves up, begin operating and then file a 990 at the end of their fiscal year, which sort of automatically creates their exemption. So one question is: Are all c4s required to file a 1024 and get a determination letter from the I.R.S.? If so, at what point in their lifetime do they have to do that?

My other question is one you all probably can't/won't answer, but I have to ask: When did these three organizations file their 1024s? The determination letters say two were founded in 2006 and one in 2007 -- did they apply within a year of their creation? The letters also refer to application forms for the years 2010 and 2011, which suggests maybe the application was more recent.

Many thanks, Stephanie

From: Burke Anthony
Sent: Monday, July 18, 2011 12:36 PM
To: Eldridge Michelle L
Subject: New York Times 501(c)(4)s denied exempt status

Michelle, I received a call from New York Times reporter Stephanie Strom who asked for a particular PLR: 201128092, which has not yet been posted to IRS.gov. Stephanie became interested in the PLR after reading an item by Paul Streckfus in the EO Journal:

EO Tax Journal 2011-118

Paul Streckfus, July 18, 2011 at 5:50 am

Some interesting PLRs were released by the IRS last week. Today I'll note the ones I found of most interest.

1 – IRS Denies 501(c)(4) Status to Three Organizations Primarily Benefiting a Political Party

2 – Three-Year Wait Rewarded in PLR 201128027

The IRS probably got it right in this private letter ruling (reprinted below), involving an ecumenical ministry that offers a broad range of social service programs to the poor and distressed or underprivileged, but lots of slippery slopes had to be scaled, at least in my opinion. Continue... <http://eotaxjournal.com/eotj/>

She said the article referred to PLRs 201128034 and 201128035. PLR 201128024 is a final determination that an entity did not qualify for exempt status under 501(c)(4) because its activities were conducted primarily for the benefit of a political party and a private group of individuals rather than the community as a whole. When I explained that the PLR referred to in the Paul Streckfus item, 20112892 was probably in the process of being redacted before it could be placed in IRS.gov, she had no follow-up questions.

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 1:05 PM
To: Eldridge Michelle L
Subject: Re: New York Times -- Stephanie Strom -- c4s/determination letters

I am out of this meeting at 2:30. Can we talk then?
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Eldridge Michelle L
Sent: Tuesday, July 19, 2011 12:05 PM
To: Keith Frank; Lemons Terry L; Lerner Lois G; Grant Joseph H; Flax Nikole C
Cc: Burke Anthony; Williams Grant
Subject: FW: New York Times -- Stephanie Strom -- c4s/determination letters

FYI--We have heard back from Stephanie Strom with more details on her story, and her questions as it relates to some (c)4 determination letters. Here are two of the three determination letters she references. She is asking for answers today--not sure if that is her firm deadline or not...

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I'm attaching the two e-mails relating to Stephanie's inbound from today and yesterday with her questions. Please advise on how you wish to handle. Thanks. --Michelle

From: Strom, Stephanie [<mailto:ssstrom@nytimes.com>]
Sent: Tuesday, July 19, 2011 10:59 AM
To: Williams Grant
Subject: RE: Hi Stephanie

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Many thanks, Stephanie

From: Burke Anthony
Sent: Monday, July 18, 2011 12:36 PM

To: Eldridge Michelle L

Subject: New York Times 501(c)(4)s denied exempt status

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EO Tax Journal 2011-118

Paul Streckfus, July 18, 2011 at 5:50 am

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She said the article referred to PLRs 201128034 and 201128035. PLR 201128024 is a final determination that an entity did not qualify for exempt status under 501(c)(4) because its activities were conducted primarily for the benefit of a political party and a private group of individuals rather than the community as a whole. When I explained that the PLR referred to in the Paul Streckfus item, 20112892 was probably in the process of being redacted before it could be placed in IRS.gov, she had no follow-up questions.

From: Lerner Lois G
Sent: Tuesday, July 19, 2011 1:06 PM
To: Fish David L
Cc: Paz Holly O; Letourneau Diane L
Subject: Fw: New York Times -- Stephanie Strom -- c4s/determination letters

Will be talking to them at 2:30 Do we know why the denial dated Jan and the one dated April came out same time? Is it redaction? Why would one take so much longer than the other? Not complaining --just need something to say. Thanks
Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Tuesday, July 19, 2011 12:17 PM
To: Lerner Lois G; Kindell Judith E; Fish David L
Subject: FW: New York Times -- Stephanie Strom -- c4s/determination letters

Can someone talk to me about this? Thanks
2-5055

From: Eldridge Michelle L
Sent: Tuesday, July 19, 2011 12:06 PM
To: Keith Frank; Lemons Terry L; Lerner Lois G; Grant Joseph H; Flax Nikole C
Cc: Burke Anthony; Williams Grant
Subject: FW: New York Times -- Stephanie Strom -- c4s/determination letters

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From: Strom, Stephanie [<mailto:ssstrom@nytimes.com>]
Sent: Tuesday, July 19, 2011 10:59 AM
To: Williams Grant
Subject: RE: Hi Stephanie

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From: Fish David L
Sent: Tuesday, July 19, 2011 1:14 PM
To: Flax Nikole C
Cc: Kindell Judith E; Lerner Lois G
Subject: FW: EO Tax Journal 2011-118

From: paul streckfus [mailto:pstreckfus@gmail.com]
Sent: Monday, July 18, 2011 5:43 AM
To: paul streckfus
Subject: EO Tax Journal 2011-118

*From the Desk of Paul Streckfus,
Editor, EO Tax Journal*

Email Update 2011-118 (Monday, July 18, 2011)
Copyright 2011 Paul Streckfus

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1 - IRS Denies 501(c)(4) Status to Three Organizations Primarily Benefiting a Political Party

Three organizations that appear similar to the organization that was the subject of a 1989 Tax Court opinion (*American Campaign Academy v. Commissioner*, 92 T.C. 1053) were denied exemption under section 501(c)(4) in Denial Letters 201128032, 201128034, and 201128035. Denial letter 201128034 is set out below. The facts of each denial letter, while heavily redacted, appear to describe separate organizations, which have different dates of formation in 2006 -2007. The Law and Analysis in each denial letter is the same. None of the organizations appears to have protested the IRS's proposed determination. Since section 501(c)(4) status is at issue, they are not entitled to judicial review under section 7428 of the Code, but will probably still end up in court.

PLR 201128034

Contact Person: * * *
Identification Number: * * *
Contact Number: * * *
Employer Identification Number: * * *
Form Required To Be Filed: * * *
Tax Years: * * *

UIL: 501.04-00
Date: April 18, 2011
Release Date: 7/15/2011

Dear * * *:

This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(4).

We made this determination for the following reason(s):

You are not operated primarily to promote social welfare because your activities are conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file. File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at [1-800-829-1040](tel:1-800-829-1040) or the IRS Customer Service number for businesses, [1-800-829-4933](tel:1-800-829-4933). The IRS Customer Service number for people with hearing impairments is [1-800-829-4059](tel:1-800-829-4059).

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Internal Revenue Service
Washington, D.C.

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

* * * * *

Contact Person: * * *
Identification Number: * * *
Contact Number: * * *
FAX Number: * * *
Employer Identification Number: * * *

UIL Code: 501.04-00
Date: January 14, 2011

LEGEND:

State = * * *
Party = * * *

Dear * * *:

We have considered your application for recognition of exemption from Federal income tax under section 501(a) of the Internal Revenue Code ("the Code"). Based on the information provided, we have concluded that you do not qualify for exemption under section 501(c)(4) of the Code. The basis for our conclusion is set forth below.

FACTS

You were formed on December 21, 2007 as a nonprofit corporation under the laws of State. Your Articles of Organization and Bylaws state that your purpose is

and 4. To operate exclusively to promote the social welfare within the meaning of Section 501(c)(4) of the Internal Revenue Code. . . .

Your Articles of Organization and Bylaws provide that upon dissolution, your assets shall be dedicated to social welfare purposes, and that no part of your net income or assets may inure to the benefit of any director, officer, member, or private individual.

You conduct a training program of *** for *** who are members of Party. The program includes sessions covering

Your recruitment of students began in *** and training began in ***

You charge *** in tuition for your training program. You provide scholarships for tuition expenses and make payment plans available. You select up to *** participants each year.

Your website contains a number of materials related to your training program. Your homepage states that you are *** You describe your curriculum as follows:

Your website states that you select students for your training program based on evidence of

Your 2010 Program Application shows that one of your training dates coincides with the [Party]'s State Convention and contains a *** and, *** If an applicant did not *** is then asked to explain why.

Your 2010 Program Application also contains a *** which requires the applicant to affirm the following:

On your *** page you state you are, *** On the same page, you state,

In answering the question "What makes [you] unique?" you state that you are *** You also state that you are

In materials you provide to potential donors, you note your program's success by stating that the ***

LAW

Section 501(a) of the Internal Revenue Code ("Code") exempts from federal income tax organizations described in section 501(c)(4).

Section 501(c)(4)(A) of the Code describes civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare. Section 501(c)(4)(B) indicates that subparagraph (A) shall not apply to an entity unless no part of the net earnings of such entity inures to the benefit of any private shareholder or individual.

Section 1.501(c)(4)-1(a)(1) of the Income Tax Regulations ("regulations") states that to be described in section 501(c)(4) of the Code, an organization must not be organized or operated for profit and must be operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2) of the regulations states that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. Additionally, it states that an organization described within this section is operated primarily for the purpose of bringing about civic betterments and social improvements.

Rev. Rul. 73-306, 1973-2 C.B. 179, provides that an organization formed for the purpose of promoting the common interest of tenants who reside in a particular apartment complex does not qualify for exemption under section 501(c)(4) of the Code. Any person regularly living in the complex was eligible for membership. The organization represented its member-tenants in negotiations with the

management of the complex in order to secure better maintenance and services, as well as reasonable rentals. The ruling holds that the organization was not described in section 501(c)(4) because it operated essentially to benefit its members and, thus, was not primarily engaged in activities that promote the common good and general welfare of the community. In contrast, Rev. Rul. 80-206, 1980-2 C.B. 185, holds that an organization formed to promote the legal rights of all tenants in a community, instead of limiting its benefits to member-tenants, does qualify for exemption under section 501(c)(4) of the Code.

Rev. Rul. 73-349, 1973-2 C.B. 179, holds that an organization formed to purchase groceries for its members at the lowest possible prices on a cooperative basis is not exempt under section 501(c)(4) of the Code. Rather, the organization was a cooperative enterprise operated primarily for the private economic benefit or convenience of its members, and provided only incidental benefit to the community.

Rev. Rul. 75-286, 1975-2 C.B. 210, describes an organization that was formed by the residents of a city block to preserve and beautify that block, to improve all public facilities within the block, and to prevent physical deterioration of the block. Its activities consisted of paying the city government to plant trees on public property within the block, organizing residents to pick up litter and refuse in the public streets and on public sidewalks within the block, and encouraging residents to take an active part in beautifying the block by placing shrubbery in public areas. Much of the public area improved by the organization was part of the public roadway lying between the sidewalk and the street in front of private property owned by members of the organization. Membership in the organization was restricted to residents of the block and those owning property or operating businesses there.

Because the activities enhanced the value of the members' property rights, the organization served the private interests of its members and did not qualify for exemption under section 501(c)(3). The restricted nature of its membership and limited area in which improvements were made were further indicators of private benefit. However, by beautifying and preserving public property in cooperation with the local government, the organization was considered to primarily promote the general welfare of the community even though its activities also benefited its members. Therefore, the organization did qualify under section 501(c)(4).

In *Erie Endowment v. United States*, 316 F.2d 151 (3d Cir. 1963), the court held that to qualify for exemption within the meaning of section 501(c)(4) of the Code, "the organization must be a community movement designed to accomplish community ends." *Id.* at 156.

In *Commissioner v. Lake Forest, Inc.*, 305 F.2d 814 (4th Cir. 1962), a corporation was organized by World War II veterans for the purpose of purchasing a government housing project and converting it to cooperative, nonprofit housing for its members. Individuals became members in the corporation by purchasing an apartment unit and, as such, the number of members was limited to the number of units available. The court held that the organization was not described in section 501(c)(4) of the Code because it was "a public-spirited but privately-devoted endeavor" that provided only incidental benefit to the community. *Id.* at 818. The organization did not promote social welfare because it furnished housing only to a certain group of individuals, rather than on a community basis, and did not offer a service or program for the direct betterment or improvement of the community as a whole.

In *New York State Association of Real Estate Boards Group Insurance Fund v. Commissioner*, 54 T.C. 1325 (1970), an association organized by a small group interested in obtaining group insurance did not qualify for exemption because it offered its benefits to only a limited class of its members and their employees. The court noted "[t]here is not in such an organization the requisite civic concern to constitute social welfare" required for qualification under section 501(c)(4). Where the primary benefit from an organization is limited to that organization's members, and not provided to the community as a whole, the organization is not operated primarily for the social welfare.

In *Contracting Plumbers Cooperative Restoration Corp. v. United States*, 488 F.2d 684 (2d Cir. 1973), *cert. denied*, 419 U.S. 827 (1974), plumbers working in New York City were responsible for the cuts they made in the city streets. Prior to the organization's existence, the city had repaired the cuts and billed the plumbers individually in what proved to be a highly inefficient system. The organization was formed in order to restore the city streets. It only repaired cuts made by its members. The joint effort of the plumbers reduced their liability and their expenses, and more efficiently repaired the city streets. While the court found that the program provided substantial benefits to the public, it concluded that the organization primarily served the private economic interests of its members and, thus, could not be considered exempt under section 501(c)(4) of the Code.

In *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), the organization's primary activity was to operate a school ("the Academy") training individuals for careers as political campaign professionals. The organization represented on its application for exemption that the Academy was an outgrowth of programs operated by the National Republican Congressional Committee ("NRCC") that were designed to train candidates and to train and subsequently place campaign professionals in Republican campaigns. In addition, the NRCC contributed physical assets to the Academy, two of the Academy's six full-time faculty members had been previously involved in the NRCC's training program, one of the Academy's three initial directors was the Executive Director of the NRCC at the time, and another initial director was a member of the Republican National Committee at the time. The Academy's activities were exclusively funded by the National Republican Congressional Trust. The Academy's curriculum included discussions concerning "How some Republicans have won Black votes," "NRCC/RNC/NRSC/State Party naughtiness," and "Use of GOP allies," without a counterbalance of comparable studies of other political parties.

While applicants to the Academy were not required to formally declare their political affiliation to attend the organization's school, the admission panel could deduce such affiliation from the campaign experiences and political references in the applications. The court found that this knowledge of an applicant's political affiliations allowed the admission panel to limit enrollment to applicants who were likely to subsequently work in Republican organizations and campaigns. Indeed, the court found that no graduate was known to affiliate with any political party other than the Republican Party. A substantial number of the members of the Academy's admission panel were affiliated with the Republican Party.

The Service determined that the organization operated for a substantial, non-exempt private purpose. The Tax Court agreed, holding the organization did not operate exclusively for exempt, educational purposes under section 501(c)(3) of the Code because it conducted its activities to benefit the private interests of Republican entities and candidates. Although these entities and candidates were not organization "insiders," the court stated that the conferral of nonincidental benefits on disinterested persons may cause an organization to serve a private interest. While the school had a legitimate educational program, it conducted these activities with the partisan objective of benefiting Republican candidates and entities. As such, a more than incidental private benefit was conferred on Republican entities and candidates who employed the Academy's students, one that precluded exemption under section 501(c)(3).

ANALYSIS

Based on the information you submitted with your application and in subsequent correspondence, you are not operated exclusively for the promotion of social welfare within the meaning of section 501(c)(4) of the Code because your activities primarily serve private interests. Therefore, you do not qualify for exemption from federal income tax as an organization described in section 501(c)(4).

Your activities do not primarily promote social welfare because you primarily benefit private individuals and interests.

An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community. Section 1.501(c)(4)-1(a)(2)(i) of the regulations. An organization recognized under section 501(c)(4) is operated primarily for the purpose of bringing about civic betterments and social improvements. *Id.*

To qualify for exemption under section 501(c)(4), an organization must primarily benefit the community as a whole, rather than select individuals or groups. *See Contracting Plumbers Coop. Restoration Corp., supra; New York State Ass'n of Real Estate Boards Group Ins. Fund, supra; Lake Forest, Inc., supra; Rev. Rul. 75-286, supra.* A section 501(c)(4) organization must be "a community movement designed to accomplish community ends." *Erie Endowment, supra.* As such, a tenants' organization that benefits all the tenants in the community qualifies for exemption, while one that directs its activities toward benefiting only its member-tenants does not. *Compare Rev. Rul. 80-206, supra, with Rev. Rul. 73-306, supra; see also Rev. Rul. 73-349, supra.* Therefore, conferring a sufficient amount of private benefit on select individuals will preclude exemption under section 501(c)(4) for an organization that would otherwise qualify. Even if an organization substantially benefits the community, it will fail to qualify for exemption if it primarily benefits private interests. *See Contracting Plumbers, supra.*

Educational activities undertaken to provide a partisan benefit are considered to serve private interests, rather than the common good. In *American Campaign Academy, supra*, the court denied exemption under section 501(c)(3) to a school organized to train individuals for careers as political campaign professionals because its educational activities were operated with the partisan purpose of benefiting Republican Party entities and candidates. The private benefit conferred on these persons was more than incidental, and thus demonstrated a substantial non-exempt purpose that precluded exemption. While you are requesting recognition as an organization described in section 501(c)(4) and not section 501(c)(3) (as was American Campaign Academy), the standard for determining what constitutes private benefit described in *American Campaign Academy* applies to both sections. As such, for purposes of both section 501(c)(3) and section 501(c)(4), an organization which conducts its educational activities to benefit a political party and its candidates serves private interests. And, as discussed above, an organization that primarily serves private interests fails to qualify for exemption under section 501(c)(4).

Thus, notwithstanding any benefit your educational activities may provide to the community, you fail to qualify for exemption because your training program primarily benefits the interests of the Party and its candidates. According to your Articles, Bylaws, and website, your primary activity is to train and recruit * * * who are members of Party to run for political office. Moreover, your program application asks prospective students to disclose specific details of their political participation as a member of Party, and clearly discloses that you limit your membership to registered members of the Party * * *. Like the school in *American Campaign Academy*, your purpose in conducting this activity is to provide education solely to individuals affiliated with a certain political party who want to enter politics. Indeed, you measure your success in terms of the number of your graduates who have won elective office representing the Party.

Because your primary activity is an educational program that is limited to * * * who are members of Party and is conducted with the partisan objective of increasing the number of Party's elected officials, you primarily serve private interests. Therefore, the operation

of your program does not promote social welfare within the meaning of section 501(c)(4) of the Code.

CONCLUSION

In summary, you are not operated primarily to promote social welfare because your activities are conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole. Accordingly, you do not qualify for exemption as an organization described in section 501(c)(4) of the Code and you must file federal income tax returns.

[Standard paragraphs deleted]

Sincerely,

Holly Paz, Acting Director
Exempt Organizations Rulings & Agreements
Internal Revenue Service
Washington, D.C.

2 - Three-Year Wait Rewarded in PLR 201128027

The IRS probably got it right in this private letter ruling (reprinted below), involving an ecumenical ministry that offers a broad range of social service programs to the poor and distressed or underprivileged, but lots of slippery slopes had to be scaled, at least in my opinion.

Query: Does this private letter ruling break new ground or is it sufficient to fall back on facts and circumstances (facts that are not all that clear)? I'm indebted to Bill Brockner for his analysis and comments, which I've tried to follow, but any errors are mine, which I'm sure he'll point out.

The IRS ruled in PLR 201128027 that "the use of the [community] center by tenants (to conduct substantially related activities and programs) will constitute substantially related use by you for purposes of section 514(b)(1)(A)." According to the statement of facts, "You would rent space at cost to clubs, community foundations, church groups, schools and other nonprofit organizations and individuals that respond to community needs." How is "cost" defined?

Are these facts covered by Rev. Rul. 69-572 (reprinted below) or Rev. Rul. 58-547, neither of which is cited in PLR 201128027? Rev. Rul. 69-572 states: "Because of the close connection between this organization and the charitable functions of the tenant - organizations, the rental of the organization's facilities at rates substantially below their fair rental value, and the operation by the organization with the intention of realizing an amount sufficient only to meet annual operating costs, the organization is dedicated to carrying out the charitable endeavors of the community chest and its member agencies." Rev. Rul. 58-547, on the other hand, holds that "a lease, the parties to which are both exempt under section 501(c)(3) of the Code and which otherwise constitutes a business lease within the meaning of section 514 of the Code, will not be considered as substantially related to the charitable purpose of the lessor solely because the lessee is likewise an exempt organization."

Is the organization described in PLR 201128027 sufficiently different from the organization described in Rev. Rul. 79-360, which describes a health club? In PLR 201128027, the annual membership fee has been set "at less than 20 percent of the fees charged by the other commercial centers in the neighborhoods." Anyone who has been a member of a health club or compared fees knows pricing varies all over the place, with various discounts available, with various plans of membership available, etc., so saying one club is 20 percent cheaper than others probably can't be established on any firm basis. The organization in PLR 201128027 says it "would turn no one away because of inability to pay." How does that work? Is it publicized? How is "inability to pay" defined?

As noted, facts and circumstances seem to play a big role in this ruling's rationale. The ruling indicates that the recreational facilities benefit a significant segment of an underserved population with affordable membership fees.

If all of this is not enough, the IRS cites the *Restatement (Second) of Trusts* for the proposition that an organization promoting the general happiness of a community is charitable. Does that include an organization giving out free beer? Or beer at cost? Suppose that's part of an ecumenical ministry? Are we on a number of slippery slopes with rulings like PLR 201128027?

PLR 201128027

Contact Person: * * *
Identification Number: * * *
Telephone Number: * * *

Employer Identification Number: * * *

UIL: 513.00-00, 514.00-00

Release Date: 7/15/2011

Date: April 20, 2011

LEGEND:

B = * * *

M = * * *

N = * * *

Dear * * *:

We have considered your request dated, December 3, 2007, for a ruling with regard to whether income produced by rental and exempt activities related to your debt-financed property will be included in the computation of your unrelated business income under section 512 of the Internal Revenue Code (Code).

B made a charitable bequest to M, an ecumenical ministry that offers a broad range of social service programs to the poor and distressed or underprivileged. M consists of several territories, including N and you. B made the gift to M to construct community centers in underserved urban areas throughout the country that would attend to spiritual and physical needs, combat juvenile delinquency and provide opportunities for community building. The trust requires M to place one-half of the gift in a capital building fund to purchase real properties and construct, furnish and equip the community centers, and place the other half in a separate endowment fund to be used for employee salaries and other operating expenses. M plans to divide the gift equally between the territories, which will allocate the funds in accordance with the trust provisions.

Before B died, she gave funds to N to build a prototype community center. N found that the portion of the funds allocated to the endowment fund produced only 25 percent of the revenue necessary to cover its operating costs. At this time, N is temporarily redirecting other resources to cover the deficit. You are concerned that, since your allocation of funds will be identical, your reserves would also be insufficient to cover the operating costs of your new centers.

To ensure an adequate level of funding for your new centers' ongoing operations, you plan to finance your centers differently. You would issue construction bonds and use the proceeds to purchase investment securities that would comprise a reserve fund capable of generating a significant portion of the income necessary to cover operating costs and to serve as a sinking fund for retiring the construction bonds. You agree that the outstanding bond indebtedness is acquisition indebtedness as defined in section 514(c) (1) of the Code.

You have received your part of the gift and identified several communities that you believe would get the most benefit. One center is currently operating and the others are in the planning and construction stages, but you expect them to be substantially similar. You intend to:

- Integrate the spiritual ministry with other services provided by the centers,
- Link the centers' programs to the existing social-service programs that you have established in the communities,
- Provide high-quality personal development opportunities that build character, confidence and competence in young people, families and individuals in an inclusive manner, including opportunities in education, recreation and the arts, and
- Ensure that the centers are accessible to and target a population of children, families and individuals that are underserved.

You selected the communities that showed the most need based on the information collected from the local offices of federal, state and local governments as to population, economic, and demographic statistics. For example, the information you gathered with regard to one community showed that 42 percent of the population lives in poverty (about twice the citywide figure). Residents in this community have twice the citywide rate of public assistance, single-parent families, and households with children under 18.

You base your representations and approximations on the center that is currently operating. All of your centers would offer memberships to the public. You gathered fee information from the health and fitness centers in the communities and set your annual membership fees at less than 20 percent of the fees charged by the other commercial centers in the neighborhoods. Your annual fees would include use of all areas of the centers, except for classes, skating, camps and programs. You would also offer fees on a sliding scale based on government standards for assistance and scholarships to anyone who demonstrates a financial need. If a person is unable to pay, but does not qualify for a scholarship, you have committed to reduce the fee to an amount that the person can pay. You state that you would turn no one away because of inability to pay.

You state that you would devote 85 percent or more of your property to programs that further exempt purposes. For example, you would devote 35 percent of your properties to religious and educational programs. The faith and family center would include a worship area, nursery, food pantry, and dedicated spaces for senior and youth programs. The learning and technology center would offer computer usage, classrooms/seminar rooms, tutoring, technology instruction on programs, literacy instruction, GED training, vocation-specific programs and creative arts classes. Finally, the visual/performing arts theater center would offer public performances in music and dance, youth, family and community theater, music lessons, dance programs, visual arts and crafts instruction and exhibition.

You would also use approximately 47 percent of your properties for recreational programs. Your indoor recreational area would offer a fitness center, basketball and sports gymnasium, indoor running/walking track, game room and locker rooms. You would offer a general-purpose swimming pool, leisure pool for children's entertainment, relaxation, fitness and swim instruction and a therapeutic whirlpool for relaxation and rehabilitation. Finally, you would provide an outdoor area for outdoor sports, recreation, and a soccer field, softball/Little League fields, grass volleyball court, general-purpose recreation fields, a skateboarding park, outdoor amphitheater, children's playground, and horticultural center for family and youth development.

Your special programs, which would comprise 15 percent of your facilities, would offer a healthy living center, childcare center, kitchen, library, gathering space, and emergency/disaster services. You would use your kitchen to provide free meals every Monday through Friday to persons who are homeless, unemployed, or otherwise cannot afford a hot meal.

You plan to rent space for various purposes. You would rent space at cost to clubs, community foundations, church groups, schools and other non-profit organizations and individuals that respond to community needs. You estimate that you would rent approximately two percent of floor space and use less than one percent of total open hours for other activities. You would not provide any services in connection to your rental income and you do not anticipate using the facility for any long-term rental activities.

RULINGS REQUESTED

1. Provided that substantially all the use of the centers will be used as described, the rental income, if any, that you derive from the non-exempt purpose use of the centers will qualify for the exclusion provided by section 514(b)(1)(A).
2. The income that you will receive from the various recreational, charitable, religious, and educational activities conducted at the centers, as described herein, will not constitute income from an unrelated trade or business as defined under section 513(a) because those activities are substantially related to your tax-exempt purposes.
3. The use of the center by tenants (to conduct substantially related activities and programs), from which you may derive rental income will constitute substantially related use by you for purposes of section 514(b)(1)(A).

LAW

Section 511 of the Internal Revenue Code (Code) imposes a tax on the unrelated business taxable income (as defined in section 512) of organizations described in sections 401(a) and 501(a).

Section 512(a) of the Code states that the term "unrelated business taxable income" means the gross income derived by any organization from any unrelated trade or business (as defined in section 513) regularly carried on by it, less the deductions allowed by this chapter which are directly connected with the carrying on of such trade or business, both computed with the modifications provided in subsection (b).

Section 512(b)(3) of the Code states that any rents from real property (and incidental related personal property) are not treated as unrelated business income unless the real property is debt-financed under section 514.

Section 513(a)(2) of the Code states, in pertinent part, that the term "unrelated trade or business" means, in the case of any organization subject to the tax imposed by section 511, any trade or business the conduct of which is not substantially related to the exercise or performance by such organization of its charitable, educational, or other purpose or function constituting the basis for its exemption under section 501, except that such term does not include any trade or business which is carried on by the organization primarily for the convenience of its members, students, patients, officers, or employees.

Section 513(c) of the Code states that the term "unrelated trade or business" includes any activity that is carried on for the production of income from the sale of goods or the performance of services. For purposes of the preceding sentence, an activity does not lose identity as a trade or business merely because it is carried on within a larger aggregate of similar activities or within a larger complex of other endeavors, which may, or may not be related to the exempt purposes of the organization.

Section 514(a)(1) of the Code states that there shall be included with respect to each debt -financed property as an item of gross income derived from unrelated trade or business an amount which is the same percentage of the total gross income derived during the taxable year from or on account of such property as (A) the average acquisition indebtedness for the taxable year with respect to the property is of (B) the average amount of the adjusted basis of such property during the period it is held by the organization during such taxable year.

Section 514(b)(1)(A)(i) of the Code states that the term "debt -financed property" means any property which is held to produce income and with respect to which there is an acquisition indebtedness (as defined in subsection (c)) at any time during the taxable year except that such term does not include any property substantially all the use of which is substantially related (aside from the need of the organization for income or funds) to the exercise or performance by such organization of its charitable, educational or other purpose or function constituting the basis for its exemption under section 501.

Section 514(c)(1) of the Code states that the term "acquisition indebtedness" means, with respect to any debt -financed property, the unpaid amount of the indebtedness incurred by the organization in acquiring or improving such property, the indebtedness incurred before the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement, and the indebtedness incurred after the acquisition or improvement of such property if such indebtedness would not have been incurred but for such acquisition or improvement and the incurrence of such indebtedness was reasonably foreseeable at the time of such acquisition or improvement.

Section 1.501(c)(3)-1(d)(2) of the Treasury Regulations (regulations) states that the term "charitable" is used in section 501(c)(3) in its generally accepted legal sense and is, therefore not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes which may fall within the broad outlines of "charity" as developed by judicial decisions. Such term includes, in part, relief of the poor and distressed or of the underprivileged, advancement of religion, advancement of education or science, and the promotion of social welfare by organizations designed to accomplish any of the above purposes, or to lessen neighborhood tensions, or combat community deterioration and juvenile delinquency.

Section 1.513-1(d)(1) of the regulations states that gross income derives from "unrelated trade or business," within the meaning of section 513(a), if the conduct of the trade or business which produces the income is not substantially related (other than through the production of funds) to the purposes for which exemption is granted. The presence of this requirement necessitates an examination of the relationship between the business activities which generate the particular income in question -- the activities, that is, of producing or distributing the goods or performing the services involved -- and the accomplishment of the organization's exempt purposes.

Section 1.513-1(d)(2) of the regulations provides that trade or business is "related" to exempt purposes, in the relevant sense, only where the conduct of the business activities has a causal relationship to the achievement of exempt purposes (other than through the production of income); and it is "substantially related," for purposes of section 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Section 1.513-1(d)(3) of the regulations states that, in determining whether activities contribute importantly to the accomplishment of an exempt purpose, the size and extent of the activities involved must be considered in relation to the nature and extent of the exempt function which they purport to serve. Thus, where income is realized by an exempt organization from activities which are in part related to the performance of its exempt functions, but which are conducted on a larger scale than is reasonably necessary for performance of such functions, the gross income attributable to that portion of the activities in excess of the needs of exempt functions constitutes gross income from the conduct of unrelated trade or business. Such income is not derived from the production or distribution of goods or the performance of services, which contribute importantly to the accomplishment of any exempt purpose of the organization.

Section 1.513-1(d)(4)(i) of the regulations states that gross income derived from charges for the performance of exempt functions does not constitute gross income from the conduct of unrelated trade or business.

Section 1.513-1(d)(4)(i), Example (1) of the regulations described an organization that operated a school to train children in the performing arts. The organization derived gross income from admission charges for the performances. The student's participation in performances before audiences was an important part of their training. Since the income realized from the performances derived from activities, which contributed importantly to the accomplishment of the organization's purposes, it did not constitute gross income from unrelated trade or business.

Section 1.513-1(d)(4)(iii) of the regulations states that a facility necessary to the conduct of exempt functions may also be employed in a commercial endeavor. In such cases, the mere fact of the use of the asset or facility in exempt functions does not, by itself make the

income from the commercial endeavor gross income from unrelated trade or business. The test, instead, is whether the activities productive of the income in question contribute importantly to the accomplishment of exempt purposes.

Section 1.514(b)-1(b)(1)(i) of the regulations states that to the extent that the use of any property is substantially related (aside from the need of the organization for income or funds or the use it makes of the profits derived) to the exercise or the performance by an organization of its charitable, educational or other purpose or function constituting its basis for exemption under section 501, such property shall not be treated as "debt-financed property". See section 1.513 -1 for principles applicable in determining whether there is a substantial relationship to the exempt purpose of the organization.

Section 1.514(b)-1(b)(1)(ii) of the regulations states that if substantially all of any property is used in a manner described in subdivision (i) of this subparagraph, such property shall not be treated as "debt-financed property". In general, the preceding sentence shall apply if 85 percent or more of the use of such property is devoted to the organization's exempt purpose. The extent to which property is used for an exempt purpose shall be determined on the basis of all the facts and circumstances. These may include (where appropriate) --

- a. A comparison of the portion of time such property is used for exempt purposes with the total time such property is used,
- b. A comparison of the portion of such property that is used for exempt purposes with the portion of the property that is used for all purposes, or
- c. Both the comparisons described in (a) and (b) of this subdivision.

Rev. Rul. 59-310, 1959-2 C.B. 146, holds that a nonprofit corporation organized for the purpose of establishing, maintaining and operating a public swimming pool, playground and other recreational facilities for the children and other residents of a community is exempt from federal income tax under section 501(c)(3) of the Code. The organization in question operated in a community consisting principally of low-income groups who are unable to pay the cost of privately sponsored recreation facilities. The income derived from charges for admission to the pool was minor in amount.

Rev. Rul. 73-105, 1973-1 C.B. 264, held that the sales of a particular line of merchandise should be considered separately to determine their relatedness to the exempt purpose. The ruling first held that the sale by a museum of folk art of reproductions of works from the museum's own collection and reproductions of artistic works from the collections of other art museums, as well as metal, wood, and ceramic copies of American folk art objects from its own collection and similar copies of art objects from other collections of art works do not constitute unrelated trade or business. The sale of these items contributed importantly to the achievement of the folk art museum's exempt educational purposes by making works of art familiar to a broader segment of the public, thereby enhancing the public's understanding and appreciation of art. In contrast, the ruling then held that sales of scientific books and souvenir items relating to the city where the museum is located, do constitute unrelated trade or business.

Rev. Rul. 79-360, 1979-2 C.B. 236, held that the operation of a health club by an exempt organization constituted an unrelated trade or business within the meaning of section 513 of the Code. It found that the operation of the health club was separate from and in addition to the organization's general physical fitness program, and, also, that the commercially comparable annual dues or fees charged for the health club memberships and for use of the health club facilities were sufficiently high to restrict use of health club facilities to a limited number of members of the community.

In *Isabel Peters v. Commissioner*, (1953) 21 T.C. 55, the Tax Court held that providing convenient swimming and recreation facilities for all persons residing in the particular school district and especially those who could not afford to acquire and maintain such facilities was "charitable" as defined under section 501(c)(3) since it promoted the social welfare of the community.

ANALYSIS

You requested rulings with regard to whether activities associated with the community centers that you plan to acquire with construction bond proceeds will produce unrelated business taxable income (UBIT) as defined in section 512(a) of the Internal Revenue Code (Code). Generally, income produced by debt-financed property is treated as UBIT unless substantially all of its use is substantially related to exempt purposes. The information that you provided, including the careful placement and promotion of your new facilities, types of facilities, services and programs offered, and the manner in which you plan to operate, clearly show that your community centers would further your exempt purposes and benefit a significant segment of the communities. Since substantially all of the use of your property is substantially related to your exempt purposes, your community centers will not be treated as "debt-financed property" within the meaning of section 514(a)(1). Further, except for the retail sales of merchandise, the activities described herein would also not produce UBIT.

You state that you are exempt from federal tax because you further a religious purpose. Section 1.501(c)(3) -1(d)(2) of the regulations states that the term "charitable" is used in section 501(c)(3) of the Code in its generally accepted legal sense. It is therefore not to be construed as limited by the separate enumeration in section 501(c)(3) of other tax-exempt purposes, which may fall within the broad outlines of "charity" as developed by judicial decisions. In the general law of charity, the promotion of the happiness and enjoyment of

the members of the community is also a charitable purpose:

"Some of these trusts can be supported on the ground that they tend to promote the health of the community, or involve a form of education; but it is sufficient that they promote the general happiness of the community."

Restatement (Second) of Trusts, section 374 (1959); IV A. Scott, *The Law of Trusts* section 374.10 (3d ed. 1967).

The principles set forth in section 1.513 -1 of the regulations apply in determining whether the operation of your community centers has a substantial relationship to your exempt purpose. See section 1.514(b) -1(b)(i) of the regulations. In the statutory sense, the relationship must be a causal and a substantial one. In other words, to be substantially related to an exempt purpose, the activities conducted by your community centers must contribute importantly to the achievement of your exempt purposes. Section 1.513 -1(d)(2) of the regulations. By placing your new centers in communities where more households operate at or below the poverty level and have children under the age of 18, you would provide relief to the poor or the underprivileged and combat community deterioration. You have taken steps to make sure that all income levels within the community would be aware of and make use of the programs you would offer. You would make centers even more accessible by linking the programs to the existing social -service programs that you have already established in the communities. Many of the programs that you plan to offer, including the faith and family, learning and technology, and visual/theater art as well as disaster relief and library services and renting space for community gatherings sponsored by community organizations, would contribute importantly to the accomplishment of your educational, religious, and other charitable purposes.

The term "unrelated trade or business" essentially means any trade or business that is not substantially related (aside from the need of the organization for income or funds) to an organization's exempt purpose. Generally, income from the performance of exempt functions does not constitute gross income from the conduct of an unrelated trade or business. See section 1.513 -1(d)(4)(i), Example 1, of the regulations. A facility that is necessary to the conduct of exempt functions may be employed in a commercial endeavor or if the activities that produce the income in question contribute importantly to the accomplishment of exempt purposes. See section 1.513 -1(d)(4)(iii) of the regulations. For example, you would devote 35 percent of your facilities to religious and educational programs and 15 percent to special programs, both of which contribute importantly to the accomplishment of your exempt purposes. Therefore, any income produced by most of the activities you conduct within these programs would not be UBIT. However, income from one particular activity may be deemed unrelated even where the activity is an integral part of a larger activity that is in furtherance of an exempt purpose. Sections 513(c) of the Code and 1.513 -1(d)(3) of the regulations. Therefore, it is necessary to examine more closely the types of activities you would conduct in your centers to determine whether they contribute substantially to the accomplishment of your exempt purposes.

You plan to use 47 percent of your facilities to offer general, aquatic and outdoor recreation programs to your members. Business income generated by recreational facilities can be exempt from unrelated taxable business income under section 511 if the facilities benefit a significant segment of the population. See Rev. Rul. 79 -360, *supra*. An exempt organization can demonstrate that it provides a significant benefit by setting its membership fees so that they are affordable to a broad segment of the community. You plan to place your centers in areas that are underserved. For example, you would place one center in an area where 42 percent of the population lives in poverty. Further, you plan to charge fees that local residents can afford.

You would charge annual fees at rates that are less than 20 percent of the fees charged by other local commercial centers. You state that your centers would turn no one away because of inability to pay. Your annual fees include use of all areas of the center, except for classes, skating, camps and programs. You would offer fees on a sliding scale based on government standards for assistance and scholarships to anyone who demonstrates financial need. If a person is unable to pay, but does not qualify for a scholarship, you have committed to reduce the fee to an amount that the person can pay. As the Tax Court determined in *Isabel Peters, supra*, and as the Service recognized in Rev. Rul. 59 -310, *supra*, the definition of "charity" includes providing benefits for an indefinite number of persons. Since you would encourage the public to participate in general, aquatic and outdoor recreation at your centers and you would set affordable fees, your centers would benefit a significant segment of the community and the membership fees generated by your centers would not be UBIT.

You plan to sell merchandise to your members in the centers, an activity that would be a part of all of your programs. Pursuant to section 513(c) of the Code and Rev. Rul. 73 -105, *supra*, the sale of each particular item of merchandise must be considered separately to determine its relatedness to your exempt purposes. The organization described in Rev. Rul. 73 -105, was a museum that sold reproductions of works from its own collections and scientific books and souvenirs relating to the city where it was located. The ruling held that sales and rentals of copies of museum works contributed importantly to the achievement of its exempt educational purpose and the resulting income did not constitute unrelated business income subject to tax. However, the ruling also held that sales of other articles had no relationship to the museum's exempt purpose and the resulting income constituted unrelated business income subject to tax. You plan to sell t-shirts, ball caps, water bottles and towels for patrons' use at the center. Like the organization in the ruling, the sale of these items is not related to your exempt purposes and would produce UBIT.

You plan to rent space in your centers. Generally, section 512 of the Code excludes rental income from the definition of unrelated

business taxable income. However, if the rent -producing property is "debt financed", the rental income may be included as an item of gross income from an unrelated trade or business unless the rental activity is substantially related to your exempt purpose. You state that your centers would be "debt -financed" within the meaning of section 514(b)(1)(A) of the regulations. However, the regulations exclude property from the term "debt -financed" if 85 percent or more of the use of such property is devoted to the organization's exempt purpose. Section 1.514(b)-1(b)(1)(ii) of the regulations. The extent to which you use your property for a particular purpose is a determination that is based on all the facts and circumstances. That determination may include a comparison of the portion of the time that you use the property for exempt purposes with the total time you use such property, a comparison of the portion of the property that you use for exempt purposes with the portion of the property that you use for all purposes, or both.

You stated that you would devote 85 percent or more of your property to activities that further religious, charitable and educational purposes. You supported that statement with estimates of the portion of your total property that you would use for each activity that furthers your exempt purposes, which totals more than 85 percent. Your religious and educational programs (35 percent), recreational programs (47 percent), and special programs (15 percent) all further your exempt purposes by enhancing your social services and improving the overall positive impact your centers will have on the community. The remaining 3 percent of your property that you use for other purposes would not produce UBIT because the 85 percent rule prevails. Accordingly, your property is not debt -financed because substantially all of your community center activities would be substantially related to your exempt purposes under sections 513 and 514(b)(1)(A) of the Code and section 1.513 -1(d)(2) of the regulations and the income generated by those activities, including income from short-term rentals, would be exempt from unrelated taxable business income.

SUMMARY

Your property is excluded from the definition of "debt -financed" property because substantially all of its use would be substantially related to the exercise or performance of the exempt purposes that constitute the basis of your exemption. This conclusion is supported by your representation that you would devote 85 percent or more of your properties to activities that further exempt purposes, supplemented by detailed descriptions of the use of your property. The rental income from the non -exempt use of your facilities will be minimal, certainly less than 15 percent, and thus, qualifies for the exclusion from the definition of "debt -financed property" provided by section 514(b)(1)(A) and explained in section 1.514(b)-1(b)(1)(ii) of the regulations. Further, provided that your activities continue to contribute importantly to your exempt purpose, your membership fees and the revenue that you generate from the operation of your other facilities is not unrelated business taxable income. However, the retail sales of merchandise such as t -shirts, ball caps, water bottles, and towels does not contribute importantly to your exempt purpose and is unrelated business taxable income as defined in section 512(a).

Based on the foregoing, we rule, as requested, as follows:

1. Provided that substantially all the use of the centers will be used as described, the rental income, if any, that you derive from the use of the centers will qualify for the exclusion provided by section 514(b)(1)(A).
2. The income that you will receive from the various recreational, charitable, religious, and educational activities conducted at the centers, as described herein, will not constitute income from an unrelated trade or business as defined under section 513(a) because those activities are substantially related to your tax -exempt purposes.
3. The use of the center by tenants (to conduct substantially related activities and programs) will constitute substantially related use by you for purposes of section 514(b)(1)(A).

This ruling will be made available for public inspection under section 6110 of the Code after certain deletions of identifying information are made. For details, see enclosed Notice 437, Notice of Intention to Disclose. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolve questions concerning your federal income tax status, this ruling should be kept in your permanent records.

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

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to

your authorized representative.

Sincerely,

Manager, Exempt Organizations
Technical Group 2
Internal Revenue Service
Washington, D.C.

* * * * *

Rev. Rul. 69-572, 1969-2 C.B. 119

A nonprofit organization, created to construct and maintain a building for the exclusive purpose of housing and serving exempt member agencies of a community chest, may be exempt under section 501(c)(3) of the Code; Revenue Ruling 58-547 distinguished.

Advice has been requested whether a nonprofit organization formed and operated in the manner described below qualifies for exemption from Federal income tax under section 501(c)(3) of the Internal Revenue Code of 1954.

The organization was created to construct and maintain a building to house member agencies of a community chest, thereby facilitating coordination among the agencies and making more efficient use of the available voluntary labor force. Membership in the organization is limited to the board of directors of the community chest. The agencies occupying the building are exempt from Federal income tax under section 501(c)(3) of the Code. The building's construction expenses were financed by contributions from the general public and by the issuance of noninterest bearing obligations to other charitable organizations.

The organization's building was erected on city land that is the subject of a long-term lease under which the organization pays only a nominal rental and is committed to use the premises for the exclusive purpose of housing and otherwise serving the community chest agencies.

Office space in the building is leased to member agencies at a rate that makes the organization's rental income approximately equal to its total annual operating costs without any allowance for depreciation. This results in a rental rate that is substantially less than commercial rates for comparable facilities. The building also contains a large central meeting room that is separately maintained for the free use of the lessees and other interested community chest agencies under the general supervision and control of the organization's executive director.

Section 501(c)(3) of the Code provides for the exemption from Federal income tax of organizations organized and operated exclusively for charitable purposes.

The organization has demonstrated that its operations will materially aid its various tenants and other users of its facilities in the performance of their respective charitable functions. All tenants receive a direct financial benefit in that the rental charges made are substantially less than the general commercial rate for comparable facilities. Moreover, the organization's provision for housing a number of member agencies at one convenient central place enables such agencies to make frequent use of volunteer labor on an efficient basis and promotes their common interests by facilitating the effective coordination of their interrelated operations and services. The performance of a particular activity that is not inherently charitable may nonetheless further a charitable purpose. The overall result in any given case is dependent on why and how that activity is actually being conducted. See Rev. Rul. 67-4, C.B. 1967-1, 121. Because of the close connection between this organization and the charitable functions of the tenant organizations, the rental of the organization's facilities at rates substantially below their fair rental value, and the operation by the organization with the intention of realizing an amount sufficient only to meet annual operating costs, the organization is dedicated to carrying out the charitable endeavors of the community chest and its member agencies. Accordingly, it is held that the organization is exempt from Federal income tax under section 501(c)(3) of the Code.

This Revenue Ruling is distinguishable from Revenue Ruling 58-547, C.B. 1958-2, 275, which holds that a lease, the parties to which are both exempt under section 501(c)(3) of the Code and which otherwise constitutes a business lease within the meaning of section 514 of the Code, will not be considered as substantially related to the charitable purpose of the lessor solely because the lessee is likewise an exempt organization. By contrast, the instant organization leases space in a non-commercial manner at substantially below the 'going-rate,' and there is a close relationship between its purposes and functions and those of the tenant organizations.

Even though an organization considers itself within the scope of this Revenue Ruling, it must file an application on Form 1023, Exemption Application, in order to be recognized by the Service as exempt under section 501(c)(3) of the Code. The application should be filed with the District Director of Internal Revenue for the district in which is located the principal place of business or

principal office of the organization. See section 1.501(a) -1 of the Income Tax Regulations.

From: Burke Anthony
Sent: Wednesday, July 20, 2011 5:27 AM
To: &C&L-COMM-MR Ees; &C&L-COMM-MR-1 Ees
Cc: Lemons Terry L; Keith Frank; Zarin Roberta B; Lerner Lois G
Subject: New York Times Article -- 501(c)(4)s

Here is Stephanie Strom's article in the New York Times regarding the letters to potential 501(c)(4)s denying their tax exempt status. Not surprisingly, the article tries to tie the 501(c)(4) gift tax issue to these denial letters -- see the Mark Owens quote in the 5th graph.

The New York Times

July 20, 2011

Political Advocacy Groups Denied Tax -Exempt Status

By [STEPHANIE STROM](#)

Three nonprofit advocacy groups that recruited and trained potential political candidates in the last several years have been denied tax exemption by the [Internal Revenue Service](#).

[Copies of the letters](#) informing the groups of the decisions were [heavily redacted](#) by the I.R.S. when it [released them](#) last week, so it was impossible to know the names of the organizations involved, or which political party they might have worked with.

“You are not operated primarily to promote social welfare because your activities are primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole,” the I.R.S. wrote in the letters. “Accordingly, you do not qualify for exemption.”

Word of the decisions has been circulating this week, especially among lawyers who advise these types of nonprofits because they have become more prominent in political elections.

The organizations had been created as a type of nonprofit — known as a 501(c)4 for the section of the tax code that governs it. “I don’t know that you can read a message into these decisions, but the fact that they’re landing now, just as interest in these types of organizations is heating up again, is causing them to get a lot more attention than they normally would,” said Marcus S. Owens, a lawyer who used to run the division of the I.R.S. that oversees all nonprofit groups.

In recent months, the I.R.S. has undertaken actions that suggested the agency had stepped up its scrutiny of these groups. The agency recently backed off inquiries into whether five major donors to such groups had paid gift taxes — a rule rarely if ever enforced. The I.R.S. said it needed to develop a broader policy before taking any individual actions.

Billionaires like the Koch brothers and political strategists like Karl Rove are best known on the Republican side for being affiliated with groups weighing in on recent elections, like the 2010 midterm cycle. Democrats have also begun forming similar groups to counter those heavyweights.

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“Any lawyer would have told them they weren’t going to get exemption based on the facts we can see in these letters,” said Paul Streckfus, a former I.R.S. official who now publishes an influential newsletter about legal and tax developments in the tax-exempt world. “I think it’s the beginnings of a test case.”

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From: Lerner Lois G
Sent: Wednesday, July 20, 2011 9:49 AM
To: Lemons Terry L; Miller Steven T; Grant Joseph H; Flax Nikole C; Keith Frank; Eldridge Michelle L; Williams Floyd L
Subject: RE: Times / c4

Just what we'd hoped for.

Lois G. Lerner

Director of Exempt Organizations

From: Lemons Terry L
Sent: Tuesday, July 19, 2011 9:25 PM
To: Miller Steven T; Lerner Lois G; Grant Joseph H; Flax Nikole C; Keith Frank; Eldridge Michelle L; Williams Floyd L
Subject: Times / c4

Times story is on the web. Pretty straightforward.

Sent from my BlackBerry Wireless Handheld

From: Terry (b)(6) and (b)(7)(C) Lemons [mailto:(b)(6) and (b)(7)(C)]
Sent: Tuesday, July 19, 2011 09:19 PM
To: Lemons Terry L
Subject:

Political Advocacy Groups Denied Tax-Exempt Status

By [STEPHANIE STROM](#)

Published: July 19, 2011

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From: Lerner Lois G
Sent: Wednesday, July 20, 2011 2:52 PM
To: Paz Holly O
Subject: FW: Bazinga

(b)(3)/6103

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Wednesday, July 20, 2011 3:33 PM
To: Lerner Lois G
Cc: Zarin Roberta B
Subject: FW: Bazinga

Heads up Lois--Frank is getting Nikole--calling you now

From: Williams Grant
Sent: Wednesday, July 20, 2011 3:23 PM
To: Eldridge Michelle L
Subject: FW: Bazinga

From: Strom, Stephanie [<mailto:ssstrom@nytimes.com>]
Sent: Wednesday, July 20, 2011 3:19 PM
To: Williams Grant
Subject: Bazinga

Hi, Grant,

So, as I said, I have identified and gotten confirmation that the three organizations denied exemption were Emerge Maine, Emerge Massachusetts and Emerge Nevada.

These organizations are state affiliates of Emerge America, and I believe there are six other Emerges around the country -- some of which have been granted tax exemption as c4s. Emerge California, for example, has I.R.S. approval for tax exemption.

And while Maine, Massachusetts and Nevada were waiting for approval, another Emerge, in Kentucky, which was formed two years after them, was given approval, and Oregon, which also applied a couple of years later, is still pending.

The question, obviously, is why have some of these groups been approved and others not?

I am on a tight deadline so would like to talk to someone or have an answer to the question ASAP.

Many thanks, Stephanie

Stephanie Strom
The New York Times
620 Eighth Avenue
New York, NY 10018

O: 212-556-8794
M: 646-281-1402
t: @ssstrom

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 3:07 PM
To: Paz Holly O
Subject: FW: website info

How in the world did this get screened in Cincy? Isn't there an "other" category

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Wednesday, July 20, 2011 3:58 PM
To: Keith Frank; Lerner Lois G
Cc: Lemons Terry L
Subject: website info

From websites of two identified by Stephanie as granted 501c4s:

(b)(3)/6103

(b)(3)/6103

From: Kindell Judith E
Sent: Wednesday, July 20, 2011 3:10 PM
To: Paz Holly O; Lerner Lois G
Cc: Letourneau Diane L
Subject: (c)(4) cases

According to the SOI data, (b)(3); 6103 has a ruling date of (b)(3); 6103 (b)(3); 6103 has a ruling date of (b)(3); 6103 and (b)(3); 6103 has a ruling date of (b)(3);...

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 4:24 PM
To: Paz Holly O; Kindell Judith E; Downing Nanette M
Subject: Cases

This is a list [REDACTED] cases we know about. I need your help in determining [REDACTED]

(b)(3)/6103

[REDACTED]? Also need to know where [REDACTED] Cincy? DC? Dallas?

Apparent Cincinnati Approvals

[REDACTED]
(b)(3); 6103

DC Denials

[REDACTED]
(b)(3); 6103

In Process

[REDACTED] (b)(3); 6103 ? Check where it is.

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Wednesday, July 20, 2011 4:33 PM
To: Lerner Lois G; Kindell Judith E
Subject: FW: case inquiry
Attachments: OtherDocument[1].tif; Form1024[1].tif

Importance: High

Haven't had a chance to open this yet but here is (b)(3)/6103

From: Angner William J
Sent: Wednesday, July 20, 2011 5:26 PM
To: Paz Holly O
Subject: case inquiry
Importance: High

Brenda Melahn wanted me to follow-up her voicemail to you with a copy of Inc.

(b)(3)/6103

Bill Angner
Mgr Group 7827
SE:T:EO:RA:D:2:7827
513-263-3717 phone
513-263-4488 fax

(b)(3); 6103

(b)(3); 6103

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From: Zarin Roberta B
Sent: Wednesday, July 20, 2011 5:38 PM
To: Eldridge Michelle L; Grant Joseph H; Lerner Lois G; Medina Moises C; Grant Joseph H; Lemons Terry L; Urban Joseph J; Marks Nancy J; Light Sharon P; Kindell Judith E
Cc: Adam Debbie A; Egeth Hillary B; Williams Grant
Subject: FW: Accounting Today / IRS Rejects Tax Exemption for Political Groups (Lois mention)

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Smith Philip A
Sent: Wednesday, July 20, 2011 5:31 PM
To: White Shirley A; Crom Richard E; Letourneau Diane L
Cc: Zarin Roberta B
Subject: Accounting Today / IRS Rejects Tax Exemption for Political Groups (Lois mention)

IRS Rejects Tax Exemption for Political Groups

Washington, D.C. (July 20, 2011)

By Michael Cohn, Accounting Today

The Internal Revenue Service has issued [letters](#) denying tax-exempt status to three unidentified political groups that had applied for the exemption as Section 501(c)(4) groups.

In [redacted letters](#) recently made public on the [IRS Web site](#), Lois G. Lerner, director of the IRS's Exempt Organizations unit, wrote, "This is our final determination that you do not qualify for exemption from Federal income tax under Internal Revenue Code section 501(a) as an organization described in Code section 501(c)(4). We made this determination for the following reason(s): You are not operated primarily to promote social welfare because your activities are conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole."

The redacted letters did not include the names of the organizations that received the IRS warning.

However, groups such as Crossroads GPS, Americans for Prosperity and the American Action Network that have been set up as 501(c)(4) tax-exempt organizations raised large amounts of money for the 2010 election cycle, particularly for Republican candidates in the wake of the Supreme Court's Citizens United decision allowing unlimited corporate contributions.

Unlike Section 527 organizations, which used to be the preferred tax-exempt vehicle for funneling political donations, 501(c)(4) groups do not need to disclose their donors. However, the Section 501(c)(4) tax exemption is supposed to be for social welfare organizations, and not for political campaigns.

The IRS warned the groups that they may now be subject to taxes and penalties on the contributions they received from donors while their tax -exempt status was pending.

“You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file,” wrote Lerner. “File the returns in accordance with their instructions, and do not send them to this office. Failure to file the returns timely may result in a penalty.”

The letters were sent in April, but were made public this week on the IRS’s Web site, and were linked to by blogs such as the [Election Law blog](#) and the [TaxProf blog](#).

Senate Finance Committee Chairman Max Baucus, D -Mont., wrote to IRS Commissioner Doug Shulman last September asking the agency to investigate the tax -exempt status of political organizations (see [Senator Asks IRS to Probe Political Groups](#)). “Political campaigns and powerful individuals should not be able to use tax -exempt organizations as political pawns to serve their own special interests,” Baucus said. “The tax exemption given to nonprofit organizations comes with a responsibility to serve the public interest, and Congress has an obligation to exercise the vigorous oversight necessary to ensure they do. When political campaigns and individuals manipulate tax -exempt organizations to advance their own political agenda, they are able to raise and spend money without disclosing a dime, deceive the public and manipulate the entire political system.”

Earlier this year, the IRS sent letters to five unidentified political donors informing them that they might be subject to the gift tax for their donations in 2008 to unidentified 501(c)(4) organizations (see [IRS May Tax Political Donations as Gifts](#)). “Donations to 501(c)(4) organizations are taxable gifts, and your contribution in 2008 should have been reported on your 2008 Federal Gift Tax Return (Form 709),” the IRS wrote.

However, the letters led to a backlash among Republican congressional leaders, who demanded to know why the IRS had reversed a 30-year-long tradition of not subjecting such donations to the gift tax (see [Senators Question IRS on Gift Tax Enforcement and Political Influence](#) and [Congress Demands Answers from IRS on Gift Tax Probe](#)).

Earlier this month, the IRS announced that it was backing away from the inquiry and would stop examining the donors (see [IRS Suspends Gift Tax Examinations of Political Donors](#)). The IRS said it would review the need to issue further guidance on the issue of the gift tax and leave it to Congress to decide if it wanted to take legislative action to decide on the applicability of the gift tax to 501(c)(4) organizations. It is unclear if the IRS is now taking a different tack by denying 501(c)(4) status to the organizations entirely.

Philip A. Smith
Internal Revenue Service
Customer Education & Outreach
Exempt Organizations
philip.a.smith@irs.gov
(O) 202-283-9763

From: Lemons Terry L
Sent: Wednesday, July 20, 2011 10:12 PM
To: Lerner Lois G
Subject: Re: clips/thanks

The flip side is that I don't think Joe would want your job, either:) Times piece couldve been worse. G'night...

Sent from my BlackBerry Wireless Handheld

From: Lerner Lois G
Sent: Wednesday, July 20, 2011 06:52 PM
To: Eldridge Michelle L; Zarin Roberta B
Cc: Lemons Terry L
Subject: RE: clips/thanks

I like the promotion --not sure Joseph will like me taking on the the directorship for TEGE Division!

Lois G. Lerner

Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Wednesday, July 20, 2011 8:25 AM
To: Lerner Lois G; Zarin Roberta B
Cc: Lemons Terry L
Subject: clips/thanks

Thanks for your help on these last night Lois. Your involvement helped balance the stories. Here are the clips...

The New York Times

July 20, 2011, B8

Political Advocacy Groups Denied Tax-Exempt Status

By [STEPHANIE STROM](#)

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Tax Notes Today

July 20, 2011

501(C)(4) EXEMPTION DENIALS NOT DUE TO POLITICAL INTERVENTION, IRS SAYS

By David van den Berg

The IRS's denial of tax-exempt status to three organizations seeking recognition under section 501(c)(4) whose activities primarily benefited a political party and its candidates rather than the community as a whole was not based on political activities of the groups, an IRS official told Tax Analysts July 19.

Lois Lerner, exempt organizations director, IRS Tax -Exempt and Government Entities Division, said the three organizations' political activities were not a factor in their denials. "The analysis for that determination was not based on whether the organization intervened in political campaigns," Lerner said. "Rather, it was whether the organization was primarily promoting social welfare rather than benefiting third parties. All we look at are tax rules." (For LTR 201128034, see *Doc 2011-15475* or *2011 TNT 137-36*. For LTR 201128032, see *Doc 2011-15473* or *2011 TNT 137-35*. For LTR 201128035, see *Doc 2011-15476* or *2011 TNT 137-29*.)

The IRS recently abandoned an investigation into potential gift tax liabilities of five donors to section 501(c)(4) organizations. (For prior coverage, see *Doc 2011-14829* or *2011 TNT 131-2*.)

All three of the denial letters, which the IRS released July 15, involve organizations operate training programs. One of the organizations was founded in 2007 and others were founded in 2006.

"I don't see the three denials as signaling anything in particular other than a continuation of a long - standing IRS view on such entities," said Marcus Owens of Caplin & Drysdale, Washington. Owens formerly served as exempt organizations director for the IRS.

The three organizations that were denied exemption "look to have run headlong" into the 1989 *American Campaign Academy* case, said Ofer Lion of Mitchell Silberberg & Knupp LLP, Los Angeles. While that case involved an organization that did not qualify under section 501(c)(3), the standard for determining what constitutes private benefit applies to section 501(c)(4) as well, the denial letters said. (For *American Campaign Academy v. Commissioner*, 92 T.C. 1053 (1989), see *Doc 89-3911* or *89 TNT 105-20*.)

All the denial letters cited *American Campaign Academy*, in which the organization's primary activity was to operate a school training people for careers as campaign professionals, according to the letters. The academy was an outgrowth of programs operated by the National Republican Congressional Committee, which contributed assets to it. The Tax Court ruled the organization did not operate exclusively for exempt, educational purposes because it conducted its activities to benefit the private interests of Republican entities and candidates.

The denials show that including an explicit standard of partisan affiliation as a prerequisite to participate in an organization's activities will disqualify it for 501(c)(4) status, said Elizabeth Kingsley of Harmon, Curran, Spielberg and Eisenberg LLP, Washington.

"Most of the politically active (c)(4)s are careful to frame their missions and advocacy in policy terms, either specifically around a given issue or promoting 'progressive' or 'conservative' issues generally," she said. "I do not see anything in these rulings that signifies any intent on the IRS to go after those groups based on partisan benefit, even though their advocacy may well align with the policy agenda of a particular party."

From: Williams Grant
Sent: Thursday, July 21, 2011 1:27 PM
To: Lerner Lois G; Kindell Judith E; Zarin Roberta B
Cc: Eldridge Michelle L
Subject: Question about 501(c) background materials
Attachments: IRS TaxExemptOrgs1.pdf; IRS TaxExemptOrgs2.pdf

Hi Lois, Judy, and Bobby,

Back in May you provided us with the attached materials for Charles Babcock of Bloomberg, who was then working on his story about 501(c)(4)s and other organizations; we did forward these two attached documents to him (I renamed them along the way to what I'm calling them here).

I believe Lois had said at the time that the first document attached here was pretty much what the IRS had put in the Baucus letter earlier this year, so it had been scrubbed/cleared -- and was thus a good tutorial for Mr. Babcock. I believe Lois had said the second document had been prepared by Judy for Bloomberg and thus was another good tutorial.

We wondered if there are any links to these two documents--or to portions of the documents--on our website that we could refer folks to?

Thanks very much,

Grant

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

Types of Tax-Exempt Organizations

Charitable organizations described in section 501(c)(3) must be organized and operated to further charitable, religious, educational, etc. purposes. As such, they must be operated for the public rather than private benefit and their net earnings may not inure to the benefit of any private shareholder or individual. Section 501(c)(3) organizations are eligible to receive tax-deductible charitable contributions under section 170. To be treated as a tax-exempt section 501(c)(3) organization, most charitable organizations (other than churches) must notify the IRS by filing Form 1023, Application for Recognition of Tax-Exempt Status.

The exempt purpose of section 501(c)(4) social welfare organizations is to promote social welfare by promoting the common good and general welfare of people in the community. For section 501(c)(5) labor, agricultural, and horticultural organizations, the exempt purpose is the betterment of conditions of those engaged in their pursuits, the improvement of the grade of their products, or the development of a higher degree of efficiency in their respective occupations. The section 501(c)(6) business league exempt purpose is to promote the common business interest of its members and not to conduct a regular trade or business for profit. The net earnings of these organizations may not inure to the benefit of any private shareholder or individual (for section 501(c)(4) and (6) organizations) or member (for section 501(c)(5) organizations). While these organizations may request a determination by the IRS of their tax-exempt status by filing Form 1024, Application for Recognition of Exemption Under Section 501(a), there is no requirement in the Internal Revenue Code that they do so to be treated as a tax-exempt organization.

The exempt purpose of section 527 political organizations is attempting to influence the election, selection, nomination, or appointment of any individual to federal, state, or local public office, office in a political party or the Presidential and Vice-Presidential electors. These include candidate committees, party committees, and political action committees (PACs). Certain section 527 political organizations are automatically tax exempt: FEC political committees, state and local candidate committees, state and local party committees, and small organizations that never receive more than \$25,000 in gross receipts during any taxable year. All other section 527 political organizations must electronically file Form 8871 to be tax-exempt, including state PACs that receive more than \$25,000 in any taxable year. If they do not file Form 8871, they are taxable section 527 organizations and subject to tax on all of their income (including contributions) at the highest corporate rate. They are not eligible to receive tax-deductible charitable contributions under section 170.

Types of Advocacy

The Internal Revenue Code distinguishes between different types of advocacy that tax-exempt organizations may engage in, particularly lobbying activity and political campaign activity.

Lobbying activity is the attempt to influence legislation. For these purposes, legislation includes action on acts, bills, resolutions, or similar items by the Congress, any state legislature, any local council, or similar governing body, or by the public in a referendum, initiative, constitutional amendment, or similar procedure.

Political campaign activity is the attempt to influence the election of candidates to public office. This includes any activities that favor or oppose one or more candidates for public office, such as candidate endorsements, contributions to political campaign funds, or public statements of position (verbal or written) made by or on behalf of an organization in favor of, or in opposition to, any candidate for public office.

General advocacy includes activity attempting to influence the public on issues of concern to the organization, attempting to influence actions by the executive branch of government such as issuance of regulations, and activities intended to encourage people to participate in the electoral process in a manner that does not favor or oppose any particular candidates.

The IRS bases its determination of whether an activity constitutes lobbying or political campaign activity on all of the relevant facts and circumstances. Consequently, a communication made shortly before an election that identifies a candidate and takes a position may not constitute political campaign activity in certain circumstances. See Rev. Rul. 2004-6 for examples of the facts and circumstances considered in making such a determination.

Advocacy by Tax-Exempt Organizations

As the chart below illustrates, the different types of tax-exempt organizations discussed above have different rules as to the types of advocacy they may conduct consistent with their tax-exempt status. Engaging in each type of advocacy through some form of tax-exempt organization is possible, but not all types of tax-exempt organizations can engage in each type of advocacy.

	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)	527
Receive Tax-Deductible Charitable Contributions	YES	NO	NO	NO	NO
Engage in Legislative Advocacy	LTD	YES	YES	YES	LTD
Engage in Candidate Election Advocacy	NO	LTD	LTD	LTD	YES
Engage in Public Advocacy Not Related to Legislation or Election of Candidates	YES	YES	YES	YES	LTD

By statute, section 501(c)(3) charitable organizations may not engage in lobbying activity as a substantial activity and are absolutely prohibited from engaging in political campaign activity. They may engage in other advocacy activities, including encouraging people to participate in the electoral process in a manner that does not support or oppose any candidates for public office, without jeopardizing their tax-exempt status. In addition to the possibility of loss of tax-exempt status if they engage in political campaign activity or too much lobbying activity, the expenditures for such activities may be subject to an excise tax under section 4955 for political campaign activity or section 4911 or section 4912 for lobbying activity. A section 501(c)(3) organization that loses its tax-exempt status due to too much lobbying or political campaign activity may not be treated as a section 501(c)(4) organization.

At the opposite end of the spectrum are section 527 political organizations. As their exempt purpose is to engage in political campaign activity, they are unlimited in the amount they may do. However, they are limited in the amount of lobbying and other advocacy they may conduct. Section 527 political organizations that expend more than an insubstantial amount from any fund for non-political campaign activity will be subject to tax on all the income (including contributions) to that fund.

The organizations described in sections 501(c)(4), 501(c)(5), and 501(c)(6) are treated similarly as to the treatment of their advocacy activities. Activities that further the respective exempt purposes of these three types of tax-exempt organizations not only include general advocacy activities related to their exempt purpose, but can also include lobbying activity related to their exempt purpose. Thus, for example, a ballot measure committee may qualify as a section 501(c)(4), (5), or (6) organization. Political campaign activity does not further their respective exempt purposes so they are limited

in the amount of political campaign activity they may engage in without jeopardizing their tax-exempt status as that activity, along with all other non-exempt purpose activity, must be less than primary.

While section 501(c)(4), (5), and (6) organizations may engage in a limited amount of political campaign activity without jeopardizing their tax-exempt status, they are subject to tax under section 527(f) on the lesser of their net investment income or the amount expended for their political campaign activity. In determining whether an activity is subject to tax under section 527(f), all the relevant facts and circumstances are considered.

Additionally, section 501(c)(4), (5), and (6) organizations may be subject to the notice and proxy tax requirements of section 6033(e). Under section 162(e), the organization cannot generally take a deduction of expenses for lobbying and political campaign activity as an ordinary and necessary business expense. Although in some instances, dues or similar amounts paid to section 501(c)(4), (5), and (6) organizations may be deductible as an ordinary and necessary business expense, they are not deductible to the extent the organization uses dues or similar amounts for attempting to influence legislation or candidate elections. Unless substantially all of the organization's members do not deduct their dues or similar amounts as a business expense, the section 501(c)(4), (5), and (6) organization must either (1) notify its members of the portion of the dues used for lobbying or political campaign activity or (2) pay a proxy tax on that amount. Rev. Proc. 98-19 provides tests for determining whether substantially all of an organization's members do not deduct dues as business expenses. In making the calculation, the organization does not include any expenses that were subject to tax under section 527(f), so it includes only those expenditures for political campaign activity that exceed the organization's net investment income.

The IRS has recognized the need for guidance in this area and issued Rev. Rul. 2004-6, which provides examples illustrating facts and circumstances to be considered in determining whether section 501(c)(4), (5), and (6) organizations are subject to tax under section 527(f).

Tax-Exempt Organization Reporting and Disclosure Requirements

Most tax-exempt organizations must file an annual information return with the IRS. Section 501(c)(3) charitable organizations that are churches or government instrumentalities have no requirement to file the annual information return. Also, section 527 political organizations that are automatically tax-exempt and were not required to file Form 8871 have no requirement to file the annual information return.

Depending on the amount of the organization's annual gross receipts and net assets, the annual information return is the Form 990, the Form 990-EZ, or the Form 990-N. Section 527 political organizations are not required to file Form 990-N. These forms are publicly available. However, other than for section 527 political organizations, the IRS is not permitted by statute, and the organizations have no requirement, to disclose the names and addresses of contributors. Therefore, the publicly available information generally does not include Schedule B. Over the last several years, the IRS has imaged Form 990 series returns on DVD and made them available to the public. Recipients of this information then make these returns available on the internet to anyone. The forms are due on the 15th day of the fifth month following the end of the organization's taxable year (May 15 for calendar year organizations), but organizations may request extensions of up to six months (so many calendar year organizations do not file until November 15 of the year after the taxable year being reported).

Organizations filing Form 990 or Form 990-EZ must report whether they had any expenditures for political campaign activity and, if so, how much they expended. Section 501(c)(3) charitable organizations must also report their lobbying activities, if any. Section 501(c)(4), (5), and (6) organizations that have not established that their members cannot deduct substantially all of their dues as a business expense must report on their lobbying and political campaign activity, unless it consists solely of in-house lobbying that was less than \$2,000. This information is now collected on Schedule C of Form 990 or Form 990-EZ.

As discussed above, section 527 political organizations must file Form 8871 to be tax-exempt, unless they are automatically tax-exempt because they are an FEC political committee, state or local candidate committee, state or local party committee, or a small organization that never receives more than \$25,000 in gross receipts for any taxable year. Organizations file these forms electronically, and they are publicly available on the IRS web site. Section 527 political organizations that have filed Form 8871 must also periodically report information on their contributions and expenditures using Form 8872 unless they meet the requirements of a qualified state or local political organization. These forms are also publicly available on the IRS web site. As only those section 527 political organizations that filed Form 8871 must file Form 8872, a section 527 political organization that is not exempt because it has not filed Form 8871 is not required to file Form 8872. Thus, an organization that did not qualify as a section 501(c)(4) organization because its primary activity was political campaign activity and therefore was an organization described in section 527 would have no requirement to disclose contributor information unless and until it filed Form 8871.

Section 527 political organizations report their taxable income on Form 1120-POL. Under section 6103, this form is not publicly disclosable. While the taxable income of tax-exempt section 527 political organizations consists primarily of investment income, the taxable income of those section 527 organizations that are not exempt because they have not filed Form 8871 includes all income, including contributions. However, those organizations have no requirement to disclose any information other than the aggregate amount of those contributions on Form 1120-POL.

Section 501(c)(4), (5), and (6) organizations use Form 1120-POL to report any tax due under section 527(f). If those organizations pay the proxy tax under section 6033(e), they report it on Form 990-T. While the Forms 990-T that section 501(c)(3) charitable organizations file are required to be publicly disclosed, those that section 501(c)(4), (5), and (6) organizations file are not.

Application Process

To be treated as a tax-exempt section 501(c)(3) organization, most charitable organizations (other than churches) are required by section 508 to notify the IRS by filing Form 1023, *Application for Recognition of Tax-Exempt Status*. There is no similar requirement under the Code for other tax-exempt organizations (such as social welfare organizations exempt under section 501(c)(4)). Those organizations that meet the particular requirements for exemption under the appropriate subsection of section 501(c) can be treated as tax-exempt organizations without notifying the IRS. Even when not required by law to do so, many organizations request a determination by the IRS that their organization meets the requirements for tax-exempt status under the appropriate section of the Internal Revenue Code by filing Form 1024, *Application for Recognition of Exemption Under Section 501(a)*.

The process begins with the filing of an application for recognition of exemption – Form 1023 for section 501(c)(3) charities and Form 1024 for other types of tax-exempt organizations, including section 501(c)(4), (5) and (6) organizations. The form is required to be signed by an officer of the organization under penalties of perjury and the appropriate user fee must be paid.

As detailed in Revenue Procedure 2011-9, the application process is representational and organizations may apply before they have actually commenced operations. In those instances, the organization must describe its proposed activities. During the application process, the IRS may request additional information to be submitted under penalties of perjury as part of the administrative record. The applicant is responsible for the accuracy of its representations in the application.

A favorable determination letter will be issued if the activities (or proposed activities) are described in sufficient detail to permit a conclusion that the organization will clearly meet the requirements for exemption. The exempt purpose of section 501(c)(4) social welfare organizations is to promote social welfare by promoting the common good and general welfare of people in the community. For section 501(c)(5) labor, agricultural, and horticultural organizations, the exempt purpose is the betterment of conditions of those engaged in their pursuits, the improvement of the grade of their products, or the development of a higher degree of efficiency in their respective occupations. The section 501(c)(6) business league exempt purpose is to promote the common business interest of its members and not to conduct a regular trade or business for profit. The net earnings of these organizations may not inure to the benefit of any private shareholder or individual (for section 501(c)(4) and (6) organizations) or member (for section 501(c)(5) organizations). The determination is based solely on the information and representations submitted as part of the administrative file.

An organization that receives a favorable determination concerning its tax-exempt status and operates in the manner described in its application is entitled to rely on the determination made by the IRS that it meets the requirements for tax-exempt status. If the organization later changes its activities, or fails to disclose a material fact or

misrepresents a material fact in its application, the organization may not be able to rely on the favorable determination letter or ruling. If an organization that has received a determination from the IRS is subsequently examined and found not to meet the requirements for tax-exempt status, the IRS will generally revoke the earlier determination letter prospectively unless the organization changed its activities or failed to disclose or misrepresented a material fact in its application. An organization should report changes in its activities to the IRS when it files its Form 990.

For more information about the application process, see Publication 557, *Tax-Exempt Status for Your Organization*.

From: Kindell Judith E
Sent: Thursday, July 21, 2011 2:51 PM
To: Williams Grant; Lerner Lois G; Zarin Roberta B
Cc: Eldridge Michelle L
Subject: RE: Question about 501(c) background materials

Those 2 docs are not on the web. Information about the application process is available on our website in the Life Cycles <http://www.irs.gov/charities/article/0,,id=169727,00.html> Information about 501(c)(4) orgs and political campaign intervention are available here <http://www.irs.gov/charities/nonprofits/article/0,,id=155031,00.html>

From: Williams Grant
Sent: Thursday, July 21, 2011 2:27 PM
To: Lerner Lois G; Kindell Judith E; Zarin Roberta B
Cc: Eldridge Michelle L
Subject: Question about 501(c) background materials

Hi Lois, Judy, and Bobby,

Back in May you provided us with the attached materials for Charles Babcock of Bloomberg, who was then working on his story about 501(c)(4)s and other organizations; we did forward these two attached documents to him (I renamed them along the way to what I'm calling them here).

I believe Lois had said at the time that the first document attached here was pretty much what the IRS had put in the Baucus letter earlier this year, so it had been scrubbed/cleared -- and was thus a good tutorial for Mr. Babcock. I believe Lois had said the second document had been prepared by Judy for Bloomberg and thus was another good tutorial.

We wondered if there are any links to these two documents--or to portions of the documents--on our website that we could refer folks to?

Thanks very much,

Grant

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

From: Lerner Lois G
Sent: Friday, July 22, 2011 5:48 PM
To: Williams Grant; Kindell Judith E; Zarin Roberta B
Cc: Eldridge Michelle L
Subject: RE: Question about 501(c) background materials

Importance: High

Not sure the Bacchus stuff is all on the link, but something similar is --I assume we lifted the application process piece from a longer doc on the web --Judy can you help? Thanks

Lois G. Lerner

Director of Exempt Organizations

From: Williams Grant
Sent: Thursday, July 21, 2011 2:27 PM
To: Lerner Lois G; Kindell Judith E; Zarin Roberta B
Cc: Eldridge Michelle L
Subject: Question about 501(c) background materials

Hi Lois, Judy, and Bobby,

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Thanks very much,

Grant

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

From: Paz Holly O
Sent: Friday, July 22, 2011 7:51 PM
To: Lerner Lois G
Subject: RE: Times / c4

(b)(3)/6103

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

From: Lerner Lois G
Sent: Friday, July 22, 2011 7:05 PM
To: Paz Holly O
Subject: FW: Times / c4

(b)(3)/6103

Lois G. Lerner
Director of Exempt Organizations

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

From: Lemons Terry L
Sent: Wednesday, July 20, 2011 11:10 PM
To: Lerner Lois G; Grant Joseph H; Keith Frank; Eldridge Michelle L; Zarin Roberta B
Subject: Times / c4

Has some perspective on it. Headed to page B4 in the morning.

3 Groups Denied Break By I.R.S. Are Named By STEPHANIE ST ROMThree nonprofit advocacy groups that were denied tax exemption by the

Internal Revenue Service were all units of

Emerge America, an organization devoted to cultivating female political leaders for local, state and federal government.

The I.R.S. denied tax exemption to the groups - Emerge Nevada, Emerge Maine and Emerge Massachusetts - because, the agency wrote in denial letters, they were set up specifically to cultivate Democratic candidates. Their Web sites ask for evidence that participants in their training programs are Democrats.

News of the I.R.S. decision, which surfaced in

heavily redacted denial letters to the groups that were posted to the agency's Web site last Thursday, raised concerns among advocacy groups, known as 501(c)(4) organizations after the section of the tax code that governs them, at large.

Crossroads GPS, a conservative advocacy organization with ties to Karl Rove, the Republican strategist, sent an e-mail to supporters on Tuesday, assuring them that it was not one of the three groups denied exemption.

Karen Middleton, president of Emerge America, acknowledged on Wednesday that the three state organizations had been denied an exemption. She said the groups were in the process of converting into 527 organizations, which are also tax-exempt but disclose their donors, unlike 501(c)(4) groups.

"We're all small organizations," Ms. Middleton said. "We train about 25 Democratic women each year in each state where we work, and we don't engage in any work that involved candidates or campaigns."

The I.R.S. has approved five other state Emerge organizations - in California, Arizona, New Mexico, Wisconsin and Kentucky - as advocacy groups.

"It's just bizarre," said Kimberly Ellis, executive director of Emerge California. "Nevada has been around and waiting for approval for the last five years, and in the interim, Oregon and Kentucky are established and file for their approval - and Kentucky gets it but Nevada, Maine and Massachusetts don't."

Michelle Eldridge, an I.R.S. spokeswoman, said the agency could not comment on individual taxpayers.

Paul Streckfus, a former I.R.S. official, said such inconsistency was not unusual. In part, it is because the office that handles approval of tax-exempt groups, he said, receives hundreds if not thousands of applications a day at its office in Cincinnati. Some of the applications are then sent for processing at field offices around the country, and, in some cases, to headquarters in Washington.

"My guess is that the one that recently got approved went to a different office than the ones that were denied, which seem to have been handled in Washington," Mr. Streckfus said.

Ms. Ellis said Kentucky's application was processed in an I.R.S. office in the Western United States. She did not know where the still-pending application of Emerge Oregon ended up.

Sent from my BlackBerry Wireless Handheld

From: Lerner Lois G
Sent: Monday, July 25, 2011 10:03 AM
To: Downing Nanette M
Subject: Re: Just FYI on c4s

(b)(3)/6103

Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Downing Nanette M
Sent: Monday, July 25, 2011 08:59 AM
To: Lerner Lois G
Subject: FW: Just FYI on c4s

(b)(3)/6103

From: Lerner Lois G
Sent: Friday, July 22, 2011 12:17 PM
To: Downing Nanette M
Subject: FW: Just FYI on c4s

(b)(3)/6103

Lois G. Lerner
Director of Exempt Organizations

From: Eldridge Michelle L
Sent: Tuesday, July 19, 2011 5:47 PM
To: Lemons Terry L; Keith Frank
Cc: Lerner Lois G
Subject: Fw: Just FYI on c4s

See story below--FYI

Sent from my BlackBerry Wireless Device

From: Williams Grant
Sent: Tuesday, July 19, 2011 05:22 PM
To: Eldridge Michelle L
Subject: Just FYI on c4s

<http://www.sfexaminer.com/blogs/beltway-confidential/2011/07/media-matters-about-lose-irs>

SF Examiner blog

Is Media Matters about to lose with the IRS?

By: [Mark Tapscott](#) | Editorial Page Editor [Follow Him @mtapscott](#) | 07/19/11 11:08 AM

It appears three applicants for 501(C)(4) tax status have been denied by the IRS. The names of the three have not been released - yet.

But the main reason cited by IRS for the denials, according to [Election Law Blog](#), is that the organizations' primary activities are "conducted primarily for the benefit of a political party and for a group of private individuals."

Now I am from out of town and all, but if you can't operate to benefit a political party and private individuals as a 501(C)(4), how in the world can you operate doing the same thing but as a 501(C)(3) tax -exempt educational foundation? I refer, of course, to [Media Matters for America](#), which describes itself as having gone to "war" against Fox News because Fox is "the defacto leader of the Republican Party," doesn't that mean MMA's activities are conducted for the benefit of the other political party, the Democrats?

And as for private individuals, well, there is that \$1 million George Soros gave MMA to declare war on Fox.

Several weeks ago, [Fox encouraged viewers](#) to file protests of MMA's tax exempt status. Could it be that the IRS is laying some groundwork for jerking MMA's (C)(3) tax -exempt status?

I'm just sayin'!

<http://electionlawblog.org/?p=20560>

No (c)(4) status for entities connected to parties

Posted on [July 18, 2011](#) by [Justin Levitt](#)

The IRS has released rulings denying 501(c)(4) status to three different organizations, on the grounds that the organizations' activities are "conducted primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole."

Though identifying information was redacted in the rulings, the IRS determined that all three organizations sought, as their primary activity, to train and recruit members of an (undisclosed) political party to run for public office. The letters are [here](#), [here](#), and [here](#).

From: Seto Michael C
Sent: Tuesday, August 16, 2011 2:50 PM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Letourneau Diane L
Cc: Paz Holly O; Neuhart Paige; Trilli Darla J
Subject: SCR Report for July /Summary of SCR cases
Attachments: SCR Report Table July 2011.doc

There are two items of interest:

- 1) [REDACTED]
[REDACTED] *b(3)\6103; non-responsive* [REDACTED]
[REDACTED]
- 2) [REDACTED] *b(3)\6103; non-responsive* [REDACTED]

**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				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)	b(3)\6103			
2.	b(3)\6103; non-responsive								

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

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

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

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

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

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

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

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

From: Seto Michael C
Sent: Friday, September 16, 2011 1:05 PM
To: Paz Holly O; Letourneau Diane L; Light Sharon P; Kindell Judith E
Cc: Neuhart Paige; Trilli Darla J; Lerner Lois G; Abner Donna J; Thomas Cindy M; Fish David L
Subject: SCR Report for August 2011
Attachments: SCR Report Table Aug 2011.doc

The cases are moving but no closings in August. The processing of two major SCR cases, [REDACTED] b(3)\6103 and [REDACTED] b(3)\6103 is on hold pending discussion between the EO Director and Counsel in the former and discussion between the TE/GE Acting Commissioner and the POA in the latter.

**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	b(3)\6103			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)	b(3)\6103; (b)(5) DP AC WP			

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

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

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

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

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

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

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

From: Paz Holly O
Sent: Thursday, February 16, 2012 12:38 PM
To: Lerner Lois G
Subject: RE: Review of Classification Write-Ups

Will do.

From: Lerner Lois G
Sent: Thursday, February 16, 2012 1:28 PM
To: Paz Holly O
Cc: Light Sharon P; Kindell Judith E; Downing Nanette M; Miller Thomas J
Subject: Review of Classification Write-Ups

While you were gone, Judy and Sharon had the opportunity to look at some of the write -up from the referral committee and classification folks on cases they had reviewed. We are all a bit concerned about the mention of specific Congress people, practitioners and political parties. Our filed folks are not as sensitive as we are to the fact that anything we write can be public--or at least be seen by Congress. We talked with Nan and she thought it would be great if R & A could put together some training points to help them under stand the potential pitfalls, as well as how to think about referrals. As a starting point, Nan has sent up a bunch of papers that I asked Tom Miller to review to provide feedback to Sharon/Judy --or whomever we decide should draft the training.

I realize everyone is very busy, but I'd like you and Tom to get together to work out a reasonable plan for completing the review and reporting back on some of the issues he thinks we'd need to cover. If you need more info, we can talk. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, February 17, 2012 12:38 PM
To: Paz Holly O
Subject: FW: Request for Briefing on section 501(c)(4) Application Process

FYI--sooner the better.

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, February 17, 2012 1:38 PM
To: Williams Floyd L; Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Need to see the file and talk to folks --we'll try our best

Lois G. Lerner

Director of Exempt Organizations

From: Williams Floyd L
Sent: Friday, February 17, 2012 1:13 PM
To: Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Thanks, Joe, it would be best if we could do this next week as it is recess, however, early the following week might work.

From: Grant Joseph H
Sent: Friday, February 17, 2012 12:36 PM
To: Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: Re: Request for Briefing on section 501(c)(4) Application Process

Floyd,

We are looking in to it. We need to look at the file before heading up to the Hill. Lois will come to you with some times for next week or early the following week.

Joseph

Sent from my BlackBerry Wireless Handheld

From: Williams Floyd L

Sent: Friday, February 17, 2012 11:06 AM

To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L

Cc: Keith Frank; Norton William G Jr; Landes Scott S

Subject: Request for Briefing on section 501(c)(4) Application Process

I just received a call from Kristina Moore, Senior Counsel to House Committee on Oversight and Government Reform. She wants a briefing on the section 501(c)(4) determination process. This request is prompted by a concern that was brought to the attention of Rep. Jim Jordan, who is Chair of the Subcommittee on Regulatory Affairs, Stimulus, and Government Spending. The specific concern involved an [REDACTED] (b)(3)/6103 [REDACTED]

Kristina would like to understand why this should take so long and wants to know more, in general, about the determination process.

I want to be as responsive as possible here and would like to be able to get back to her next week. I think Lois and her team are probably the key people here. Can I get some times to offer her a briefing next week?

From: Lerner Lois G
Sent: Friday, February 17, 2012 2:11 PM
To: Williams Floyd L
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Thanks

Lois G. Lerner

Director of Exempt Organizations

From: Williams Floyd L
Sent: Friday, February 17, 2012 2:21 PM
To: Grant Joseph H; Lerner Lois G
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

I know you will!!!

From: Grant Joseph H
Sent: Friday, February 17, 2012 1:34 PM
To: Williams Floyd L; Lerner Lois G
Subject: Re: Request for Briefing on section 501(c)(4) Application Process

Floyd,

We hear you and will do our best.

Joseph

Sent from my BlackBerry Wireless Handheld

From: Williams Floyd L
Sent: Friday, February 17, 2012 01:12 PM
To: Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Thanks, Joe, it would be best if we could do this next week as it is recess, however, early the following week might work.

From: Grant Joseph H
Sent: Friday, February 17, 2012 12:36 PM
To: Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: Re: Request for Briefing on section 501(c)(4) Application Process

Floyd,

We are looking in to it. We need to look at the file before heading up to the Hill. Lois will come to you with some times for next week or early the following week.
Joseph

Sent from my BlackBerry Wireless Handheld

From: Williams Floyd L

Sent: Friday, February 17, 2012 11:06 AM

To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L

Cc: Keith Frank; Norton William G Jr; Landes Scott S

Subject: Request for Briefing on section 501(c)(4) Application Process

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(b)(3)/6103

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I want to be as responsive as possible here and would like to be able to get back to her next week. I think Lois and her team are probably the key people here. Can I get some times to offer her a briefing next week?

From: Lerner Lois G
Sent: Friday, February 17, 2012 5:40 PM
To: Marx Dawn R
Subject: FW: RE Request for Briefing on section 501(c)(4) Application Process
Attachments: [REDACTED] b(3)/6103

Please print and put into folder --Holly and I will probably be going over on this

Lois G. Lerner

Director of Exempt Organizations

From: Urban Joseph J
Sent: Friday, February 17, 2012 11:56 AM
To: Grant Joseph H; Lerner Lois G; Fish David L
Cc: Marks Nancy J; Lowe Justin; Kindell Judith E; Light Sharon P; Paz Holly O; Medina Moises C
Subject: RE Request for Briefing on section 501(c)(4) Application Process

FYI, the House Committee on Oversight and Government Reform chaired by Congressman Issa. Rep. Jordan is from Urbana Ohio. Recently, there was an article in the [REDACTED] b(3)/6103 which reprinted an article in the [REDACTED] b(3)/6103 about delays in processing (c)(4) applications concerning Tea Party and Liberty groups, and the questions being asked. The author is the [REDACTED] b(3)/6103 and discussed a specific complaint about the processing of the [REDACTED] b(3)/6103. The article was also published on the [REDACTED] b(3)/6103 web site. Also, yesterday, the [REDACTED] b(3)/6103. I am including both articles below.

[REDACTED] b(3)/6103

[REDACTED] b(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

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Sent: Friday, February 17, 2012 11:06 AM

To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L

Cc: Keith Frank; Norton William G Jr; Landes Scott S

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Kristina would like to understand why this should take so long and wants to know more, in general, about the determination process.

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(b)(3)/6103

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 4:13 PM
To: Paz Holly O
Subject: FW: Request for Briefing on section 501(c)(4) Application Process

Importance: High

Need the timeline on this case ASAP please --what we did tonight was easy --Nikole and I will need to go up and actually talk to staff --thanks

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 21, 2012 4:59 PM
To: Lerner Lois G; Grant Joseph H
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

I realize we can't discuss the case absent a waiver, but can we get a timeline of the case when you have sorted it out? Thanks

From: Lerner Lois G
Sent: Friday, February 17, 2012 1:17 PM
To: Flax Nikole C; Grant Joseph H; Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

I love to have you with me! I'll let you know once I've looked at the info.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Friday, February 17, 2012 12:39 PM
To: Grant Joseph H; Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Lets coordinate schedules so that I can attend as well. Thanks

From: Grant Joseph H
Sent: Friday, February 17, 2012 12:36 PM

To: Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: Re: Request for Briefing on section 501(c)(4) Application Process

Floyd,

We are looking in to it. We need to look at the file before heading up to the Hill. Lois will come to you with some times for next week or early the following week.

Joseph

Sent from my BlackBerry Wireless Handheld

From: Williams Floyd L
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From: Lerner Lois G
Sent: Tuesday, February 21, 2012 4:14 PM
To: Flax Nikole C; Williams Floyd L; Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S; Barre Catherine M
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

I can do Friday afternoon.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 21, 2012 4:04 PM
To: Williams Floyd L; Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S; Barre Catherine M
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Lois - can we do Friday afternoon?

From: Williams Floyd L
Sent: Tuesday, February 21, 2012 3:59 PM
To: Flax Nikole C; Grant Joseph H; Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Lois/Nikole, can you get back to me with some times that might work? It would be nice to knock this one out during recess week. Thanks.

From: Flax Nikole C
Sent: Friday, February 17, 2012 12:39 PM
To: Grant Joseph H; Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Lerner Lois G; Urban Joseph J; Fish David L
Cc: Keith Frank; Norton William G Jr; Landes Scott S
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

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Cc: Keith Frank; Norton William G Jr; Landes Scott S

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From: Lerner Lois G
Sent: Tuesday, February 21, 2012 4:21 PM
To: Flax Nikole C
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today

Importance: High

fyi

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 5:20 PM
To: Zarin Roberta B; Paz Holly O
Cc: Thomas Cindy M
Subject: RE: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

We are handling this at a higher level--Nikole Flax and I are supposed to go talk to Congressman on Friday. No one else should be doing anything. Bobby can you let the leg affairs and media relations folks know. Holly--I need a complete timeline since it came in the door please.

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 5:13 PM
To: Paz Holly O; Lerner Lois G
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Thomas Cindy M
Sent: Tuesday, February 21, 2012 3:18 PM
To: Paz Holly O
Cc: Light Sharon P; Zarin Roberta B; Nielson Jacqueline R; Hall Regeina D

Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

Holly,

Please read Jackie's email directly below. How do you want to handle this?

NOTE: This case was assigned to Joseph Herr on 2/6/2012. It has a control date from 9/2010.

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:04 PM
To: Zarin Roberta B; Thomas Cindy M
Cc: Hall Eric
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

I do have the privacy release from the (b)(3)/6103, EIN (b)(3)/6103 re: their (b)(3)/6103. If we could also give him just a couple of talking points, that might be helpful, e.g. we review each application for completeness, etc. Thanks! Jackie N., Governmental Liaison, 614-280-8739

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 11:22 AM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O
Cc: Eldridge Michelle L; Cressman William M; Daly Richard M; Hall Eric; Cressman William M
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

see the email request below and the attached email traffic from late last week. Can someone in EO help please?

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Hall Eric
Sent: Tuesday, February 21, 2012 10:53 AM
To: Zarin Roberta B
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

Bobbi - Congressman Jim Jordan will be addressing a group this evening that is wondering what has become of its application for tax exempt status. The group appears to be politically active and vocal. See below. Is there any chance of getting some talking points or comments before close-of-business, so that we can prep Congressman Jordan? We do not have a disclosure authorization, so any talking points would have to be generic, focused on the bigger picture outlined below.

Let me know. Thanks,

Eric Hall
Internal Revenue Service
Legislative Affairs
(202) 622-4057

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 10:24 AM
To: Hall Eric; Esrig Bonnie A
Subject: (b)(3) organization meeting with Rep. Jordan today

Help! An organization in [REDACTED]

[REDACTED] (b)(3)/6103 [REDACTED]

[REDACTED] (b)(3)/6103 and (b)(5)/DP [REDACTED]

[REDACTED] Thanks for your help and advice. Jackie N.

From: Jenkins Jennifer A
Sent: Tuesday, February 21, 2012 9:32 AM
To: *Media Relations
Cc: Kerns Chris D; Cressman William M; Nielson Jacqueline R
Subject: Clip: [REDACTED] (b)(3)/6103

[REDACTED]

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 6:25 PM
To: Flax Nikole C
Subject: RE: Talking points for meeting with Rep. Jordan today

I sent it to you after it went to media and leg affairs --I'm guessing he got it

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 21, 2012 5:43 PM
To: Lerner Lois G
Subject: RE: Talking points for meeting with Rep. Jordan today

[lets just wait until friday](#)

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 5:32 PM
To: Flax Nikole C
Subject: RE: Talking points for meeting with Rep. Jordan today

He' is meeting with a different , similarly situated org than the one he has the release on(the one we'll be talking to him about Friday) tonight and wanted our general process to tell them about

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Tuesday, February 21, 2012 5:28 PM
To: Lerner Lois G
Subject: RE: Talking points for meeting with Rep. Jordan today

[I am confused. What meeting is today? Why don't we just convey the info Friday?](#)

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 5:11 PM
To: Flax Nikole C
Subject: FW: Talking points for meeting with Rep. Jordan today
Importance: High

Thought you'd want to see this --apparently his staff asked for something general to use as talking point--the Rep is speaking to the org tonight

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B

Sent: Tuesday, February 21, 2012 5:01 PM

To: Hall Eric; Nielson Jacqueline R

Cc: Lerner Lois G; Paz Holly O; Eldridge Michelle L; Williams Floyd L; Cressman William M

Subject: Talking points for meeting with Rep. Jordan today

Importance: High

Upon receipt, exemption applications accompanied by the required user fee are initially separated into four categories: (1) those that can be approved immediately based on the information submitted, (2) those that need minor additional information to be resolved, (3) those that are submitted on obsolete forms or do not include the items specified on the Procedural Checklist (at http://www.irs.gov/pub/irs-tege/f1023_procedural_checklist_0606.pdf), and (4) those that require development.

If an application falls within one of the first three categories, the applicant will receive either its determination letter or a request for additional information, via phone, fax, or letter, within approximately 90 days of the date the application was submitted.

Applications falling within the fourth category must be assigned to an EO agent for further development. Due to staffing levels, applications falling into this category cannot always immediately be assigned. These applications can experience some “wait time” before assignment to an agent. The number of applications awaiting assignment to EO agents has increased due, in part, to the influx of applications from large organizations seeking to have their exempt status retroactively reinstated after being automatically revoked pursuant to the Pension Protection Act of 2006 for failure to file annual information returns/notices for three consecutive years.

Once a case is assigned to an EO agent, the agent must consider the type of organization and the rules applicable to that type of organization. Because exemption from federal income tax is a valuable subsidy, the Internal Revenue Code and accompanying Treasury Regulations impose detailed requirements for qualification for exemption as various types of entities. EO agents often have to ask the applicant organizations questions and ask for related documents to determine whether they satisfy these requirements.

For example, under the Code, organizations exempt under section 501(c)(3) (what we commonly refer to as charities) are absolutely forbidden from intervening in political campaigns. In contrast, organizations exempt under sections 501(c)(4), 501(c)(5) and 501(c)(6) can intervene in political campaigns within limits. It is thus important that EO agents look at the materials used and activities conducted by organizations seeking exemption under sections 501(c)(4), 501(c)(5) and 501(c)(6) to make sure campaign intervention will be within the legal limits. This review often involves a back and forth question and answer process between the IRS and the applicant.

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 6:42 PM
To: Paz Holly O
Cc: Downing Nanette M; Miller Thomas J
Subject: RE: Review of Classification Write-Ups

Perfect! Thanks

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Tuesday, February 21, 2012 12:47 PM
To: Lerner Lois G
Cc: Downing Nanette M; Miller Thomas J
Subject: RE: Review of Classification Write-Ups

It's my understanding that Tom has already reviewed and provided a memo of his comments to Judy/Sharon. I believe the three of them are meeting to discuss early this week.

From: Lerner Lois G
Sent: Friday, February 17, 2012 7:53 PM
To: Downing Nanette M; Paz Holly O
Cc: Light Sharon P; Kindell Judith E; Miller Thomas J
Subject: RE: Review of Classification Write-Ups

I have gone out to Holly to ask her to get a sense of when Tom will have looked at these. I don't want to wait to long

Lois G. Lerner

Director of Exempt Organizations

From: Downing Nanette M
Sent: Friday, February 17, 2012 7:57 AM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P; Kindell Judith E; Miller Thomas J
Subject: FW: Review of Classification Write-Ups

Realized I had a senior moment here. Nancy reminded me that there were 2 items we needed assistance on. The writing of the SCR's and the classification referrals. The March 15th meeting is for the SCR and Judy is doing that with our managers. The classification piece will need to be done with my classifiers and referral committee members. We will need to get that one scheduled as soon as R&A is ready.

From: Downing Nanette M
Sent: Friday, February 17, 2012 6:17 AM
To: Lerner Lois G; Paz Holly O

Cc: Light Sharon P; Kindell Judith E; Miller Thomas J

Subject: RE: Review of Classification Write-Ups

I thought we were going to have Judy and Sharon talk to my front line managers about this at the next quarterly managers call. I believe it is scheduled for March 15h. I think Nancy Todd has already reached out to Judy and Sharon to get them on the agenda. I have had a discussion with the Area Managers but agree we need a more in depth discussion with the front line managers.

So depending on who is doing it, is March 15 still good? I appreciate any help you can give us!

From: Lerner Lois G

Sent: Thursday, February 16, 2012 12:28 PM

To: Paz Holly O

Cc: Light Sharon P; Kindell Judith E; Downing Nanette M; Miller Thomas J

Subject: Review of Classification Write-Ups

While you were gone, Judy and Sharon had the opportunity to look at some of the write -up from the referral committee and classification folks on cases they had reviewed. We are all a bit concerned about the mention of specific Congress people, practitioners and political parties. Our filed folks are not as sensitive as we are to the fact that anything we write can be public--or at least be seen by Congress. We talked with Nan and she thought it would be great if R & A could put together some training points to help them understand the potential pitfalls, as well as how to think about referrals. As a starting point, Nan has sent up a bunch of papers that I asked Tom Miller to review to provide feedback to Sharon/Judy --or whomever we decide should draft the training.

I realize everyone is very busy, but I'd like you and Tom to get together to work out a reasonable plan for completing the review and reporting back on some of the issues he thinks we'd need to cover. If you need more info, we can talk. Thanks

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Tuesday, February 21, 2012 9:51 PM
To: Lerner Lois G; Zarin Roberta B
Subject: RE: Talking points for meeting with Rep. Jordan today

Have it on the one org. Cindy is getting me that one the second one tomorrow by cob.

From: Lerner Lois G
Sent: Tuesday, February 21, 2012 5:25 PM
To: Zarin Roberta B; Paz Holly O
Subject: RE: Talking points for meeting with Rep. Jordan today
Importance: High

Nikole and I are meeting with the office on Friday about the facts of the specific matter, so I need staff ASAP from Cindy

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 5:15 PM
To: Lerner Lois G; Paz Holly O
Subject: FW: Talking points for meeting with Rep. Jordan today
Importance: High

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 5:05 PM
To: Ohi, Susan
Cc: Zarin Roberta B
Subject: FW: Talking points for meeting with Rep. Jordan today
Importance: High

Susan, here are talking points from our Exempt Organizations Division that Congressman Jordan can use at his meeting tonight. Please let me know if other questions come up tonight. Thank you.

Thanks for your help, Bobby. Jackie N., 614-280-8739

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 5:01 PM
To: Hall Eric; Nielson Jacqueline R
Cc: Lerner Lois G; Paz Holly O; Eldridge Michelle L; Williams Floyd L; Cressman William M
Subject: Talking points for meeting with Rep. Jordan today
Importance: High

Upon receipt, exemption applications accompanied by the required user fee are initially separated into four categories: (1) those that can be approved immediately based on the information submitted, (2) those that need minor additional information to be resolved, (3) those that are submitted on obsolete forms or do not include the items specified on the Procedural Checklist (at http://www.irs.gov/pub/irs-tege/f1023_procedural_checklist_0606.pdf), and (4) those that require development.

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From: Lerner Lois G
Sent: Wednesday, February 22, 2012 6:00 PM
To: Flax Nikole C
Subject: FW: Tea Party appliation

Not sure you've seen yet

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Wednesday, February 22, 2012 3:51 PM
To: Lerner Lois G; Paz Holly O; Urban Joseph J
Cc: Marx Dawn R
Subject: Tea Party appliation

Application for exempt status (Note this article has links to two letters written by EPEO staffers)
[Congressional investigations sought over IRS 'assault' on tea party groups](#)

The Daily Caller via Yahoo! News On Tuesday Jamie Radtke, a Republican U.S. Senate candidate from Virginia, asked California Republican Rep. Darrell Issa to investigate what she said was unfair treatment of tea party groups by the Internal Revenue Service. Issa chairs the House Committee on Oversight and Government Reform.

<http://news.yahoo.com/congressional-investigations-sought-over-irs-assault-tea-party-065323989.html>

<http://israelmatzav.blogspot.com/2012/02/z-street-wins-one-against-obamas-irs.html>

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Lerner Lois G
Sent: Wednesday, February 22, 2012 6:16 PM
To: Lerner Lois G
Subject: FW: Significant Case Report for January 2012
Attachments: SCR Report Table Jan 2012.doc

Lois G. Lerner

Director of Exempt Organizations

From: Seto Michael C
Sent: Wednesday, February 22, 2012 10:33 AM
To: Lerner Lois G; Kindell Judith E; Light Sharon P
Cc: Paz Holly O; Fish David L; Trilli Darla J; Neuhart Paige; Marx Dawn R; Abner Donna J; Thomas Cindy M
Subject: Significant Case Report for January 2012

Highlights:

A. Closures

- We have no closures for January.

B. Specific Cases

b(3)6103

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	b(3)\6103; (b)(5) DP AC			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)	b(3)\6103; (b)(5) DP AC		b(3)\6103; (b)(5) DP AC WP	b(3)\6103; (b)(...
	b(3)\6103; (b)(5) DP AC								
2.	b(3)\6103; (b)(5) DP AC								

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

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Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

Entirely withhold (b)(3)/6103 Partially withhold (b)(5)/DP, AC, WP

From: Zarin Roberta B
Sent: Thursday, February 23, 2012 7:25 AM
To: Lerner Lois G
Cc: Marx Dawn R
Subject: RE: Tea Party appliation

I'm booked at 10:30 (and all day).

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Lerner Lois G
Sent: Wednesday, February 22, 2012 7:06 PM
To: Zarin Roberta B; Paz Holly O; Urban Joseph J; Kindell Judith E
Cc: Marx Dawn R; Light Sharon P
Subject: RE: Tea Party appliation
Importance: High

OK--so for my afternoon meeting, I think I will also need to have numbers in the pipeline of all advocacy matters and status --that is, are any getting screened or all going to full development? Also, is there any history on similarly situated organizations? Rather than email--let's talk at the 10:30 meeting in the morning--

Judy, not sure you are here tomorrow -if you have info to share and need a call in number, let Dawn know.

Lois G. Lerner

Director of Exempt Organizations

From: Zarin Roberta B
Sent: Wednesday, February 22, 2012 3:51 PM
To: Lerner Lois G; Paz Holly O; Urban Joseph J
Cc: Marx Dawn R
Subject: Tea Party appliation

Application for exempt status (Note this article has links to two letters written by EPEO staffers)
[Congressional investigations sought over IRS 'assault' on tea party groups](#)

The Daily Caller via Yahoo! News On Tuesday Jamie Radtke, a Republican U.S. Senate candidate from Virginia, asked California Republican Rep. Darrell Issa to investigate what she said was unfair treatment of tea party groups by the Internal Revenue Service. Issa chairs the House Committee on Oversight and Government Reform.
<http://news.yahoo.com/congressional-investigations-sought-over-irs-assault-tea-party-065323989.html>

<http://israelmatzav.blogspot.com/2012/02/z-street-wins-one-against-obamas-irs.html>

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Paz Holly O
Sent: Monday, May 13, 2013 3:00 PM
To: Light Sharon P
Subject: FW: 201210022-Draft Report
Attachments: SecureZIP Attachments.zip

From: Daly Richard M
Sent: Friday, April 12, 2013 2:56 PM
To: Lerner Lois G; Paz Holly O; Fish David L
Cc: Grant Joseph H; Medina Moises C; Marks Nancy J
Subject: FW: 201210022-Draft Report

Joel Rutstein has just provided me with the draft of the report. This is the version we must respond to.

Joel appropriately asks why this is on something of a fast track. I have no answer, but am asking Troy.

Will let you know. In the meantime, let's get a draft response ready to send to Nikole by Thursday of next week, April 18.

Mike

From: Rutstein Joel S
Sent: Friday, April 12, 2013 2:43 PM
To: Daly Richard M
Cc: Landes Scott S
Subject: FW: 201210022-Draft Report

Hi Mike. TIGTA just issued the draft report, the discussion draft report for which we discussed last week. I've opened e-trak case #2013-41614. The response is due to TIGTA by April 30, 2013. Do you know why they're giving you less than the customary 30 days? Thanks, Joel

Joel S. Rutstein, Esq.

Program Manager, GAO/TIGTA Audits
Legislation and Reports Branch
Office of Legislative Affairs
(202) 622-4133
(202) 622-5247 (fax)
Email: joel.s.rutstein@irs.gov
Web: <http://irweb.irs.gov/AboutIRS/bu/cl/la/lagt/default.aspx>

From: Stephens Dorothy A TIGTA [<mailto:Dot.Stephens@tigta.treas.gov>]
Sent: Friday, April 12, 2013 2:19 PM
To: Landes Scott S; Rutstein Joel S
Subject: 201210022-Draft Report

Fyi, the attached Draft Audit Report – *Inappropriate Criteria Were Used to Identify Tax -Exempt Applications for Review* has been signed and is ready for issuance. Thanks

Dorothy Stephens

Staff Assistant to the DIGA

IG for Tax Administration

Office of Audit (OA)

(202) 927-7161 (office)

(202) 622-6513 (fax)

(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

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(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

From: Light Sharon P
Sent: Tuesday, May 14, 2013 3:43 PM
To: Kindell Judith E (judith.e.kindell@irs.gov)
Subject: FW: 201210022 Final_ Report
Attachments: SecureZIP Attachments.zip

From: Marx Dawn R **On Behalf Of** Lerner Lois G
Sent: Tuesday, May 14, 2013 4:39 PM
To: Marks Nancy J; Light Sharon P
Cc: Paz Holly O
Subject: FW: 201210022 Final_ Report

Thought you should also have this.

From: Daly Richard M
Sent: Tuesday, May 14, 2013 3:50 PM
To: Grant Joseph H; Medina Moises C; Flax Nikole C; Eldridge Michelle L; Lerner Lois G; Paz Holly O; Zarin Roberta B; Partner Melaney J
Subject: FW: 201210022 Final_ Report

Here is the report as it will be / has been issued.

From: Rutstein Joel S
Sent: Tuesday, May 14, 2013 3:39 PM
To: Daly Richard M
Subject: FW: 201210022 Final_ Report

Mike, please see below and attached. Thanks, Joel

From: Stephens Dorothy A TIGTA [<mailto:Dot.Stephens@tigta.treas.gov>]
Sent: Tuesday, May 14, 2013 3:17 PM
To: Landes Scott S; Rutstein Joel S
Subject: 201210022 Final_ Report

Fyi, the attached Final Audit Report – *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review* has been signed and is ready for issuance. Thanks

Dorothy Stephens
Staff Assistant to the DIGA
IG for Tax Administration
Office of Audit (OA)
(202) 927-7161 (office)
(202) 622-6513 (fax)

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

This report remains the property of the Treasury Inspector General for Tax Administration (TIGTA) and may not be disseminated beyond the Internal Revenue Service without the permission of the TIGTA.

This report may contain confidential return information protected from disclosure pursuant to I.R.C. § 6103(a). Such information may be disclosed only to Department of the Treasury employees who have a need to know this information in connection with their official tax administration duties.

Phone Number / 202-622-6500

E-mail Address / TIGTACommunications@tigta.treas.gov

Website / <http://www.treasury.gov/tigta>



HIGHLIGHTS

INAPPROPRIATE CRITERIA WERE USED TO IDENTIFY TAX-EXEMPT APPLICATIONS FOR REVIEW

Highlights

Final Report issued on May 14, 2013

Highlights of Reference Number: 2013-10-053 to the Internal Revenue Service Acting Commissioner, Tax Exempt and Government Entities Division.

IMPACT ON TAXPAYERS

Early in Calendar Year 2010, the IRS began using inappropriate criteria to identify organizations applying for tax-exempt status to review for indications of significant political campaign intervention. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

WHY TIGTA DID THE AUDIT

TIGTA initiated this audit based on concerns expressed by members of Congress. The overall objective of this audit was to determine whether allegations were founded that the IRS:

- 1) targeted specific groups applying for tax-exempt status,
- 2) delayed processing of targeted groups' applications, and
- 3) requested unnecessary information from targeted groups.

WHAT TIGTA FOUND

The IRS used inappropriate criteria that identified for review Tea Party and other organizations applying for tax-exempt status based upon their names or policy positions instead of indications of potential political campaign intervention. Ineffective management:

- 1) allowed inappropriate criteria to be developed and stay in place for more than 18 months,
- 2) resulted in substantial delays in processing certain applications, and
- 3) allowed unnecessary information requests to be issued.

Although the processing of some applications with potential significant political campaign

intervention was started soon after receipt, no work was completed on the majority of these applications for 13 months. This was due to delays in receiving assistance from the Exempt Organizations function Headquarters office. For the 296 total political campaign intervention applications TIGTA reviewed as of December 17, 2012, 108 had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 were open from 206 to 1,138 calendar days (some for more than three years and crossing two election cycles).

More than 20 months after the initial case was identified, processing the cases began in earnest. Many organizations received requests for additional information from the IRS that included unnecessary, burdensome questions (e.g., lists of past and future donors). The IRS later informed some organizations that they did not need to provide previously requested information. IRS officials stated that any donor information received in response to a request from its Determinations Unit was later destroyed.

WHAT TIGTA RECOMMENDED

TIGTA recommended that the IRS finalize the interim actions taken, better document the reasons why applications potentially involving political campaign intervention are chosen for review, develop a process to track requests for assistance, finalize and publish guidance, develop and provide training to employees before each election cycle, expeditiously resolve remaining political campaign intervention cases (some of which have been in process for three years), and request that social welfare activity guidance be developed by the Department of the Treasury.

In their response to the report, IRS officials agreed with seven of our nine recommendations and proposed alternative corrective actions for two of our recommendations. TIGTA does not agree that the alternative corrective actions will accomplish the intent of the recommendations and continues to believe that the IRS should better document the reasons why applications potentially involving political campaign intervention are chosen for review and finalize and publish guidance.



TREASURY INSPECTOR GENERAL
FOR TAX ADMINISTRATION

DEPARTMENT OF THE TREASURY

WASHINGTON, D.C. 20220

May 14, 2013

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT
ENTITIES DIVISION

FROM: Michael E. McKenney
Acting Deputy Inspector General for Audit

SUBJECT: Final Audit Report – Inappropriate Criteria Were Used to Identify
Tax-Exempt Applications for Review (Audit # 201210022)

This report presents the results of our review to determine whether allegations were founded that the Internal Revenue Service (IRS): 1) targeted specific groups applying for tax -exempt status, 2) delayed processing of targeted groups' applications for tax -exempt status, and 3) requested unnecessary information from targeted groups. This audit was initiated based on concerns expressed by members of Congress and reported in the media regarding the IRS's treatment of organizations applying for tax-exempt status. This review is included in our Fiscal Year 2013 Annual Audit Plan and addresses the major management challenge of Tax Compliance Initiatives.

We would like to clarify a few issues based on the IRS response to our report. The response states that our report views approvals as evidence that the Exempt Organizations function should not have looked closely at those applications. We disagree with this statement. Our objection was to the criteria used to identify these applications for review. We believe all applications should be reviewed prior to approval to determine whether tax -exempt status should be granted. The IRS's response also states that issues discussed in the report have been resolved. We disagree with this statement as well. Nine recommendations were made to correct concerns we raised in the report, and corrective actions have not been fully implemented. Further, as our report notes, a substantial number of applications have been under review, some for more than three years and through two election cycles, and remain open. Until these cases are closed by the IRS and our recommendations are fully implemented, we do not consider the concerns in this report to be resolved. Management's complete response to the draft report is included as Appendix VIII.



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Copies of this report are also being sent to the IRS managers affected by the report recommendations. If you have any questions, please contact me or Gregory D. Kutz, Assistant Inspector General for Audit (Management Services and Exempt Organizations).



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

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***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Abbreviations

BOLO	Be On the Look Out
EO	Exempt Organizations
I.R.C.	Internal Revenue Code
IRS	Internal Revenue Service



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Background

Organizations, such as charities, seeking Federal tax exemption are required to file an application with the Internal Revenue Service (IRS). Other organizations, such as social welfare organizations, may file an application but are not required to do so. The IRS's Exempt Organizations (EO) function, Rulings and Agreements office, which is headquartered in Washington, D.C., is responsible for processing applications for tax exemption. Within the Rulings and Agreements office, the Determinations Unit in Cincinnati, Ohio, is responsible for reviewing applications as they are received to determine whether the organization qualifies for tax-exempt status.

In Fiscal Year 2012,¹ 70 percent of all closed applications for tax-exempt status were approved during an initial review with little or no additional information from the organizations. If substantial additional information is needed, the application is placed in unassigned inventory until it can be assigned to a specialist in the Determinations Unit for further processing. The specialist develops a letter(s) requesting the additional information and issues it to the organization. Once the specialist receives all the necessary information to determine whether an organization should be afforded tax-exempt status, a final determination letter is issued to the organization either approving or denying the request for tax-exempt status.

If the Determinations Unit needs technical assistance processing applications, it may call upon the Technical Unit in the Rulings and Agreements office in Washington, D.C.² The IRS's goal for processing all types of applications for tax-exempt status was 121 days in Fiscal Year 2012; however, some cases may take substantially longer. For example, the EO function states in its *Fiscal Year 2013 Work Plan* that applications requiring additional information are not assigned for review until an average of five months after they are received.

Most organizations requesting tax-exempt status must submit either a Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, or Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, depending on the type of tax-exempt organization it desires to be. For example, a charitable organization would request exemption under Internal Revenue Code (I.R.C.) Section (§) 501(c)(3),³ whereas a social welfare organization would request exemption under I.R.C. § 501(c)(4).⁴

¹ A 12-consecutive-month period ending on the last day of any month. The Federal Government's fiscal year begins on October 1 and ends on September 30.

² For a high-level organizational chart of offices referenced in this report, see Appendix V.

³ I.R.C. § 501(c)(3) (2012).

⁴ I.R.C. § 501(c)(4) (2012).



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

The I.R.C. section and subsection an organization is granted tax exemption under affects the activities it may undertake. For example, I.R.C. § 501(c)(3) charitable organizations are prohibited from directly or indirectly participating in or intervening in any political campaign on behalf of or in opposition to any candidate for public office (hereafter referred to as political campaign intervention).⁵ However, I.R.C. § 501(c)(4) social welfare organizations, I.R.C. § 501(c)(5)⁶ agricultural and labor organizations, and I.R.C. § 501(c)(6)⁷ business leagues may engage in limited political campaign intervention. Figure 1 highlights certain characteristics of common types of tax-exempt organizations.

***Figure 1: Characteristics of Certain
Common Types of Tax-Exempt Organizations***

Characteristic	I.R.C. § 501(c)(3)	I.R.C. §§ 501(c)(4), (c)(5), and (c)(6)
May receive tax deductible charitable contributions.	Yes	No
May engage in political campaign intervention.	No	Limited (must not constitute primary activity of organization)
Must publicly disclose the identity of its donors.	No	No
May engage in lobbying ⁸ (<i>i.e.</i> , legislative activity).	Limited (must not be substantial)	Yes (unlimited amount if in furtherance of tax-exempt purposes)
May engage in general advocacy ⁹ not related to legislation or the election of candidates.	Yes (permitted as an educational activity)	Yes (unlimited amount if in furtherance of tax-exempt purposes)
Must apply with the IRS.	Yes	No

Source: Draft Advocacy Guide Sheet and Internal Revenue Manual.

⁵ Political campaign intervention is the term used in Treasury Regulations §§ 1.501(c)(3)-1, 1.501(c)(4)-1, 1.501(c)(5)-1, and 1.501(c)(6)-1.

⁶ I.R.C. § 501(c)(5) (2012).

⁷ I.R.C. § 501(c)(6) (2012).

⁸ An organization engages in lobbying, or legislative activities, when it attempts to influence specific legislation by directly contacting members of a legislative body (Federal, State, or local) or encouraging the public to contact those members regarding that legislation. An organization also engages in lobbying when it encourages the public to take a position on a referendum. Lobbying is distinguished from political campaign intervention because lobbying does not involve attempts to influence the election of candidates for public office.

⁹ An organization engages in general advocacy when it attempts to 1) influence public opinion on issues germane to the organization's tax-exempt purposes, 2) influence nonlegislative governing bodies (*e.g.*, the executive branch or regulatory agencies), or 3) encourage voter participation through "get out the vote" drives, voter guides, and candidate debates in a nonpartisan, neutral manner. General advocacy basically includes all types of advocacy other than political campaign intervention and lobbying.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

During the 2012 election cycle, the activities of tax-exempt organizations received media coverage concerning the amount of money spent on influencing elections. According to the Center for Responsive Politics, tax-exempt groups, such as I.R.C. § 501(c)(4), I.R.C. § 501(c)(5), and I.R.C. § 501(c)(6) organizations, spent \$133 million in Calendar Year 2010 on Federal candidate-oriented expenditures. In Calendar Year 2012, this figure increased to \$315 million.¹⁰ In addition, as shown in Figure 2, the number of applications for tax-exempt status has increased over the past four fiscal years.¹¹

***Figure 2: Number of Applications for
I.R.C. §§ 501(c)(3)–(6) Tax-Exempt
Status Received by the IRS***

Fiscal Year	I.R.C. Subsection			
	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)
2009	65,179	1,751	543	1,828
2010	59,486	1,735	290	1,637
2011	58,712	2,265	409	1,836
2012	66,543	3,357	1,081	2,338

Source: These data were provided by the EO function as background and were not validated for accuracy or reliability.

During the 2012 election cycle, some members of Congress raised concerns to the IRS about selective enforcement and the duty to treat similarly situated organizations consistently. In addition, several organizations applying for I.R.C. § 501(c)(4) tax-exempt status made allegations that the IRS 1) targeted specific groups applying for tax -exempt status, 2) delayed the processing of targeted groups' applications for tax -exempt status, and 3) requested unnecessary information from targeted organizations. Lastly, several members of Congress requested that the IRS investigate whether existing social welfare organizations are improperly engaged in a substantial, or even predominant, amount of campaign activity.

***This audit focused on
allegations that the IRS targeted
specific groups applying for
tax-exempt status, delayed the
processing of targeted groups'
applications, and requested
unnecessary information from
targeted organizations.***

We initiated this audit based on concerns expressed by Congress and reported in the media regarding the IRS's treatment of organizations applying for tax -exempt status. We focused our

¹⁰ The Center for Responsive Politics obtained its information from the Federal Election Commission. We only included expenditures reported to the Federal Election Commission specifically for advocating the election or defeat of clearly identified Federal candidates.

¹¹ Some of this increase may be due to the reapplication of those organizations whose tax -exempt status was revoked as a result of not filing information returns for three consecutive years.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

efforts on reviewing the processing of applications for tax -exempt status and determining whether allegations made against the IRS were founded.¹² Tax-exempt application case files were selected for review in June 2012 and were reviewed as provided by the EO function between July and November 2012. We did not review whether specific applications for tax-exempt status should be approved or denied .

This review was performed at the EO function Headquarters office in Washington, D.C., and the Determinations Unit in Cincinnati, Ohio, during the period June 2012 through February 2013. We conducted this performance audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective. Detailed information on our audit objective, scope, and methodology is presented in Appendix I. Major contributors to the report are listed in Appendix II.

¹² A future audit is being considered to assess how the EO function monitors I.R.C. §§ 501(c)(4)–(6) organizations to ensure that political campaign intervention does not constitute their primary activity.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Results of Review

The Determinations Unit Used Inappropriate Criteria to Identify Potential Political Cases

The Determinations Unit developed and used inappropriate criteria to identify applications from organizations with the words Tea Party in their names. These applications (hereafter referred to as potential political cases)¹³ were forwarded to a team of specialists¹⁴ for review. Subsequently, the Determinations Unit expanded the criteria to inappropriately include organizations with other specific names (Patriots and 9/12) or policy positions. While the criteria used by the Determinations Unit specified particular organization names, the team of specialists was also processing applications from groups with names other than those identified in the criteria. The inappropriate and changing criteria may have led to inconsistent treatment of organizations applying for tax-exempt status. For example, we identified some organizations' applications with evidence of significant political campaign intervention that were not forwarded to the team of specialists for processing but should have been. We also identified applications that were forwarded to the team of specialists but did not have indications of significant political campaign intervention. All applications that were forwarded to the team of specialists experienced substantial delays in processing. Although the IRS has taken some action, it will need to do more so that the public has reasonable assurance that applications are processed without unreasonable delay in a fair and impartial manner in the future.

Criteria for selecting applications inappropriately identified organizations based on their names and policy positions

The Determinations Unit developed and began using criteria to identify potential political cases for review that inappropriately identified specific groups applying for tax-exempt status based on their names or policy positions instead of developing criteria based on tax-exempt laws and Treasury Regulations.

[REDACTED] According to media reports, some organizations were classified as I.R.C. § 501(c)(4) social welfare organizations but operated like political organizations. [REDACTED]

¹³ Until July 2011, the Rulings and Agreements office referred to these cases as Tea Party cases. Afterwards, the EO function referred to these cases as advocacy cases.

¹⁴ Initially, the team consisted of one specialist, but it was expanded to several specialists in December 2011. The EO function referred to this team as the advocacy team.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Soon thereafter, according to the IRS, a Determinations Unit specialist was asked to search for applications with Tea Party, Patriots, or 9/12 in the organization's name as well as other "political-sounding" names. EO function officials stated that, in May 2010, the Determinations Unit began developing a spreadsheet that would become known as the "Be On the Look Out" listing (hereafter referred to as the BOLO listing),¹⁵ which included the emerging issue of Tea Party applications. In June 2010, the Determinations Unit began training its specialists on issues to be aware of, including Tea Party cases. By July 2010, Determinations Unit management stated that it had requested its specialists to be on the lookout for Tea Party applications.

In August 2010, the Determinations Unit distributed the first formal BOLO listing. The criteria in the BOLO listing were Tea Party organizations applying for I.R.C. § 501(c)(3) or I.R.C. § 501(c)(4) status. Based on our review of other BOLO listing criteria, the use of organization names on the BOLO listing is not unique to potential political cases.¹⁶ EO function officials stated that Determinations Unit specialists interpreted the general criteria in the BOLO listing and developed expanded criteria for identifying potential political cases.¹⁷ Figure 3 shows that, by June 2011, the expanded criteria included additional names (Patriots and 9/12 Project) as well as policy positions espoused by organizations in their applications.

Figure 3: Criteria for Potential Political Cases (June 2011)

"Tea Party," "Patriots" or "9/12 Project" is referenced in the case file
Issues include government spending, government debt or taxes
Education of the public by advocacy/lobbying to "make America a better place to live"
Statements in the case file criticize how the country is being run

Source: EO function briefing dated June 2011.

The mission of the IRS is to provide America's taxpayers top quality service by helping them understand and meet their tax responsibilities and by applying the tax law with integrity and fairness to all. According to IRS Policy Statement 1-1, IRS employees accomplish this mission by being impartial and handling tax matters in a manner that will promote public confidence. However, the criteria developed by the Determinations Unit gives the appearance that the IRS is not impartial in conducting its mission. The criteria focused narrowly on the names and policy positions of organizations instead of tax-exempt laws and Treasury Regulations. Criteria for

¹⁵ The BOLO listing includes a consolidated list of emerging issues the EO function identifies for dissemination to Determinations Unit specialists.

¹⁶ We did not review the use of other named organizations on the BOLO listing to determine if their use was appropriate.

¹⁷ During interviews with Determinations Unit specialists and managers, we could not specifically determine who had been involved in creating the criteria. EO function officials later clarified that the expanded criteria were a compilation of various Determinations Unit specialists' responses on how they were identifying Tea Party cases.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

selecting applications for the team of specialists should focus on the activities of the organizations and whether they fulfill the requirements of the law. Using the names or policy positions of organizations is not an appropriate basis for identifying applications for review by the team of specialists.

We asked the Acting Commissioner, Tax Exempt and Government Entities Division; the Director, EO; and Determinations Unit personnel if the criteria were influenced by any individual or organization outside the IRS. All of these officials stated that the criteria were not influenced by any individual or organization outside the IRS. Instead, the Determinations Unit developed and implemented inappropriate criteria in part due to insufficient oversight provided by management. Specifically, only first-line management approved references to the Tea Party in the BOLO listing criteria before it was implemented. As a result, inappropriate criteria remained in place for more than 18 months. Determinations Unit employees also did not consider the public perception of using politically sensitive criteria when identifying these cases. Lastly, the criteria developed showed a lack of knowledge in the Determinations Unit of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) organizations.

Determinations Unit employees stated that they considered the Tea Party criterion as a shorthand term for all potential political cases. Whether the inappropriate criterion was shorthand for all potential political cases or not, developing and using criteria that focuses on organization names and policy positions instead of the activities permitted under the Treasury Regulations does not promote public confidence that tax-exempt laws are being adhered to impartially. In addition, the applications for those organizations that were identified for processing by the team of specialists experienced significant delays and requests for unnecessary information that is detailed later in this report.

After being briefed on the expanded criteria in June 2011, the Director, EO, immediately directed that the criteria be changed. In July 2011, the criteria were changed to focus on the potential “political, lobbying, or [general] advocacy” activities of the organization. These criteria were an improvement over using organization names and policy positions. However, the team of specialists subsequently changed the criteria in January 2012 without executive approval because they believed the July 2011 criteria were too broad. The January 2012 criteria again focused on the policy positions of organizations instead of tax-exempt laws and Treasury Regulations. After three months, the Director, Rulings and Agreements, learned the criteria had been changed by the team of specialists and subsequently revised the criteria again in May 2012. (See Appendix VI for a complete timeline of criteria used to identify potential political cases). The May 2012 criteria more clearly focus on activities permitted under the Treasury Regulations. As a result of changes made to the criteria without management knowledge, the Director, Rulings and Agreements, issued a memorandum requiring all original entries and changes to criteria included on the BOLO listing be approved at the executive level prior to implementation.

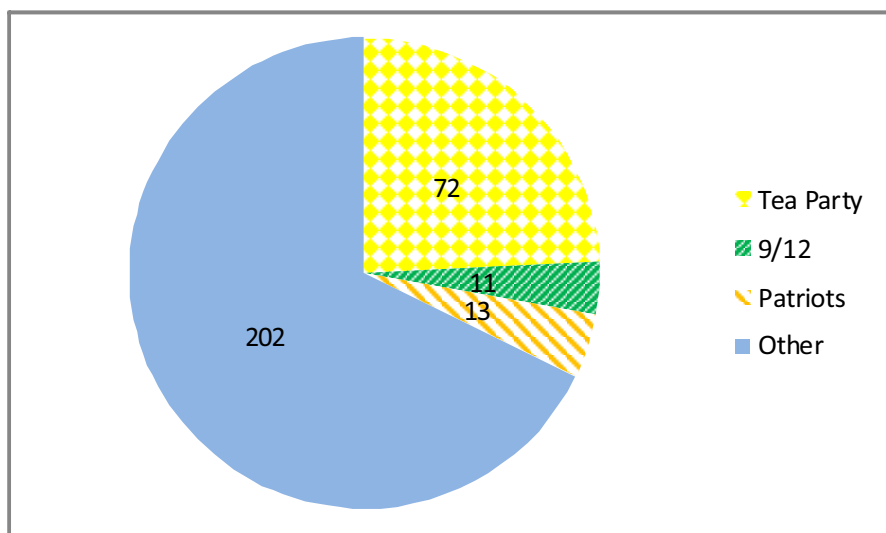


Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

The team of specialists processed applications by organizations with names other than Tea Party, Patriots, and 9/12

To determine if organizations other than those specifically identified in the inappropriate criteria were processed by the team of specialists, we reviewed the names on all applications identified as potential political cases.¹⁸ Figure 4 shows that a approximately one-third of the applications identified for processing by the team of specialists included Tea Party, Patriots, or 9/12 in their names, while the remainder did not. According to the Director, Rulings and Agreements, the fact that the team of specialists worked applications that did not involve the Tea Party, Patriots, or 9/12 groups demonstrated that the IRS was not politically biased in its identification of applications for processing by the team of specialists.

Figure 4: Breakdown of Potential Political Cases by Organization Name



Source: EO function Potential Political Case Tracking Sheet as of May 31, 2012.

While the team of specialists reviewed applications from a variety of organizations, we determined during our reviews of statistical samples of I.R.C. § 501(c)(4) tax-exempt applications that all cases with Tea Party, Patriots, or 9/12 in their names were forwarded to the team of specialists.¹⁹

¹⁸ We could not determine which potential political cases may have been identified based on an organization's policy positions.

¹⁹ We determined this through two statistical samples of 338 (7.5 percent) from a universe of 4,510 I.R.C. § 501(c)(4) tax-exempt applications filed during May 2010 through May 2012 that were not forwarded to the team of specialists. See Appendix I for details on our sampling methodology.



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Some applications with indications of significant political campaign intervention were not identified for review by the team of specialists

In May 2012, the Director, Rulings and Agreements, approved the current criteria for identifying potential political cases. The criteria are “501(c)(3), 501(c)(4), 501(c)(5), and 501(c)(6) organizations with indicators of significant amounts of political campaign intervention... .” To determine if all cases with indications of significant political campaign intervention were sent to the team of specialists, we reviewed two statistical samples of I.R.C. § 501(c)(4) applications.

- **Applications That the IRS Determined Required Minimal or No Additional Information for Processing** – We reviewed a statistical sample of 94 I.R.C. § 501(c)(4) cases closed from May 2010²⁰ through May 2012 from a universe of 2,051 applications that the IRS determined required minimal or no additional information from the organizations (also referred to by the EO function as merit closures) . We determined that two (2 percent) of 94 approved applications had indications of significant political campaign intervention and should have been forwarded to the team of specialists.²¹ Based on our statistical sample, we project an estimated 44 merit closure applications were not appropriately identified as potential political cases during this time period.²²
- **Applications Identified by the IRS That Required Additional Information for Processing** – We reviewed a statistical sample of 244 I.R.C. § 501(c)(4) cases closed from May 2010 through May 2012 or open as of May 31, 2012, from a universe of 2,459 applications that the IRS determined required additional information from the organizations applying for tax -exempt status (also referred to by the EO function as full development applications) but were not forwarded to the team of specialists. For the applications that were available for our review, we found that 14 (6 percent)²³ of 237 applications²⁴ included indications of significant political campaign intervention and should have been processed by the team of specialists.²⁵ We project an estimated 141 full development applications were not appropriately identified as potential political cases during this time period.²⁶

²⁰ May 2010 was chosen because it is the first date that we were informed that the Determinations Unit was using criteria which identified specific organizations by name.

²¹ Neither of the two cases involved a Tea Party, Patriots, or 9/12 organization.

²² See Appendix IV.

²³ None of the 14 cases involved a Tea Party, Patriots, or 9/12 organization.

²⁴ We could not analyze seven sampled application case files because of incomplete documentation in the case files (six applications) or the case file could not be located (one application). See Appendix IV.

²⁵ We determined that eight applications were appropriately forwarded to the team of specialists. Five of the eight application case files involved Tea Party, Patriots, or 9/12 organizations.

²⁶ See Appendix IV.



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To determine if cases without indications of significant political campaign intervention were sent to the team of specialists, we reviewed all of the applications identified as potential political cases as of May 31, 2012.

- **Applications That the IRS Determined Should Be Processed by the Team of Specialists** – We reviewed all 298 applications that had been identified as potential political cases as of May 31, 2012. In the majority of cases, we agreed that the applications submitted included indications of significant political campaign intervention. However, we did not identify any indications of significant political campaign intervention for 91 (31 percent) of the 296 applications²⁷ that had complete documentation.²⁸

We discussed our results with EO function officials, who disagreed with our findings. Although EO function officials provided explanations about why the applications should have been identified as potential political cases, the case files did not include the specific reason(s) the applications were selected. EO function officials also stated that applications may not literally include statements indicating significant political campaign intervention.²⁹ According to EO function officials, organizations may not understand what constitutes political campaign intervention or may provide vague descriptions of certain activities that the EO function knows from past experience potentially involve political campaign intervention. In these cases, the EO function believes it is important to review the applications to ensure that political campaign intervention is not the organizations' primary activity. To provide further assurance that Determinations Unit employees are handling tax matters in an impartial manner, it would be helpful to document specifically why applications are chosen for further review.

Recommendations

The Director, EO, should:

Recommendation 1: Ensure that the memorandum requiring the Director, Rulings and Agreements, to approve all original entries and changes to criteria included on the BOLO listing prior to implementation be formalized in the appropriate Internal Revenue Manual.

Management's Response: The IRS agreed with this recommendation and will ensure that the procedures set forth in the memorandum requiring the Director,

²⁷ We could not complete our review of two cases due to inadequate documentation in the case files. See Appendix IV.

²⁸ Seventeen (19 percent) of the 91 applications involved Tea Party, Patriots, or 9/12 organizations.

²⁹ It should also be noted that, in some cases, specialists obtained additional information after the application was received that indicated the organizations were involved in political campaign intervention which was not available in the initial application documentation we reviewed.



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Rulings and Agreements, to approve in advance all original entries and changes to the BOLO listing are made part of the Internal Revenue Manual.

Recommendation 2: Develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (e.g., evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).

Management's Response: The IRS proposed an alternative corrective action to our recommendation. The IRS stated it will review its screening procedures to determine whether, and to what extent, additional documentation can be implemented without having an adverse impact on the timeliness of case processing.

Office of Audit Comment: We do not believe this alternative corrective action fully addresses the recommendation. Developing procedures to better document the reasons applications are chosen for further review would help ensure that applications are being handled in an impartial manner. In addition, as detailed in the next section of this report, the average time these applications have been open is 574 days as of December 17, 2012. We do not believe documenting a brief explanation about why applications are chosen for review would have an adverse impact on the timeliness of case processing.

Recommendation 3: Develop training or workshops to be held before each election cycle including, but not limited to, the proper ways to identify applications that require review of political campaign intervention activities.

Management's Response: The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Potential Political Cases Experienced Significant Processing Delays

Organizations that applied for tax-exempt status and had their applications forwarded to the team of specialists experienced substantial delays. As of December 17, 2012, many organizations had not received an approval or denial letter for more than two years after they submitted their applications. Some cases have been open during two election cycles (2010 and 2012). The *IRS Strategic Plan 2009–2013* has several goals and objectives that involve timely interacting with taxpayers, including enforcement of the tax law in a timely manner while minimizing taxpayer burden. The EO function does not have specific timeliness goals for processing applications, such as potential political cases, that require significant follow-up with the



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organizations.³⁰ The time it takes to process an application depends upon the facts and circumstances of the case.

Potential political cases took significantly longer than average to process due to ineffective management oversight. Once cases were initially identified for processing by the team of specialists, the Determinations Unit Program Manager requested assistance via e-mail from the Technical Unit to ensure consistency in processing the cases. However, EO function management did not ensure that there was a formal process in place for initiating, tracking, or monitoring requests for assistance. In addition, there were several changes in Rulings and Agreements management responsible for overseeing the fulfillment of requests for assistance from the Determinations Unit during this time period. This contributed to the lengthy delays in processing potential political cases. As a result, the Determinations Unit waited more than 20 months (February 2010 to November 2011) to receive draft written guidance from the Technical Unit for processing potential political cases.

As a result, the IRS delayed the issuance of letters to organizations approving their tax-exempt status. For I.R.C. § 501(c)(3) organizations, this means that potential donors and grantors could be reluctant to provide donations or grants.³¹ In addition, some organizations withdrew their applications and others may not have begun conducting planned charitable or social welfare work. The delays may have also prevented some organizations from receiving certain benefits of the tax-exempt status. For example, if organizations are approved for tax-exempt status, they may receive exemption from certain State taxes and reduced postal rates. For organizations that may eventually be denied tax-exempt status but have been operating while their applications are pending, the organizations will be required to retroactively file income tax returns and may be liable to pay income taxes for, in some cases, more than two years.

To analyze the delays, we: 1) reviewed the events that led to delays in processing potential political cases, 2) compared the amount of time cases assigned to the team of specialists were open to applications that were not assigned to the team of specialists, and 3) determined if organizations were eligible to sue the IRS due to delays in processing certain applications.

Potential political cases experienced long processing delays

The team of specialists stopped working on potential political cases from October 2010 through November 2011, resulting in a 13-month delay, while they waited for assistance from the Technical Unit. Figure 5 illustrates significant events and delays concerning potential political cases. For a comprehensive timeline of events related to potential political cases, see Appendix VII.

³⁰ The EO function, however, had an overall goal to process merit and full development tax-exempt applications in 121 days for Fiscal Year 2012.

³¹ Of 298 cases reviewed, 89 were I.R.C. § 501(c)(3) organizations.



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Figure 5: Timeline of Events and Delays Involving the Processing of Potential Political Cases ([REDACTED] Through May 2012)

Date	Events and Delays
[REDACTED]	[REDACTED]
April 2010	The team of specialists is formed with one specialist who is assigned potential political cases and begins working on them with the assistance of a Technical Unit employee.
October 2010	The team of specialists stops processing potential political cases while waiting for assistance from the Technical Unit.
July 2011	The EO function decides to develop written guidance for the Determinations Unit to process the potential political cases.
November 2011	Draft written guidance is provided to the Determinations Unit.
December 2011	Additional specialists are added to the team of specialists.
January 2012	Specialists begin issuing additional information request letters to organizations applying for tax-exempt status, requesting that the information be provided in two to three weeks. These time periods are standard response times given for any information request and are included in the Internal Revenue Manual.
February 2012	Concerns are raised in the media regarding requests for significant amounts of information from organizations applying for tax -exempt status. The Director, EO, stops specialists from issuing any more letters requesting information. Instead, letters allowing extensions of 60 days to respond to previous additional information letters were developed and issued in March and April 2012. These letters also noted that applicants should contact the IRS if they needed longer than 60 days to respond.
May 2012	A workshop is given to Determinations Unit specialists assigned to potential political cases. Afterwards, a review of all the open cases is completed to recommend whether additional processing is necessary or whether the cases can be closed (as of December 17, 2012, 160 applications were still being processed).

Source: Interviews of EO function employees and our review of EO function e-mails.

Ineffective oversight by management led to significant delays in processing potential political cases. [REDACTED]

[REDACTED] In April 2010, the Determinations Unit Program Manager requested via e-mail a contact in the Technical Unit to provide assistance with processing the applications. A Technical Unit specialist was assigned this task and began working with the team of specialists. The team of specialists stopped processing cases in October 2010 without closing any of the 40 cases that were begun. However, the Determinations Unit Program Manager thought the cases were being processed. Later, we were informed by the Director, Rulings and Agreements, that there was a miscommunication about processing the cases. The Determinations Unit waited for assistance from the Technical Unit instead of



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continuing to process the cases. The Determinations Unit Program Manager requested status updates on the request for assistance several times via e-mail. Draft written guidance was not received from the Technical Unit until November 2011, 13 months after the Determinations Unit stopped processing the cases. As of the end of our audit work in February 2013, the guidance had not been finalized because the EO function decided to provide training instead.³²

Many organizations waited much longer than 13 months for a decision, while others have yet to receive a decision from the IRS. For example, as of December 17, 2012, the IRS had been processing several potential political cases for more than 1,000 calendar days. Some of these organizations received requests for additional information in Calendar Year 2010 and then did not hear from the IRS again for more than a year while the Determinations Unit waited for assistance from the Technical Unit. For the 296 potential political cases we reviewed,³³ as of December 17, 2012, 108 applications had been approved, 28 were withdrawn by the applicant, none had been denied, and 160 cases were open from 206 to 1,138 calendar days (some crossing two election cycles).

In March 2012, the Deputy Commissioner, Services and Enforcement, asked the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, to look into concerns raised by the media about delays in processing applications for tax-exempt status from Tea Party groups and the nature of the questions being asked related to the applications. In April 2012, the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, along with a team of EO function Headquarters office employees, reviewed many of the potential political cases and determined that there appeared to be some confusion by Determinations Unit specialists and applicants on what activities are allowed by I.R.C. § 501(c)(4) organizations. We believe this could be due to the lack of specific guidance on how to determine the “primary activity” of an I.R.C. § 501(c)(4) organization. Treasury Regulations state that I.R.C. § 501(c)(4) organizations should have social welfare as their “primary activity”; however, the regulations do not define how to measure whether social welfare is an organization’s “primary activity.”

As a result of this confusion, the EO function Headquarters employees provided a two-day workshop to the team of specialists in May 2012 to train them on what activities are allowable by I.R.C. § 501(c)(4) organizations, including lobbying and political campaign intervention. After this workshop, potential political cases were independently reviewed by two people to determine what, if any, additional work needed to be completed prior to making a decision to approve or deny the applications for tax-exempt status. This review continued on any newly identified potential political cases. Prior to the hands-on training and independent reviews, the team of specialists had only approved six (2 percent) of 298 applications. After the hands-on training

³² In response to the National Taxpayer Advocate’s *2007 Annual Report to Congress*, the IRS commented that putting guide sheets for processing applications for tax-exempt status on its Internet site would result in fewer delays.

³³ [REDACTED]



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and independent reviews began, the Determinations Unit approved an additional 102 applications by December 2012.³⁴ In addition, it was decided that applications could be approved, but a referral for follow-up could be sent to another unit,³⁵ which could review the activities of an organization at a later date to determine if they were consistent with the organization's tax-exempt status.

Potential political cases were open much longer than similar cases that were not identified for processing by the team of specialists

For Fiscal Year 2012, the average time it took the Determinations Unit to complete processing applications requiring additional information from organizations applying for tax -exempt status (also referred to by the EO function as full development cases) was 238 calendar days according to IRS data. In comparison, the average time a potential political case was open as of December 17, 2012, was 574 calendar days (with 158 potential political cases being open longer than the average calendar days it took to close other full development cases).³⁶ Figure 6 shows that more than 80 percent of the potential political cases have been open more than one year .

***Figure 6: Number of Calendar Days Potential Political Cases
Were Open (as of December 17, 2012)***

Total Cases	Number and Percentage ³⁷ of Potential Political Cases Open by Calendar Day Range				
	0–120 Calendar Days	121–180 Calendar Days	181–270 Calendar Days	271–365 Calendar Days	More Than 365 Calendar Days
160	0 (0%)	0 (0%)	3 (2%)	28 (18%)	129 (81%)

Source: Our analysis of EO function documentation.

³⁴ Of the 102 applications, 29 (28 percent) involved Tea Party, Patriots, or 9/12 organizations.

³⁵ The Review of Operations Unit completes compliance reviews on tax -exempt organizations to determine whether they are operating in accordance with their tax -exempt purposes and are current with their filing requirements. Unit personnel review information available on IRS systems, filed returns, applications for tax exemption, and the Internet to assess the organizations' operations and make recommendations for further actions.

³⁶ See Appendix IV.

³⁷ Percentages may not equal 100 percent due to rounding.



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Some charitable organizations were eligible to sue the IRS for declaratory judgment due to the delays in processing applications

The Determinations Unit did not always timely approve or deny the applications for I.R.C. § 501(c)(3) tax-exempt status for potential political cases. However, the tax law provides organizations with the ability to sue the IRS to force a decision on their applications if the IRS does not approve or deny their applications within 270 calendar days.³⁸

As of May 31, 2012,³⁹ 32 (36 percent) of 89 I.R.C. § 501(c)(3) potential political cases were open more than 270 calendar days, and the organizations had responded timely to all requests for additional information, as required. As of the end of our fieldwork, none of these organizations had sued the IRS, even though they had the legal right. In another 38 open cases, organizations were timely in their responses to additional information requests, but the 270-calendar-day threshold had not been reached as of May 31, 2012. These 38 organizations may have the right to sue the IRS in the future if determinations are not made within the 270-calendar-day period.

Recommendations

The Director, EO, should:

Recommendation 4: Develop a process for the Determinations Unit to formally request assistance from the Technical Unit and the Guidance Unit.⁴⁰ The process should include actions to initiate, track, and monitor requests for assistance to ensure that requests are responded to timely.

Management's Response: The IRS agreed with this recommendation and will develop a formal process for the Determination Unit to request assistance and to monitor such requests.

Recommendation 5: Develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention. This guidance should also be posted to the Internet to provide transparency to organizations on the application process.

Management's Response: The IRS proposed alternative corrective action to our recommendation. The IRS will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS

³⁸ Revenue Procedure 2012-09 provides further guidance on the implementation of this right.

³⁹ Tax-exempt application case files were selected for review in June 2012 based on a May 31, 2012, listing of applications being processed by the team of specialists.

⁴⁰ The Guidance Unit provides formal and informal guidance that explains how certain laws, such as regulations, revenue rulings, revenue procedures, notices, and announcements, may apply to exempt organizations.



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noted that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Office of Audit Comment: We do not believe that this alternative corrective action fully addresses our recommendation. We believe that specific guidance should be developed and made available to specialists processing potential political cases. Making this guidance available on the Internet for organizations could also address a concern raised in the IRS's response that many applications appear to contain incomplete and inconsistent information.

Recommendation 6: Develop training or workshops to be held before each election cycle including, but not limited to: a) what constitutes political campaign intervention versus general advocacy (including case examples) and b) the ability to refer for follow-up those organizations that may conduct activities in a future year which may cause them to lose their tax-exempt status.

Management's Response: The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS reported that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.

Recommendation 7: Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.

Management's Response: The IRS agreed with this recommendation and stated that, while this is an ongoing project, it is closely overseeing the remaining open cases to ensure that it reaches determinations as expeditiously as possible.

The Acting Commissioner, Tax Exempt and Government Entities Division, should:

Recommendation 8: Recommend to IRS Chief Counsel and the Department of the Treasury that guidance on how to measure the "primary activity" of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.⁴¹

Management's Response: The IRS agreed with this recommendation and will share this recommendation with the IRS Chief Counsel and the Department of Treasury's Office of Tax Policy.

⁴¹ The Department of the Treasury issues a Priority Guidance Plan each year to identify and prioritize the tax issues that should be addressed through regulations, revenue rulings, revenue procedures, notices, and other published administrative guidance.



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The Determinations Unit Requested Unnecessary Information for Many Potential Political Cases

The Determinations Unit sent requests for information that we later (in whole or in part) determined to be unnecessary for 98 (58 percent) of 170 organizations that received additional information request letters.⁴² According to the Internal Revenue Manual, these requests should be thorough, complete, and relevant. However, the Determinations Unit requested irrelevant (unnecessary) information because of a lack of managerial review, at all levels, of questions before they were sent to organizations seeking tax -exempt status. We also believe that Determinations Unit specialists lacked knowledge of what activities are allowed by I.R.C. § 501(c)(3) and I.R.C. § 501(c)(4) tax-exempt organizations. This created burden on the organizations that were required to gather and forward information that was not needed by the Determinations Unit and led to delays in processing the applications. These delays could result in potential donors and grantors being reluctant to provide donations or grants to organizations applying for I.R.C. § 501(c)(3) tax-exempt status. In addition, some organizations may not have begun conducting planned charitable or social welfare work.

After receiving draft guidance in November 2011, the team of specialists began sending requests for additional information in January 2012 to organizations that were applying for tax-exempt status. For some organizations, this was the second letter received from the IRS requesting additional information, the first of which had been received more than a year before this date. These letters requested that the information be provided in two or three weeks (as is customary in these letters) despite the fact that the IRS had done nothing with some of the applications for more than one year. After the letters were received, organizations seeking tax -exempt status, as well as members of Congress, expressed concerns about the type and extent of questions being asked. For example, the Determinations Unit requested donor information from 27 organizations⁴³ that it would be required to make public if the application was approved, even though this information could not be disclosed by the IRS when provided by organizations whose tax-exempt status had been approved. Figure 7 shows an example of requests sent to organizations applying for tax -exempt status regarding donors.

⁴² See Appendix IV.

⁴³ Of the 27 organizations, 13 had Tea Party, Patriots, or 9/12 in their names.



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Figure 7: Example of Requests for Information Regarding Past and Future Donors in Letters Sent in January/February 2012

Provide the following information for the income you received and raised for the years from inception to the present. Also, provide the same information for the income you expect to receive and raise for 2012, 2013, and 2014.

- a. Donations, contributions, and grant income for each year, which includes the following information:
 1. The names of the donors, contributors, and grantors. If the donor, contributor, or grantor has run or will run for a public office, identify the office. If not, please confirm by answering this question "No."
 2. The amounts of each of the donations, contributions, and grants and the dates you received them.
 3. How did you use these donations, contributions, and grants? Provide the details.

If you did not receive or do not expect to receive any donation, contribution, and grant income, please confirm by answering "None received" and/or "None expected."

Source: Application case files.

After media attention, the Director, EO, stopped issuance of additional information request letters and provided an extension of time to respond to previously issued letters. The Deputy Commissioner for Services and Enforcement then asked the Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, to find out how applications were being processed and make recommendations. The Senior Technical Advisor and a team of specialists visited the Determinations Unit in Cincinnati, Ohio, and began reviewing cases. As part of this effort, EO function Headquarters office employees reviewed the additional information request letters prepared by the team of specialists and identified seven questions that they deemed unnecessary. Subsequently, the EO function instituted the practice that all additional information request letters for potential political cases be reviewed by the EO function Headquarters office before they are sent to organizations seeking tax-exempt status. In addition, EO function officials informed us that they decided to destroy all donor lists that were sent in for potential political cases that the IRS determined it should not have requested. Figure 8 lists the seven questions identified as being unnecessary.



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Figure 8: Seven Questions Identified As Unnecessary by the EO Function

Number	Question
1	Requests the names of donors.
2	Requests a list of all issues that are important to the organization and asks that the organization indicate its position regarding such issues.
3	Requests 1) the roles and activities of the audience and participants other than members in the activity and 2) the type of conversations and discussions members and participants had during the activity.
4	Asks whether the officer, director, <i>etc.</i> , has run or will run for public office.
5	Requests the political affiliation of the officer, director, speakers, candidates supported, <i>etc.</i> , or otherwise refers to the relationship with identified political party-related organizations.
6	Requests information regarding employment, other than for the organization, including hours worked.
7	Requests information regarding activities of another organization – not just the relationship of the other organization to the applicant.

Source: EO function review of additional information request letters.

We reviewed case file information for all 170 organizations that received additional information request letters and determined that 98 (58 percent) had received requests for information that was later deemed unnecessary by the EO function. Of the 98 organizations:

- 15 were informed that they did not need to respond to previous requests for information and, instead, received a revised request for information.
- 12 either received a letter or a telephone call stating that their application was approved and they no longer needed to respond to information requests they had received from the IRS.



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Figure 9 shows excerpts from the approval letter developed for organizations that did not need to respond to a previous additional information request letter .

Figure 9: Excerpts From a Template Approval Letter, Which Includes a Statement That Previously Requested Information Is No Longer Needed

Dear Applicant:

We are pleased to inform you that upon review of your application for tax-exempt status we have determined that you are exempt from Federal income tax under section 501(c)(4) of the Internal Revenue Code. Because this letter could help resolve any questions regarding your exempt status, you should keep it in your permanent records.

Please note that we have just completed another review of your request to be recognized as tax-exempt under section 501(c)(4) of the Internal Revenue Code. Based on that review, we concluded that we do not need the additional materials previously requested because your application and materials provide sufficient information.

Source: IRS template approval letter.

Recommendation

Recommendation 9: The Director, EO, should develop training or workshops to be held before each election cycle including, but not limited to, how to word questions in additional information request letters and what additional information should be requested.

Management's Response: The IRS agreed with this recommendation and will develop training on the topics described in Recommendations 3, 5, 6, and 9. Because election cycles are continuous, the IRS reported that it will develop a schedule which ensures that staff have the training as needed to handle potential political intervention matters.



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Appendix I

Detailed Objective, Scope, and Methodology

The overall objective was to determine whether allegations were founded that the IRS: 1) targeted specific groups applying for tax-exempt status, 2) delayed processing targeted groups' applications for tax-exempt status, and 3) requested unnecessary information from targeted groups. To accomplish our objective, we :

- I. Assessed the actions taken by the EO function in response to the increase in applications for tax-exempt status from organizations potentially involved in political campaign intervention.
 - A. Interviewed EO function management to identify steps taken and who authorized them. We also developed a timeline of events.
 - B. Obtained a list of applications that were identified for processing by the team of specialists and determined the status of the identified cases (open, approved, denied, etc.) through May 31, 2012. We also received an updated list of identified cases through December 17, 2012, to determine the status of each initial case as of this date.
 - C. Determined whether procedures and controls in place since May 2010 resulted in inconsistent treatment of applications potentially involving political campaign intervention.
- II. Determined whether changes to procedures and controls since May 2010 affected the timeliness of reviewing applications potentially involving political campaign intervention.
 - A. Interviewed EO function personnel to determine whether there were any outside influences that affected the timeliness of reviewing potential political cases.
 - B. Reviewed all 89 I.R.C. § 501(c)(3) potential political cases to determine whether they were processed within the 270 -day standard required by law.
- III. Determined whether the actions taken by the EO function to identify applications for tax-exempt status of organizations potentially involved in political campaign intervention were consistent.
 - A. Selected a statistical sample of 244 open and closed I.R.C. § 501(c)(4) application cases from a universe of 2,459 cases that the IRS determined needed significant additional information (full development) on the Employee Plans/Exempt Organizations Determination System from May 2010 through May 2012 to determine whether they should have been identified for processing by the team of specialists.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

We selected our statistical sample using the following criteria: 90 percent confidence level, 50 percent error rate,¹ and ± 5 percent precision rate. We used a random sample to ensure that each application case had an equal chance of being selected, which enabled us to obtain sufficient evidence to support our results. A contracted statistician reviewed our projections.

1. Obtained the universe of 2,459 cases from the Employee Plans/Exempt Organizations Determination System and performed validity checks to ensure that the data were accurate. We found the data could be relied on for this review.
 2. Obtained a statistical sample of open and closed application cases.
 3. Determined whether application cases with potential political campaign intervention issues were identified for processing by the team of specialists.
 4. Interviewed EO function personnel to obtain their perspective on any application cases we identified that should have been identified for processing by the team of specialists but were not.
- B. Selected a statistical sample of 94 closed I.R.C. § 501(c)(4) application cases from a universe of 2,051 cases that the IRS determined did not need significant additional information (merit cases) on the Employee Plans/Exempt Organizations Determination System from May 2010 through May 2012 to determine whether they should have been identified for processing by the team of specialists. We selected our statistical sample using the following criteria: 90 percent confidence level, 10 percent error rate,² and ± 5 percent precision rate. We used a random sample to ensure that each application case had an equal chance of being selected, which enabled us to obtain sufficient evidence to support our results. A contracted statistician reviewed our projections.
1. Obtained the universe of 2,051 cases from the Employee Plans/Exempt Organizations Determination System and performed validity checks to ensure that the data were accurate. We found the data could be relied on for this review.
 2. Obtained a statistical sample of closed application cases.
 3. Determined whether application cases with potential political campaign intervention issues were not identified for processing by the team of specialists.

¹ An expected error rate of 50 percent was chosen because we determined that cases needing significant additional information had criteria that included the names of specific groups.

² An expected error rate of 10 percent was chosen because procedures require that cases with political issues generally need significant additional information.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

4. Interviewed EO function personnel to obtain their perspective on any applications we identified that should have been identified for processing by the team of specialists but were not.
- C. Obtained and reviewed all 298 application cases identified for processing by the team of specialists as of May 31, 2012, to determine whether they were correctly identified.
 1. Determined whether application cases were correctly identified for processing by the team of specialists.
 2. Interviewed EO function personnel to obtain their perspective on any cases we identified that should not have been identified for processing by the team of specialists.
- D. Computed the average cycle time of processing potential political cases and compared it to the average cycle time for processing similar cases that were not processed by the team of specialists.
- E. Determined the number of organizations that may have been adversely affected by inconsistent treatment.
- IV. Determined whether the EO function consistently had a reasonable basis for requesting information from organizations seeking tax -exempt status that were potentially involved in political campaign intervention.
 - A. Reviewed all 170 potential political cases that were issued additional information request letters to determine whether the letters included questions deemed unnecessary by the EO function.
 - B. Interviewed EO function personnel to obtain their perspective on additional information that was requested that may not have been necessary to help make a determination decision.
 - C. Determined the number of taxpayers that may have been adversely affected.

Internal controls methodology

Internal controls relate to management's plans, methods, and procedures used to meet their mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations. They include the systems for measuring, reporting, and monitoring program performance. We determined the following internal controls were relevant to our audit objective: EO function policies, procedures, and practices for identifying and processing applications for tax -exempt status with indications of political campaign intervention. We evaluated these controls by interviewing personnel, reviewing documentation, reviewing statistical samples of applications for tax-exempt status, and reviewing applications identified as involving potential political campaign intervention.



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Appendix II

Major Contributors to This Report

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***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Appendix III

Report Distribution List

Acting Commissioner C
Office of the Commissioner – Attn: Chief of Staff C
Chief Counsel CC
Deputy Commissioner for Services and Enforcement SE
National Taxpayer Advocate TA
Acting Deputy Commissioner, Tax Exempt and Government Entities Division SE:T
Director, Exempt Organizations, Tax Exempt and Government Entities Division SE:T:EO
Director, Office of Legislative Affairs CL:LA
Director, Office of Program Evaluation and Risk Analysis RAS:O
Office of Internal Control OS:CFO:CPIC:IC
Audit Liaison: Director, Communications and Liaison, Tax Exempt and Government Entities
Division SE:T:CL



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Appendix IV

Outcome Measures

This appendix presents detailed information on the measurable impact that our recommended corrective actions will have on tax administration. These benefits will be incorporated into our Semiannual Report to Congress.

Type and Value of Outcome Measure:

- Reliability of Information – Actual; nine application case files that were either incomplete or could not be located for us to review (see page 5).

Methodology Used to Measure the Reported Benefit:

During our review of applications for tax -exempt status that were not identified for the team of specialists, we were unable to review seven case files because the case file lacked complete documentation (six cases) or the case file could not be located (one case). In addition, during our review of all identified potential political cases through May 31, 2012, we were unable to analyze two case files because of incomplete documentation.

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 44 organizations whose tax -exempt applications were not appropriately identified as having significant potential political campaign intervention (see page 5).

Methodology Used to Measure the Reported Benefit:

We selected a simple random sample of 94 I.R.C. § 501(c)(4) cases closed from May 2010 through May 2012 from a universe of 2,051 applications that the IRS determined required minimal or no additional information from organizations applying for tax -exempt status. During our case reviews, we determined that two cases were not appropriately identified as having significant potential political campaign intervention. We projected, with 90 percent confidence, an actual error rate of between 0.38 percent and 6.55 percent¹ and that between eight and 134 applications² were not properly identified for processing by the team of specialists.

¹ The point estimate error rate for the sample is 2.13 percent. The 90 percent confidence interval was calculated using the Exact Binomial Method.

² The point estimate number of error applications is 44. The 90 percent confidence interval was calculated using the Exact Binomial Method.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Type and Value of Outcome Measure:

- Reliability of Information – Potential; 141 organizations whose tax-exempt applications were not appropriately identified as having significant potential political campaign intervention (see page 5).

Methodology Used to Measure the Reported Benefit:

We selected a simple random sample of 244 I.R.C. § 501(c)(4) cases closed from May 2010 through May 2012 or open as of May 31, 2012, from a universe of 2,459 applications that the IRS determined required additional information from organizations applying for tax-exempt status.³ During our case reviews, we determined that 14 cases were not appropriately identified as having significant potential political campaign intervention. We projected, with 90 percent confidence, an actual error rate of between 3.38 percent and 8.43 percent⁴ and that between 84 and 198 applications⁵ were not properly identified for processing by the team of specialists.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 158 organizations that waited longer than average for the IRS to make a decision regarding their tax-exempt status (see page 11).

Methodology Used to Measure the Reported Benefit:

We obtained data from the EO function on the average number of days it took to determine whether an application for tax-exempt status was approved or denied. In Fiscal Year 2012, it took on average 238 days to close a case that needed additional information from the organization prior to approving or denying the application. As of December 17, 2012, there were 158 potential political cases that were open more than 238 calendar days.

Type and Value of Outcome Measure:

- Taxpayer Burden – Potential; 98 organizations that received additional information request letters with questions that were later deemed unnecessary by the EO function (see page 18).

Methodology Used to Measure the Reported Benefit:

We reviewed 170 potential political cases that had received additional information request letters from the Determinations Unit. Using a list of seven questions/topics that the EO function categorized as unnecessary, we identified 98 potential political cases that included additional information request letters asking questions deemed unnecessary by the EO function.

³ We found that seven cases from the sample of 244 were not reviewable because of incomplete documentation.

⁴ The point estimate error rate for the sample is 5.91 percent with a precision of ± 2.52 percent.

⁵ The point estimate number of error applications is 141 with a precision of ± 57 applications.

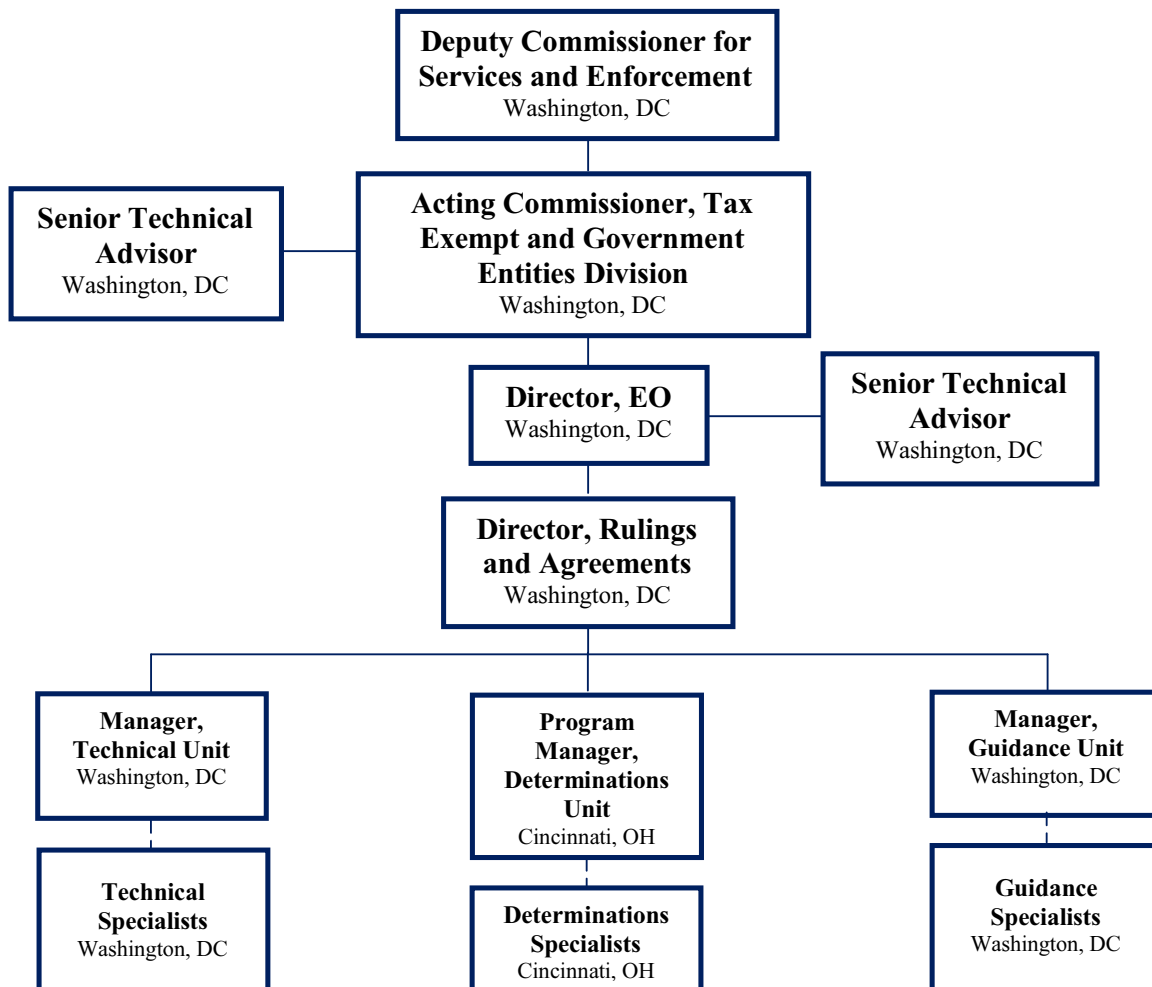


***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Appendix V

***High-Level Organizational Chart
of Offices Referenced in This Report***

The following is a high-level organizational chart of offices we discuss in this report, starting with the Deputy Commissioner for Services and Enforcement, who reports to the IRS Commissioner.





***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Appendix VI

***Timeline of Written Criteria for
Identifying Potential Political Cases***

The following illustrates the changes to the written criteria provided to Determinations Unit employees for identifying applications for the team of specialists.

Date	Criteria Developed or Actions Taken
February 2010	[REDACTED]
March–April 2010	The Determinations Unit began searching for other requests for tax exemption involving the Tea Party , Patriots, 9/12, and I.R.C. § 501(c)(4) applications involving political sounding names, e.g., “We the People” or “Take Back the Country.”
July 2010	Determinations Unit management requested its specialists to be on the lookout for Tea Party applications .
August 2010	First BOLO listing issued with criteria listed as “...various local organizations in the Tea Party movement...applying for exemption under 501(c)(3) or 501(c)(4).”
July 2011	Criteria changed to “Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)” based on the concerns the Director, EO, raised in June 2011.
January 2012	Criteria changed to “Political action type organizations involved in limiting/expanding government, educating on the constitution and bill of rights, social economic reform/movement” based on Determinations Unit concerns that the July 2011 criteria was too generic.
May 2012	Criteria changed to “501(c)(3), 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).”



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Appendix VII

Comprehensive Timeline of Events

The following chart illustrates a timeline of events from February 2010 through July 2012 involving the identification and processing of potential political cases. It shows that there was confusion about how to process the applications, delays in the processing of the applications, and a lack of management oversight and guidance. The timeline was developed using documentation provided by the EO function as well as numerous interviews with EO function personnel.

Date	Event	Additional Details	Source
February 25, 2010	[REDACTED]		E-Mail
Around March 1, 2010	The Determinations Unit Group Manager asked a specialist to search for other Tea Party or similar organizations' applications in order to determine the scope of the issue. The specialist continued to complete searches for additional cases until the precursor to the BOLO listing was issued in May 2010.	Determinations Unit personnel indicated that they used the description Tea Party as a shorthand way of referring to the group of cases involving political campaign intervention rather than to target any particular group. The specialist used Tea Party, Patriots, and 9/12 as part of the criteria for these searches.	Interview
March 16–17, 2010	Ten Tea Party cases were identified. The Acting Manager, Technical Unit, requested two more cases be transferred to Washington, D.C. [REDACTED]	Not all of the ten cases had Tea Party in their names.	E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
April 1–2, 2010	The new Acting Manager, Technical Unit, suggested the need for a Sensitive Case Report on the Tea Party case s. The Determinations Unit Program Manager agreed.		E-Mail
April 5, 2010	[REDACTED]		E-Mail
April 5, 2010	A Determinations Unit specialist developed a list of 18 identified Tea Party cases during a search of applications. Three had already been approved as tax-exempt.	While the heading of the document listing these 18 cases referred to Tea Party cases, not all of the organizations listed had Tea Party in their names.	E-Mail
April 19, 2010	The first Sensitive Case Report was prepared by the Technical Unit.	Sensitive Case Reports are shared with the Director, Rulings and Agreements, and a chart summarizing all Sensitive Case Reports is provided to the Director, EO.	Documentation
April 25–26, 2010	The Determinations Unit Program Manager requested Technical Unit contacts for the specialist assigned to work other Tea Party cases. Contacts were received. [REDACTED]		E-Mail
May 17, 2010	The Determinations Unit specialist will send additional information request letters to the Technical Unit for review prior to issuance as part of the Technical Unit's attempt to provide assistance to the Determinations Unit.		E-Mail
May 26, 2010	[REDACTED]		E-Mail
May 27, 2010	The Technical Unit began reviewing additional information request letters prepared by the Determinations Unit.		Interview and E-Mail
June 7, 2010	Determinations Unit began training its specialists on emerging issues to watch for, including an emerging issue referred to as Tea Party Cases.		Documentation
June 14, 2010	[REDACTED]		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
June 30, 2010	[REDACTED]	[REDACTED]	E-Mail
July 2010	Determinations Unit management requested its specialists to be on the lookout for Tea Party applications.		E-Mail
July 2, 2010	[REDACTED]		E-Mail
July 27, 2010	Prior to the BOLO listing development, an e-mail was sent updating the description of applications involving potential political campaign intervention and providing a coordinator contact for the cases. The description was changed to read, "These case s involve various local organizations in the Tea Party movement [that] are applying for exemption under 501(c)(3) or 501(c)(4)."		Interview and Documentation
August 12, 2010	The BOLO listing was developed by the Determinations Unit in order to replace the existing practice of sending separate e-mails to all Determinations Unit employees as to cases to watch for, potentially abusive cases, cases requiring processing by the team of specialists, and emerging issues. The description of applications involving potential political campaign intervention on the BOLO listing was the same description used in the July 27, 2010, e-mail.		Interview and Documentation
August 2010	The responsibility for applications involving potential political campaign intervention was moved to a different team of specialists as part of a group realignment within the Determinations Unit.		Interview and Documentation
October 2010	Applications involving potential political campaign intervention were transferred to another Determinations Unit specialist. The specialist did not work on the cases while waiting for guidance from the Technical Unit.	Per the Director, Rulings and Agreements, there was a miscommunication about not working the cases while waiting for guidance.	Interviews
October 19, 2010	Technical Unit personnel forwarded a memorandum to their Acting Manager describing the work completed on the Tea Party cases by the Technical Unit. Included was a list of the cases the Technical Unit had assisted the Determinations Unit with.	The list included 40 cases, 18 of which did not have Tea Party in their names.	E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
October 26, 2010	Determinations Unit personnel raised concerns to the Technical Unit with the approach being used to develop the Tea Party cases: Why does the Technical Unit need to review every additional information request letter when a template letter could be approved and used on all the cases?		E-Mail
November 16, 2010	A new coordinator contact for potential political cases was announced.		Interview and Documentation
November 16–17, 2010	A Determinations Unit Group Manager raised concern to the Determinations Unit Area Manager that they are still waiting for an additional information request letter template from the Technical Unit for the Tea Party cases. The coordinator had received calls from taxpayers checking on the status of their applications.		E-Mail
November 17, 2010	The Determinations Unit Program Manager discussed Tea Party cases with the Technical Unit manager. Review of the cases by the Technical Unit found that not all of the cases had the same issues so a template letter had not been developed.		E-Mail
December 13, 2010	The Determinations Unit Program Manager asked the Technical Unit manager for a status on the Tea Party cases. The Technical Unit manager responded that they were going to discuss the cases with the Senior Technical Advisor to the Director, EO, shortly.		E-Mail
January 28, 2011	The Determinations Unit Program Manager requested an update on the Tea Party cases from the Technical Unit Acting Manager.		E-Mail
January 2011	A new person took over the Technical Unit Acting Manager role.		Interview
February 3, 2011	The Technical Unit Acting Manager provided an update to the Determinations Unit Program Manager on the cases being worked by the Technical Unit. Letters were being developed and would be reviewed shortly.		E-Mail
March 2, 2011	A Determinations Unit Group Manager reminded the Determinations Unit Program Manager to follow up with the Technical Unit on the status of the Tea Party cases.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
March 30, 2011	[REDACTED]		E-Mail
March 31, 2011	The Determinations Unit Program Manager stated that, while waiting for assistance from the Technical Unit, the Determinations Unit still needed to work Tea Party cases to the extent possible.	This contradicts the October 2010 decision not to work cases until assistance is received from the Technical Unit and supports the statement of the Director, Rulings and Agreements, that there was a miscommunication about not working the cases while awaiting assistance.	E-Mail
April 13, 2011	[REDACTED]		E-Mail
June 1–2, 2011	The Acting Director, Rulings and Agreements, requested criteria used to identify Tea Party cases from the Determinations Unit Program Manager. The Determinations Unit Program Manager requested criteria from a Determinations Unit Group Manager.		E-Mail
June 2, 2011	A Determinations Unit Group Manager provided criteria for identifying potential Tea Party cases to the Determinations Unit Program Manager. Information was then forwarded to the Acting Director, Rulings and Agreements.	These criteria are very different than the BOLO listing criteria available at the time.	E-Mail
June 6, 2011	[REDACTED]		E-Mail

¹ The Taxpayer Advocate Service is an independent organization within the IRS that provides assistance to taxpayers whose tax problems have not been resolved through normal IRS channels. Taxpayer Advocate Service employees must, at times, rely on assistance from employees assigned to other IRS functions. To request assistance, the Taxpayer Advocate Service issues an Operations Assistance Request specifying the actions needed to help resolve the taxpayer's problem.



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
June 6, 2011	The Acting Director, Rulings and Agreements, commented that the criteria being used to identify Tea Party cases may have resulted in over-inclusion. [REDACTED]		E-Mail
June 6, 2011	The Determinations Unit Program Manager mentioned that the Determinations Unit needed assistance from the Technical Unit to ensure consistency.		E-Mail
June 29, 2011	<p>A briefing was held with the Director, EO. The briefing paper noted that the Determinations Unit sent cases that met any of the criteria below to a designated team of specialists to be worked:</p> <ul style="list-style-type: none"> • “Tea Party,” “Patriots,” or “9/12 Project” is referenced in the case file. • Issues include Government spending, Government debt, or taxes. • Education of the public via advocacy/lobbying to “make America a better place to live.” • Statements in the case file criticize how the country is being run. <p>Over 100 applications were identified by this time. It was decided to develop a guide sheet for processing these cases.</p>	<p>The briefing paper for the Director, EO, was prepared by Tax Law Specialists in the Technical Unit and the Guidance Unit and was reviewed by the Acting Manager, Technical Unit. A Guidance Unit specialist was the primary author of the briefing paper.</p> <p>During the briefing, the Director, EO, raised concerns over the language of the BOLO listing criteria. The Director, EO, instructed that the criteria be immediately revised.</p>	Documentation and E-Mail
July 5, 2011	A conference call was held with the Technical Unit; the Director, EO; and the Determinations Unit Program Manager. They developed new criteria for identifying cases. The Determinations Unit Program Manager made changes to the BOLO listing. The criteria were changed to “organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4).”		E-Mail
July 5, 2011	The EO function Headquarters office would be putting a document together with recommended actions for identified cases.		E-Mail
July 23, 2011	The Technical Unit was assigned a new person to coordinate with the Determinations Unit.		E-Mail
July 24, 2011	Work commenced on the guide sheet when the Acting Manager, Technical Unit, asked tax law specialists to draft a list of things for Determinations Unit specialists to look for when working these cases.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
August 4, 2011	Rulings and Agreements office personnel held a meeting with Chief Counsel so that everyone would have the latest information on the issue.		E-Mail
August 4, 2011	A Guidance Unit specialist asked if Counsel would review a check sheet prior to issuance to the Determinations Unit. The Acting Director, Rulings and Agreements, responded that Counsel would review it prior to issuance.		E-Mail
August 10, 2011	[REDACTED]		Documentation
September 15, 2011	The Determinations Unit Program Manager sent a list of all identified cases to the Acting Director, Rulings and Agreements, so that the Technical Unit could complete a limited "triage" of the cases using available information from the electronic case files. A Technical Unit specialist reviewed the list to determine if any cases could be closed on merit or closed with an adverse determination letter. This triage was considered a third screening.		E-Mail
September 21, 2011	The draft guide sheet was sent for review and comment to various EO function Headquarters office employees.		E-Mail
October 2011	A new person took over as the Acting Director, Rulings and Agreements.		Interview
October 24, 2011	A Technical Unit manager forwarded initial triage results to the Determinations Unit.		E-Mail
October 25, 2011	Based on the categories and terminology used in the triage results spreadsheet, the Determinations Unit Program Manager was unclear what the Determinations Unit should do with the triage results – close cases, develop further, <i>etc.</i> – and requested the status on the guidance from the Technical Unit.		E-Mail
October 26, 2011	A Technical Unit specialist provided further explanation of the triage results in an e-mail to the Determinations Unit Program Manager.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
October 30, 2011	The Determinations Unit Program Manager contacted the Acting Manager, Technical Unit, asking additional questions regarding the triage results and requesting a status update on the Technical Unit guidance. [REDACTED]		E-Mail
November 3, 2011	An updated draft version of the guide sheet was sent to EO function employees for comment.		E-Mail
November 6, 2011	The Acting Manager, Technical Unit, had a Technical Unit specialist provide more details on the triage results, and informed the Determinations Unit Program Manager that the guidance was being reviewed prior to issuance.		E-Mail
November 6, 2011	The Acting Director, Rulings and Agreements, informed the Acting Manager, Technical Unit, and the Determinations Unit Program Manager that, based on feedback received, the guidance developed would not work in its present form – it was “too lawyerly” to be useful and needed the Determinations Unit input.		Interview and E-Mail
November 15, 2011	The Determinations Unit Program Manager forwarded the Technical Unit specialist’s triage results to the Senior Technical Advisor to the Director, EO, per the Director’s request.		E-Mail
November 22, 2011	The Acting Manager, Technical Unit, forwarded the clarified triage results to the Determinations Unit Program Manager.		E-Mail
November 23–30, 2011	A new Determinations Unit coordinator was assigned oversight of the cases by a Determinations Unit Group Manager. The draft Technical Unit guidance was provided to the Group Manager. The coordinator began working cases after receiving the guidance in anticipation of a team being assembled to work the cases.		Interview and E-Mail
November 2011	The Determinations Unit specialist assigned the cases began working them after receiving the draft Technical Unit guidance.		Interview
December 7–9, 2011	A team of Determinations Unit specialists was created to review all the identified cases. An employee from Quality Assurance was also part of the team. The Technical Unit provided contacts for them.		E-Mail



***Inappropriate Criteria Were Used to
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Date	Event	Additional Details	Source
December 16, 2011	The first meeting was held by the team of specialists.		Interview and E-Mail
January 2012	The first batch of letters requesting additional information for applications containing incomplete or missing information was issued by Determinations Unit specialists based, in part, on their reading of the draft guidance issued by the Technical Unit.		Interview and E-Mail
January 2012	A Determinations Unit specialist was tasked with performing a secondary screening of identified potential political cases to ensure that they involved political activities and not just general or lobbying advocacy.		Interviews
January 25, 2012	The BOLO listing criteria were again updated. The criteria was revised as "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, social economic reform/movement." The coordinator contact was changed as well.		Interview and Documentation
February 27, 2012	A member of the team of specialists asked when to start issuing additional information request letters to applicants again.		E-Mail
February 27, 2012	The Determinations Unit Program Manager questioned why the team of specialists was not issuing additional information request letters. The Determinations Unit Group Manager for the team of specialists had told the team coordinator to stop developing template questions, not to stop issuing additional information request letters. The miscommunication was corrected on February 29, 2012.		E-Mail
February 29, 2012	The Director, EO, requested that the Acting Director, Rulings and Agreements, develop a letter to clearly inform applicants what was going to happen if they did not respond to the additional information request letters and giving them more time for their responses.		E-Mail
February 29, 2012	The Director, EO, stopped any more additional information request letters from being issued on advocacy cases until new guidance was provided to the Determinations Unit. In addition, the Acting Director, Rulings and Agreements, discussed with the Determinations Unit Program Manager about having specialists print out website information and asking the organizations to verify the information instead of asking for applicants to print out the website information.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
February–March 2012	Numerous news articles began to be published with complaints from Tea Party organizations about the IRS's unfair treatment. Congress also began to show interest in the IRS's treatment of Tea Party organizations.		Documentation
March 2012	A new person became Acting Group Manager of the team of specialists.		Interview
March 1, 2012	A draft list of template questions was prepared by the team of specialists and forwarded to the Guidance Unit.	Questions included asking for donor information.	E-Mail
March 5, 2012	The Acting Manager, Technical Unit, established procedures for reviewing the first favorable determination letter drafted by the Determinations Unit.		E-Mail
March 6, 2012	[REDACTED]		E-Mail
March 8, 2012	The Deputy Commissioner for Services and Enforcement requested that, if a taxpayer called about having to provide donor information, the Determinations Unit would allow them to not send the donor names but would inform them that the IRS may need it later.		E-Mail
March 8, 2012	The Acting Director, Rulings and Agreements, sent to the Determinations Unit Program Manager for comment a draft letter on giving applicants additional time to respond to the additional information request letters. The Determinations Unit Program Manager raised a concern of giving organizations that were not compliant with standard response timelines special treatment.		E-Mail
March 15, 2012	The Determinations Unit received guidance on how to handle different scenarios based upon the status of their cases. Those I.R.C. § 501(c)(4) organizations that had not responded to an additional information request letter were issued another letter giving them an additional 60 days to respond. Those letters were to be issued by March 16, 2012. This additional time letter was a one-time occurrence.		Interview and E-Mail
March 23, 2012, and March 27, 2012	The Senior Technical Advisor to the Acting Commissioner, Tax Exempt and Government Entities Division, and the Deputy Commissioner for Services and Enforcement discussed concerns with the media attention the Tea Party applications were receiving. The Deputy Commissioner for Services and Enforcement asked the Senior Technical Advisor to look into what was going on in the Determinations Unit and make recommendations.		Interview



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
April 2012	The Acting Director, Rulings and Agreements, learned that the BOLO listing criteria had been changed on January 25, 2012, and informed the Director, EO.		Interview
April 4, 2012	The Determinations Unit received the extension letter for issuance to I.R.C. § 501(c)(3) organizations that had not responded to a previous additional information request letter.		E-Mail
April 17, 2012	Tax Exempt and Government Entities Division Headquarters office employees received the Technical Unit triage results and the draft guidance provided by the Technical Unit. Template questions developed by the team of specialists were also provided.		E-Mail
April 23, 2012	Senior Technical Advisor to the Acting Tax Exempt and Government Entities Division Commissioner visited the Determinations Unit in Cincinnati, Ohio, with a group of EO function employees, and reviewed about half of the identified cases.		Interview
April 24, 2012	The Acting Director, Rulings and Agreements, requested that the Senior Technical Advisor to the Director, EO, review all the additional information request letters issued and identify troubling questions, which organizations received them, and which members of the team of specialists asked them.		E-Mail
April 25, 2012	The Senior Technical Advisor to the Director, EO, provided results of the additional information request letter review, including a list of troubling questions.	The results included the names of donors as a troubling question.	E-Mail
April 25, 2012	Chief Counsel's office provided additional comments on the draft guidance developed for the Determinations Unit.		E-Mail
May 8, 2012	The Determinations Unit Program Manager was informed that EO function Headquarters office employees planned to visit Cincinnati, Ohio, to provide training on cases and perform a review of the cases to recommend what additional actions, if any, were needed to make a determination.		E-Mail
May 9, 2012	The Director, Rulings and Agreements, asked about the process for updating the BOLO listing.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
May 14–15, 2012	Training was held in Cincinnati, Ohio, on how to process identified potential political cases. The Senior Technical Advisor to the Director, EO, took over coordination of the team of specialists from the Determinations Unit.		E-Mail
May 16, 2012	A joint team of Determinations Unit specialists and EO function Headquarters office employees began reviewing all potential political cases began in Cincinnati, Ohio. Cases were divided into four groups with recommendations for how to proceed: favorable determination, favorable with limited development, significant development, and probably adverse. This took around three weeks to complete. A worksheet was used to document the reviews.		E-Mail
May 17, 2012	The Director, Rulings and Agreements, issued a memorandum outlining new procedures for updating the BOLO listing. The BOLO listing criteria were updated again. New criteria reads: “501(c)(3), 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).”	Suggested additions and changes must be approved by a Determinations Unit coordinator, the Determinations Unit Program Manager, and the Director, Rulings and Agreements.	Interview and E-Mail
May 21, 2012	The EO function determined that the requested donor information could be destroyed or returned to the applicant if not used to make the final determination of tax-exempt status. It does not need to be kept in the administrative file. A letter would be issued to the organizations informing them that the donor information was destroyed.		Interview and E-Mail
May 24, 2012	A telephone call script was developed to inform some organizations that had not responded to the additional information requests that it was not necessary to send the requested information and that their applications had been approved. Also, an additional paragraph was developed for the determination letter.		E-Mail



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Date	Event	Additional Details	Source
May 2012	After the review of identified cases was completed, each Determinations Unit specialist working cases was assigned a Technical Unit employee to work with on the cases. The Technical Unit employee reviewed all additional information request letters prior to issuance. The Quality Assurance Unit began reviewing 100 percent of the cases prior to closure. The Quality Assurance Unit review will shift from 100 percent review to a sample review once a comfort level with the results of the quality review was achieved.		Interview
May 2012	A decision was made to refer cases to the Review of Operations Unit for follow-up if there were indications of political campaign intervention but not enough to prevent approval of tax-exempt status.		Interview and E-Mail
June 4, 2012	A draft letter was developed to send to organizations that provided donor information. The letter would inform the organizations that the information was destroyed.		E-Mail
June 7, 2012	The Director, Rulings and Agreements, provided guidance on how to process cases now that they had been reviewed and divided into categories. Any new cases received would go through the same review process prior to assignment.		E-Mail
July 15, 2012	A new Acting Determinations Unit Group Manager was overseeing the team of specialists.		Interview



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Appendix VIII

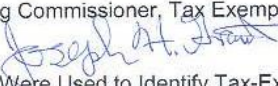
Management's Response to the Draft Report



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 30 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Joseph H. Grant, Acting Commissioner, Tax Exempt and Government Entities 

SUBJECT: "Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review"

Thank you for the opportunity to review the draft report and for your review of this issue. We appreciate your recommendations for improvements to our processes.

We recognize that some errors occurred in the handling of the influx of advocacy cases and we appreciate TIGTA's acknowledgment of our steps to improve the process. As further outlined below, significant improvements in this area are in place and we are confident that what transpired here will not recur.

We believe it is important to put this matter into context. Starting in 2010, Exempt Organizations (EO) observed a significant increase in the number of section 501(c)(3) and section 501(c)(4) applications from organizations that appeared to be, or planned to be, engaged in political campaign activity. Between 2008 and 2012, the number of applications for section 501(c)(4) status more than doubled. We also received numerous referrals from the public, media, watchdog groups, and members of Congress alleging that specific section 501(c)(4) organizations were engaged in political campaign activity to an impermissible extent.

Similar to our approach in other areas (e.g., credit counseling, down payment assistance organizations, etc.), EO sought to assign cases to designated employees. Centralization of like cases ensures that specific employees who have been trained on the relevant issues can adequately review the applications. In this way the IRS learns of new trends (as was the case in credit counseling), and can approach cases in a uniform way to promote consistency and quality. While this is the correct approach for handling certain classes of cases, centralization does slow the progress of some applications (at least initially). Therefore, it is important to take this action only in appropriate situations and to designate cases for centralization in an equitable manner.

It is our view that centralization was warranted in this situation. First, it is important to recognize the intensely fact-specific nature of the determination of whether an



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

organization is described in section 501(c)(4). To be recognized as exempt under section 501(c)(4), an organization must be engaged primarily in the promotion of social welfare. This requires a review of all activities, a classification of activities into those that promote social welfare and those that do not, and a balancing of both classes of activities. Note that the promotion of social welfare does not include political campaign intervention. And in cases where there is the potential of political campaign intervention, the application process becomes even more difficult. EO must first determine whether any activities described in the application constitute political campaign intervention and must also determine whether the applicant is primarily engaged in social welfare activity in light of any political campaign intervention and any other non-exempt activity. There are no bright line tests for what constitutes political campaign intervention (in particular, the line between such activity and education) or whether an organization is primarily engaged in social welfare activities.

The second reason that centralization was warranted in this case is that the applications EO began to receive in 2010 were in many cases vague as to the activities the applicants planned to conduct. Many applications included what appeared to be incomplete or inconsistent information. For example, a number of applications indicated that the organization did not plan to conduct political campaign activity, but elsewhere described activities that appeared in fact to be such activity. It was also clear that many organizations did not understand what activities would constitute political campaign intervention under the tax law. For these reasons, it was necessary in many cases for us to gather additional information. And we believe it was important that we be consistent in how we developed these cases.

While centralization was warranted, the manner in which we initially designated cases for centralization was inappropriate. We should centralize like cases by a review of the facts contained in the application and not just by name. While it is necessary to consider a variety of information in the screening process (including flags for current emerging issues) we recognize that selection based on organization name was not appropriate for these cases. As the report discusses, we have a new approval process by which we designate a class of cases for centralization. Decisions with respect to the centralized collection of cases must be made at a much higher level of the organization. We believe this will prevent a recurrence of what happened in this case.

The report also describes mistakes that were made in the process by which these applications were worked. The IRS recognizes that there were delays and, in some instances, information requests that were overbroad. As the report notes, we took steps to modify the original approach. First, we reviewed all cases to determine the appropriate scope of review for each case. We also established a process by which each assigned revenue agent works in coordination with a specific technical expert. With respect to information requests, in some cases the Internal Revenue Manual prescribed deadlines for applicants to respond were too short, and we requested donor names unnecessarily. In these instances, we informed organizations that they had more time and that we would work with them if they could provide the



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

information we requested in an alternative manner. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

It is important to understand that centralization of these cases did not dictate how the case ultimately was or will be resolved. As the report illustrates, EO's selection of an organization for further development does not mean that EO will deny the application, but means that EO needs to resolve questions arising from the application before we can grant tax-exemption. Moreover, the majority of cases selected for full development were not selected based on the organizations' names. Finally, all cases, whether selected by name or not, were worked in the same fashion.

The results to date support our approach. Of the nearly 300 section 501(c)(4) advocacy cases, to date we have approved more than 120 (nearly 30 have withdrawn their requests). Note that the report appears to view approvals as evidence that EO should not have looked closely at those applications. That is not the case. Many of these organizations did not supply enough information in their initial applications to merit approval so that further development was necessary. In many cases, this further development and back-and-forth discussion with the taxpayer allowed EO to conclude that the legal requirements were satisfied and allowed the applicant to better understand its responsibilities and the law.

EO is dedicated to reviewing applications for tax-exempt status in an impartial manner. Centralization of like cases furthers quality and consistency. The mistakes outlined in the report resulted from the lack of a set process for working the increase in advocacy cases and insufficient sensitivity to the implications of some of the decisions made. We believe the front line career employees that made the decisions acted out of a desire for efficiency and not out of any political or partisan viewpoint. And as the report discusses, these issues have been resolved.

Our response to your recommendations is found in the attachment. If you have any questions about this response, please contact Lois G. Lerner, Director, Exempt Organizations, at 202-283-8848.

Attachment



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Attachment

Recommendation 1: Ensure that the memorandum requiring the Director, Rulings and Agreements, to approve all original entries and changes to criteria included on the BOLO listing prior to implementation be formalized in the appropriate Internal Revenue Manual.

Corrective Action: We will ensure that the procedures set forth in the memorandum requiring the Director, Rulings and Agreements, to approve in advance all original entries and changes to the BOLO are made part of the Internal Revenue Manual.

Implementation Date: September 30, 2013

Responsible Official: Director, Exempt Organizations

Recommendation 2: Develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (e.g., evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).

Corrective Action: We will review our screening procedures to determine whether, and to what extent, additional documentation can be implemented without having an adverse impact on the timeliness of our case processing.

Implementation Date: September 30, 2013

Responsible Official: Director, Exempt Organizations

(Note: We consolidate here the text of Recommendations 3, 5, 6 and 9, and we provide a single, consolidated response to these recommendations following the text of Recommendation 9, below.)

Recommendation 3: Develop training or workshops to be held before each election cycle including, but not limited to, the proper ways to identify applications that require review of political campaign intervention activities.

Recommendation 5: Develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention. This guidance should also be posted to the Internet to provide transparency to organizations on the application process.



Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review

Recommendation 6: Develop training or workshops to be held before each election cycle including, but not limited to: a) what constitutes political campaign intervention versus general advocacy (including case examples) and b) the ability to refer for follow-up those organizations that may conduct activities in a future year which may cause them to lose their tax-exempt status.

Recommendation 9: The Director, EO, should develop training or workshops to be held before each election cycle including, but not limited to, how to word questions in additional information request letters and what additional information should be requested.

Corrective Action: We will develop training on the topics described in the recommendations 3, 5, 6, and 9. Because election cycles are continuous, we will develop a schedule that ensures staff have the training as needed to handle potential political intervention matters.

Implementation Date: January 31, 2014

Responsible Official: Director, Exempt Organizations

Recommendation 4: Develop a process for the Determinations Unit to formally request assistance from the Technical Unit and the Guidance Unit. The process should include actions to initiate, track, and monitor requests for assistance to ensure that requests are responded to timely.

Corrective Action: We will develop a formal process for Determinations to request assistance and to monitor such requests.

Implementation Date: June 30, 2013

Responsible Official: Director, Exempt Organizations

Recommendation 7: Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.

Corrective Action: While this is an ongoing project, we are closely overseeing the remaining open cases to ensure that we reach determinations as expeditiously as possible.

Implementation Date: April 30, 2013

Responsible Official: Director, Exempt Organizations



***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

Recommendation 8: Recommend to IRS Chief Counsel and the Department of the Treasury that guidance on how to measure the "primary activity" of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.

Corrective Action: We will share this recommendation with the IRS Chief Counsel and Treasury Office of Tax Policy.

Implementation Date: May 3, 2013

Responsible Official: Acting Commissioner, Tax Exempt and Government Entities

From: Lerner Lois G
Sent: Wednesday, May 01, 2013 2:38 PM
To: Cook Janine; Sinno Suzanne; Kindell Judith E; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M
Cc: Judson Victoria A
Subject: RE: Thanks for Your Support!

Great!

Lois G. Lerner
Director of Exempt Organizations

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

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]
Sent: Wednesday, May 01, 2013 3:37 PM
To: Lerner Lois G; Sinno Suzanne; Kindell Judith E; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M
Cc: Judson Victoria A
Subject: RE: Thanks for Your Support!

Yes, we will get started on looking through that.

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

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Wednesday, May 01, 2013 3:34 PM
To: Cook Janine; Sinno Suzanne; Kindell Judith E; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M
Subject: RE: Thanks for Your Support!

Are your guys working the issue of whether there is a benefit to being a taxable 527 vs taxable corp.? My guys are not.

Lois G. Lerner
Director of Exempt Organizations

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

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]
Sent: Wednesday, May 01, 2013 3:22 PM
To: Sinno Suzanne; Kindell Judith E; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M
Subject: RE: Thanks for Your Support!

I de-briefed Bill this afternoon for about 15 minutes.

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

From: Sinno Suzanne [<mailto:Suzanne.R.Sinno@irs.gov>]
Sent: Wednesday, May 01, 2013 12:23 PM
To: Kindell Judith E; Lerner Lois G; Flax Nikole C; Cook Janine; Marks Nancy J; Brown Susan D; Barre Catherine M
Subject: RE: Thanks for Your Support!

I also took notes so I can compare and make sure we captured everything.

The staffers are below.

Laura Stuber (Majority Senior Counsel)

Elise Bean (Majority Staff Director and Majority Chief Counsel)

Kaye Meier (Senior Counsel for Senator Levin)

Henry Kerner (Minority Staff Director and Minority Chief Counsel)

Stephanie Hall (Minority Counsel)

Scott Wittmann (Minority Research Assistant)

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

From: Kindell Judith E

Sent: Wednesday, May 01, 2013 12:21 PM

To: Lerner Lois G; Flax Nikole C; Cook Janine; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I have notes that I can type up - it would help if I could get the names of the Congressional staffers.

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

From: Lerner Lois G

Sent: Wednesday, May 01, 2013 12:20 PM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I didn't. I know Judy and Nan took some--not sure they are comprehensive. I'm guessing Janine also had some

Lois G. Lerner

Director of Exempt Organizations

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

From: Flax Nikole C

Sent: Wednesday, May 01, 2013 12:16 PM

To: Lerner Lois G; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I thought it went well. Did anyone take good notes that we can type up for Steve? We will also set up some time to talk him thorough the discussion before his hearing.

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

From: Lerner Lois G

Sent: Wednesday, May 01, 2013 10:26 AM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: Thanks for Your Support!

Yesterday's marathon went well thanks to "the village." Glad to have all of you as part of that village.
Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Wednesday, May 01, 2013 3:33 PM
To: Kindell Judith E; Lerner Lois G; Flax Nikole C; Cook Janine; Brown Susan D; Barre Catherine M; Sinno Suzanne
Subject: Re: Thanks for Your Support!

That's great Judy. I just noted the places where they had an additional ask and I'll type those up as well.

Sent using BlackBerry

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

From: Kindell Judith E
Sent: Wednesday, May 01, 2013 12:21 PM Eastern Standard Time
To: Lerner Lois G; Flax Nikole C; Cook Janine; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne
Subject: RE: Thanks for Your Support!

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Subject: Thanks for Your Support!

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Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Lerner Lois G
Sent: Friday, May 10, 2013 3:21 PM
To: Flax Nikole C; Eldridge Michelle L; Lemons Terry L; Marks Nancy J
Subject: RE: Proposed answers: Washington Post Editorial Board

It isn't (b)(5) DP focused on--it's the idea (b)(5) DP

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Friday, May 10, 2013 4:17 PM
To: Lerner Lois G; Eldridge Michelle L; Lemons Terry L; Marks Nancy J
Subject: RE: Proposed answers: Washington Post Editorial Board

(b)(5)/DP

From: Lerner Lois G
Sent: Friday, May 10, 2013 4:09 PM
To: Flax Nikole C; Eldridge Michelle L; Lemons Terry L
Subject: RE: Proposed answers: Washington Post Editorial Board

(b)(5) DP --I think that sentence presumes we (b)(5) DP (b)(5) DP

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Friday, May 10, 2013 3:44 PM
To: Lerner Lois G; Eldridge Michelle L; Lemons Terry L
Subject: FW: Proposed answers: Washington Post Editorial Board

(b)(5) DP want to add the following – can you live with it?

From: Flax Nikole C
Sent: Friday, May 10, 2013 3:35 PM
To: Eldridge Michelle L; Vozne Jennifer L; Lemons Terry L; Miller Steven T
Cc: Patterson Dean J
Subject: RE: Proposed answers: Washington Post Editorial Board

Can we add (b)(5)/DP ?

From: Eldridge Michelle L
Sent: Friday, May 10, 2013 3:15 PM
To: Flax Nikole C; Vozne Jennifer L; Lemons Terry L
Cc: Patterson Dean J
Subject: Proposed answers: Washington Post Editorial Board

Here is the proposed answer based on our discussion. Comments or concerns?

Proposed answer:

Here is our full statement. I have also answered your questions below.

IRS Statement

[REDACTED]

(b)(5)/DP

[REDACTED]

From: Stromberg, Stephen W [<mailto:stephen.stromberg@wpost.com>]
Sent: Friday, May 10, 2013 1:46 PM
To: Burke Anthony
Subject: From Washington Post Editorial Board

Hi –

I am writing an on-deadline editorial on the Tea Party/IRS issue, filing by 4:30 p.m. at the latest. At the moment, I have three questions:

Why weren't there protections in place to ensure that selecting out groups of a particular political stripe was not possible? What procedures are in place now to prevent this, both in the tax -exempt office and elsewhere in the IRS?

[REDACTED]

[REDACTED]

[REDACTED]

(b)(5)/DP

Who has led the investigation into this episode? Is someone else inside or outside of the IRS going to investigate further?

(b)(5)/DP

Thanks in advance.

Best,
Steve Stromberg

Steve Stromberg
Editorial Writer
The Washington Post
Office: 202.334.6370
Cell: 310.770.6646

From: Marks Nancy J
Sent: Sunday, May 12, 2013 9:56 AM
To: Kindell Judith E
Subject: RE: Thanks for Your Support!

If your notes circulated I don't seem to have received them --would be very helpful to have them as soon as possible before some hill meetings I've got to go to on Monday

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

From: Kindell Judith E
Sent: Wednesday, May 01, 2013 4:29 PM
To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne
Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M
Subject: RE: Thanks for Your Support!

I will circulate my notes once I get them typed up, but in the meantime, I thought I would circulate our to -do list. Lois and I talked last night about getting the info and I have included our thoughts on who would get it. Let me know if I have missed anything.

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

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]
Sent: Wednesday, May 01, 2013 12:48 PM
To: Lerner Lois G; Flax Nikole C; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne
Subject: RE: Thanks for Your Support!

14 pages worth....

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

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Wednesday, May 01, 2013 12:20 PM
To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne
Subject: RE: Thanks for Your Support!

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Lois G. Lerner
Director of Exempt Organizations

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From: Flax Nikole C
Sent: Wednesday, May 01, 2013 12:16 PM
To: Lerner Lois G; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne
Subject: RE: Thanks for Your Support!

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Subject: Thanks for Your Support!

Yesterday's marathon went well thanks to "the village." Glad to have all of you as part of that village.

Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Marks Nancy J
Sent: Sunday, May 12, 2013 9:57 AM
To: Cook Janine
Subject: FW: Thanks for Your Support!
Attachments: To Do List - Levin staff.docx; p1828.pdf; 38215.doc; 34233.doc; fy2011_eo_workplan[1].pdf

Could I get your fourteen pages worth? Would be helpful in prep for a hill meeting on a different but not unrelated issue that I will probably have to do tomorrow. Thanks

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

From: Kindell Judith E
Sent: Wednesday, May 01, 2013 4:29 PM
To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne
Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M
Subject: RE: Thanks for Your Support!

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Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

11058S

Time of Request: Wednesday, May 01, 2013 09:37:50 EST

Client ID/Project Name:

Number of Lines: 129

Job Number: 1825:407196323

Research Information

Service: EasySearch(TM) Feature

Print Request: Current Document: 2

Source: Combined Source Set 3

Search Terms: 34233

Send to: KINDELL, JUDITH
IRS TAX EXEMPT/GOVERNMENT ENTITIES
1111 CONSTITUTION AVE NW RM 2116IR
WASHINGTON, DC 20224-0002

2 of 38 DOCUMENTS

This document is not to be relied upon or otherwise cited as precedent by taxpayers.

General Counsel Memoranda 34233

SECTION 501
EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.
(EXEMPT V. NOT EXEMPT) 0501.00-00
-- RELIGIOUS, CHARITABLE, ETC., INSTITUTIONS AND COMMUNITY
CHEST 0501.03-00
-- LABOR ORGANIZATIONS (SEE ALSO 0501.05-00) 0501.03-12
-- POLITICAL ACTION ORGANIZATIONS 0501.03-17
-- CIVIC LEAGUES AND SOCIAL WELFARE GROUPS (SEE ALSO 0501.03-
25) 0501.04-00
-- POLITICAL ACTIVITIES ORGANIZATIONS 0501.04-03
-- LABOR ORGANIZATIONS 0501.05-00
-- BUSINESS LEAGUES, CHAMBERS OF COMMERCE, REAL ESTATE
BOARDS, OR BOARDS OF TRADE 0501.06-00

GCM 34233; 1969 GCM LEXIS 12

December 30, 1969

[*1]

REFERENCE: CC:I:I-3418
Br.5:CDMcB/GWR

TEXT:

HAROLD T. SWARTZ

Assistant Commissioner (Technical)

Attention: Director, Miscellaneous and Special Provisions Tax Division

We are responding to your memorandum of March 25, 1969, forwarding three cases in which you propose to hold that the organizations qualify for exemption. You have concluded that *** qualifies for exemption under action 501(c)(6) which exempts "Business leagues, chambers of commerce, real-estate boards, boards of trade, or professional football leagues * * *". You have also concluded that *** and ***, are entitled to exemption under section 501(c)(5) which exempts "Labor, agricultural, or horticultural organizations."

All three organizations are primarily engaged in lobbying and political activities. They attempt to influence legislation related to their interests and also endorse and oppose candidates for public office. The two labor organizations are councils whose membership consists of labor unions and other subordinate labor organizations chartered by the *** within their respective geographical [*2] areas. *** composed of physicians practicing within the State of ***

Your conclusion regarding exemption under section 501(c)(5) modifies your former position. You have concluded that the parallel nature of many of the purposes and activities of labor organizations under section 501(c)(5) and business leagues under section 501(c)(5) requires that the same standards should be

GCM 34233; 1969 GCM LEXIS 12, *

applicable to each with respect to attempts to influence legislation and the support of candidates for public office. This conclusion requires us to reconsider G.C.M. 32428, In re: *** (I-673), which agreed with your prior position.

As your supporting memorandum notes, *Rev. Rul. 61-177, C.B. 1961-2, 117*, approved by G.C.M. 31864, dated January 12, 1961, In re: *** (A-470639), held that an organization may be exempt under *section 501(c)(6) of the Code* even though its sole activity is directed to influencing legislation which is germane to the common business interests of the members of the organization. In G.C.M. 32184, dated January 8, 1962, In re: *** (I-326 and I-327), we agreed that this principle could be extended to the support of candidates for public office where intervention in campaigns could [*3] be shown to be germane to the exempt purpose of an organization described in *section 501(c)(6)*.

However, with respect to legislative and political activities of labor organizations under *section 501(c)(5) of the Code*, this office, in G.C.M. 32428, supra, approved your position that an organization formed for the primary purpose of encouraging the members of labor organizations to register and vote, to take stands on issues and to urge its members to vote for or against such issues, and which also urges its members to vote for candidates of its choice, does not qualify as a labor organization under *section 501(c)(5) of the Code*. We distinguished the organization just described from a bona fide labor organization which engages in some political activity. In the latter case, we approved exemption in G.C.M. 31213, dated May 4, 1959, In re: *** (A-624277). Since the organization was primarily organized for traditional union purposes concerning wages, hours and working conditions of its members, we concluded that the political activity of the union in its intervention in a school board campaign was incidental and did not disqualify the organization under *section 501(c)(5)*.

G.C.M. 31213 [*4] accepted the premise stated in G.C.M. 31236, dated April 28, 1959, In re: *** (A-629406). There, the qualifying character of a labor organization, as that term is used in *section 501(c)(5)*, was described as an organization which has " * * * as its principal purpose the representation of employees in such matters as wages, hours of labor, working conditions and economic benefits, and the general fostering of matters affecting the working conditions of its members." However, it is not clear from reading G.C.M. 31206 if that description of a labor organization is as broad as the one reflected in the opinion in *Portland Co-operating Labor Temple Association*, 39 B.T.A. 450 (1939), Acq. 1933-1 C.B. 23. There, the court held that an organization organized by labor unions to lease offices, (Illegible Word) halls and other facilities to labor unions qualified for exemption as a labor organization. The opinion of the court notes that the term "labor organization" " * * * bespeaks a liberal construction to embrace the common acceptance of the term, including labor unions and councils and the groups which are ordinarily organized to protect and promote the interests of labor." See also *Revenue Ruling 68-534, C.B. 1968-2, 217*, [*5] In re: *** (I-2952), which adopts a more expansive meaning for the term labor organization under *section 501(c)(5)* than that suggested by G.C.M. 32428 and G.C.M. 31206.

The same problem which now arises regarding *section 501(c)(5)* occurred in the interpretation of *section 501(c)(6)*. As noted in G.C.M. 27933, dated July 29, 1953, In re: *** (A-459910), exemption was denied under *section 101(7) of the 1939 Code*, the predecessor of *section 501(c)(6) of the 1954 Code*, if an organization engaged solely or primarily in legislative activity, on the theory that the organization was not a business league or one of the other groups enumerated in the statute. G.C.M. 27903 reached the opposite conclusion, giving a more expansive meaning to the word "business." Although there was a retract from that conclusion in G.C.M. 31252, dated May 29, 1959, In re: *** (A-623189 and A-623190), the position adopted in G.C.M. 27903 was reinstated by G.C.M. 31864, dated January 12, 1961, In re: *** (Illegible Word) and published as *Revenue Ruling 61-177, C.B. 1961-2, 117*.

We agree that just as a broader meaning was given to the term business league in *section 501(c)(6)*, so too a broader meaning should [*6] be given to the term "labor organization in *section 501(c)(5)*. Indeed, both the Portland case, which speaks of organizations designed "to protect and (Illegible Word) the interests of labor, and *Revenue Ruling 63-534*, supra, seem to give a broader meaning to the term "labor organization" than do G.C.M. 31206 and G.C.M. 32423. In any event, we agree that an organization where primary purpose and activity are to influence legislation may qualify for exemption under *section 501(c)(5)*. G.C.M. 32428 is revoked, and G.C.M.'s 31206 and 31213 are modified to the extent they are (Illegible Word) with this (Illegible Word)

GCM 34233; 1969 GCM LEXIS 12, *

However, in our reconsideration of this area, we believe that *G.C.M. 32184*, dated January 8, 1962, in re: *** (I-326 and I-327), goes beyond the scope of *section 501(c)(6)*. We concluded in that *G.C.M.* that the difference between legislative and political activities does not require a different legal approach to the latter under *section 501(c)(6)*. Thus, we agreed that an organization that applied approximately 752 of its funds toward assisting candidates for public office could qualify as a business league under *section 501(c)(6)* so long as it was established that such [*7] support was germane to the business interest of the organization. We noted, however, that:

It seems to us that it will ordinarily be far more difficult to pinpoint the germaneness of support of candidates for office (whose position on bear will rarely if ever constitute a predominant feature of their platforms) to a common business interest than it would be to demonstrate the germaneness of specific items of legislation thereto.

"Moreover, there are so many forms of undesirable activity which may be associated with 'political' activity, it is believed the Service should have rather strict standards of proof before according the privilege of exemption from Federal income tax to organizations wholly or substantially engaged in such activity."

Upon reconsideration, we believe that a distinction can and should be made between legislative and political activities. The content of specific legislative proposals can be readily identified and related to the business interests of an organization seeking exemption under *section 501(c)(6)* or the labor, agricultural, or horticultural interests of an organization claiming exemption under *section 501(c)(5)*. An organization which is exclusively [*8] engaged in support of legislative proposals germane to labor or business interests would thereby confine its activities to the statutory purposes specified in the applicable provision.

However, support of a candidate for public office necessarily involves the organization in the total political attitudes and positions of the candidate. In our opinion, that involvement transcends the narrower business interest of an organization described in *section 501(c)(6)* [or the labor interest of an organization described in *section 501(c)(5)*]. Consequently, if the primary purpose or activity of an organization is to engage in political action, then we believe it is not organized primarily as a business league and cannot qualify for exemption under *section 501(c)(6)*. Of course, if the primary purpose and activities of an organization otherwise qualify it under *section 501(c)(6)*, then participation in political activities will not disqualify it from exemption. Thus, an organization whose primary activity is directed to influencing legislation which is germane to the interests of the organization would not be disqualified if it incidentally engaged in political activity. *G.C.M. 31213* and *G.C.M. 31864*. [*9] These conclusions are equally applicable to labor organizations under *section 501(c)(5)*. *G.C.M. 32184* is hereby modified in accordance with this memorandum.

The administrative file is returned herewith.

(Signe) K. Martin Worthy

K. MARTIN WORTHY

Chief Counsel

Internal Revenue Service

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Research Information

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2 of 13 DOCUMENTS

This document is not to be relied upon or otherwise cited as precedent by taxpayers.

General Counsel Memoranda 38215

SECTION 0501
EXEMPTION FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.
(EXEMPT V. NOT EXEMPT) 0501.00-00
-- RELIGIOUS, CHARITABLE, ETC., INSTITUTIONS AND COMMUNITY
CHEST 0501.03-00
-- SOCIAL WELFARE GROUPS (SEE ALSO 0501.04-00) 0501.03-25
-- LEGISLATIVE AND POLITICAL PROPAGANDA ACTIVITIES 0501.29-00
SECTION 0527
TAXATION OF POLITICAL ORGANIZATIONS 0527.00-00
-- POLITICAL ORGANIZATION V. NOT A POLITICAL ORGANIZATION
0527.01-00

GCM 38215; 1979 GCM LEXIS 269

December 31, 1979

[*1]

REFERENCE: CC:I-446-75
Br3:SWGarrrett
ACTION DOC: *Revenue Ruling 81-95*

TEXT:

S. ALLEN WINBORNE

Assistant Commissioner (Employee Plans and Exempt Organizations)

Attention: Director, Exempt Organizations Division

At our suggestion, an October 1, 1975 memorandum from the Technical Branch of the Exempt Organizations Division (E:EO:T:CR) transmitted a proposed revenue ruling in this case for our formal consideration.

ISSUE

What effect engaging in political activities will have on an organization that is exempt from Federal income tax under *I.R.C. § 501(c)(4)*.

CONCLUSIONS

The proposed revenue ruling holds that if an organization's primary activity is the promotion of social welfare, its participation or intervention in political campaigns on behalf of or in opposition to candidates for public office will not adversely affect its exempt status under *section 501(c)(4)*. Further, the ruling holds that the organization will be subject to tax in the manner and extent provided in *section 527(f) of the Code* (relating to the taxation of "political organizations" as defined in *section 527*) on any of its political activities that come within the meaning of *section 527(e)(2)* (relating to the definition of "exempt function" [*2] for purposes of *section 527*.)

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We concur in these conclusions, and in publication of the proposed revenue ruling subject to the modifications shown on the copy attached hereto.

The proposed revenue ruling is patterned generally on the ***. It describes an organization that is primarily engaged in activities designed to promote social welfare and that, in addition, carries on certain activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. This political activity takes the form of both financial assistance and in kind service. We note that although *** is a nonprofit corporation, the proposed revenue ruling you have submitted to us does not specify whether the organization is incorporated or unincorporated. We surmise from the facts given in the revenue ruling that the organization engages directly in political activities and not through a separate, segregated fund.

ANALYSIS

The proposed revenue ruling holds that an organization exempt under *section 501(c)(4)* may carry on some political activities consisting of intervention or participation in any campaign on behalf of any [*3] candidate for public office without jeopardizing its exempt status so long as its primary activity is the promotion of social welfare. This position is generally in accord with views expressed in *G.C.M. 32394* *** *I-564* (Sept. 14, 1962), and *G.C.M. 33495*, Definition and Scope of the Term "Social Welfare", *I-1695* (April 27, 1967). In *G.C.M. 36187* *** *I-540-73* (March 11, 1975), however, this office suggested that the ruling to that organization should indicate that such political activity does not promote social welfare and should be discontinued by the organization. *G.C.M. 36187* is hereby modified to conform with the holding in the earlier *G.C.M.*'s above cited, and that in the proposed revenue ruling in respect to the permissibility of some such political activity by an otherwise qualified *section 501(c)(4)* organization.

The implementing regulations have remained unchanged since their issuance in 1959. They were question in, among other memoranda, *G.C.M. 32395*, *** *I-543* (Sept. 14, 1962). Regulation projects to amend them were initiated in 1963 (T:P:IA-R-895 and R-918) and then were referred to the then Exempt Organizations Council and no further formal action was thereafter [*4] taken on them, apparently. The proposed revenue ruling highlights their clear implications in respect to the quantum of permissible political activities of a *section 501(c)(4)* organization. As copies of three memorandums attached hereto will confirm, this office is not prepared currently to propose amendments of the regulations under *section 501(c)(4)*. Consequently we believe their interpretation in the *** and *** *G.C.M.*'s above cited controls as to the permissible quantum of such activities that is consistent with the exempt status of a *section 501(c)(4)* organization.

The concluding paragraph of the Background Information Note accompanying the proposed revenue ruling says "Inasmuch as the facts presented upon which the letter ruling was issued contain no evidence of a violation of the Federal Corrupt Practices Act, 18 USC 610, the proposed Ruling takes no position on this question. If and when the organization or its officers would ever be convicted of a violation of this act, the effect of such illegal conduct on the position taken on the qualification of the organization under *section 501(c)(4)* would have to be reconsidered."

We have, nonetheless, thought it advisable to [*5] consider this question. While the revenue ruling you propose is silent as to whether the subject organization is incorporated or unincorporated, the underlying organization, *** is a nonprofit corporation. The plain language of what used to be *section 610 of Title 18 U.S.C.* and now appears in section 321 of P.L. 94-283, The Federal Election Campaign Act Amendments of 1976, 90 Stats. 475, at 490-92, prohibits political contributions of the kind *** appears to be making by "any corporation whatever... Advisory Opinion 1975-16 issued by the Federal Election Commission "on an interim basis only" in the Federal Register on Tuesday, August 19, 1975, 40 F.R., No. 161, says the prohibitions in 18 U.S.C. § 610 apply, "with limited exception", to political contributions or expenditures by nonprofit corporations, but *** activities do not appear to be within any such exception.

While we appreciate that the proposed revenue ruling attempts to avoid the issue and on its face gives no such indication, if some of the activities of the organization are illegal, - that is, if they violate a Federal or State law - we believe these activities would disqualify the organization from recognition [*6] of exemption under *section 501(c)(4)*. Since illegal activities are contrary to the common good and general welfare of the people in a community, an organization engaging in such activities is not operated exclusively for the

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promotion of social welfare within the meaning of *section 501(c)(4)*. *Rev. Rul. 75-384, 1975-2 C.B. 204*, considered in *G.C.M. 36153 ****, *I-4036* (Jan. 31, 1975). We think, therefore, that the revenue ruling should describe the organization as unincorporated to avoid any issue regarding possible violations of *section 321* of P.L. 94-283, The Federal Election Campaign Act Amendments of 1976, 90 Stat. 475, 490-92.

The revenue ruling holds that the organization will be subject to tax in the manner and to the extent provided in *section 527 of the Code* on any of its political activities that come within the meaning of *section 527(e)(2)*. We concur in this conclusion of the proposed revenue ruling.

We note that if a *section 501(c)* organization establishes a "separate, segregated fund" described in *section 527 of the Code* by and through which to conduct political activities, the requirements of *section 321* of P.L. 94-283, *supra*, may thereby be satisfied. Moreover, [*7] the proposed regulations under *section 527* say that expenditures from a separate segregated fund described in *section 527* will not be attributable to a *section 501(c)* organization that establishes such a fund. Proposed Regs. § 1.527-5(e). Thus, the proposed regulation makes clear that for purposes of testing the exempt status of the *section 501(c)* organization, such expenditures have no effect. Inasmuch as the regulations are not final, however, it would be premature to publish on the issue of how a "separate segregated fund" might affect the exemption of a *section 501(c)(4)* organization.

SUMMARY

In the light of the foregoing analysis we concur in publication of the proposed revenue ruling as modified in the attached copy. We will be glad to discuss any aspects of this memorandum with you if that would be helpful.

N. JEROLD COHEN

Chief Counsel

By:

JEROME D. SEBASTIAN

Director

Interpretative Division

ATTACHMENTS:

75-05-04822

March 31, 1975

Background Information Note

Neither the proposed Revenue Ruling nor the case on which it is based have been considered by Chief Counsel.

The proposed ruling holds that an organization which is exempt under *section 501(c)(4) of the Code* may engage in certain [*8] political activities without jeopardizing its exempt status so long as the organization's primary activities constitute the promotion of social welfare. In addition, the ruling discusses the applicability of *section 527 of the Code* to the political activities of a *501(c)(4)* organization.

The case arose as a request for a ruling which was submitted by the organization on December 22, 1974, directly to the National Office at the suggestion of the Branch in a telephone conversation. The request was answered in a ruling dated March 31, 1975, that held the political activities conducted by the organization would not, under the circumstances, jeopardize its exempt status.

Authority for the position taken in the proposed Revenue Ruling can be found in *G.C.M. 33495*, in re: Definition and Scope of the Term "Social Welfare", April 27, 1967. That memorandum concluded that political activities would be permissible for a *501(c)(4)* organization so long as 1) they were germane to a recognized social welfare purpose, and 2) they were short of being the organization's primary activity.

With regard to the "germaneness" requirement, both Branch Position Meeting Memorandum #14,

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September 8, 1966, [*9] and EO-TCM-66-4, August 25, 1966, indicate that the Branch was only going to use the "primary purpose" requirement without regard "germaneness". Although G.C.M. 33495 was issued after these memoranda, the G.C.M. itself expresses some doubt about the propriety of the "germaneness" requirement.

The "germaneness" requirement as it applies to political activities was put to rest in G.C.M. 34233, In re: *** December 3, 1969. That memorandum, which dealt with the political activities of organizations exempt under sections 501(c)(5) and (c)(6) concluded that "primary purpose" and not "germaneness" would determine whether an organization qualified for exemption. The memorandum pointed out that the support of a political candidate necessarily involves the organization in the total political attitudes and positions of the candidate, and is not confined to narrower interests of the exempt organization. Although the G.C.M. did not deal with section 501(c)(4) the same conceptual problem arises with respect to the political activities of any exempt organization.

Thus, the proposed Revenue Ruling has been drafted without regard to "germaneness." However, it clearly indicates that the "primary [*10] purpose" requirement as discussed in G.C.M. 33495, and 34233, supra, is still of critical importance.

Further, the interplay between organizations exempt under section 501(a) and section 527 is discussed in some detail in G.C.M. 36286, in re: *** May 22, 1975, which deals with the political activities of a labor organization. Although that case involves a section 501(c)(5) organization, the principles discussed are essentially the same as those in the subject case. The G.C.M. indicates that political activities are permissible, even if substantial, so long as the exempt purposes remain primary. However, the memorandum clearly indicates that section 527 will apply to those activities. Eventually, the principles in the G.C.M. should be published in somewhat the same form as the proposed Revenue Ruling. However, because of the difference in regulations under section 501(c)(4) and 501(c)(5) it is not appropriate to include both Code sections into one ruling.

***.

The proposed Revenue Ruling clarifies a problem which has troubled the Branch for some time. However, with the enactment of section 527 of the Code any serious objections to publication should now be set aside. Nevertheless, [*11] in order to make it clear that Congress, as well as I.R.S. recognizes that a social welfare organization may engage in politics, the proposed Ruling includes a quote from the Senate Finance Committee Report on section 527 that specifically mentions section 501(c)(4) organizations.

Inasmuch as the facts presented upon which the letter ruling was issued contain no evidence of a violation of the Federal Corrupt Practices Act, 18 USC 610, * the proposed Ruling takes no position on this question. If and when the organization or its officers would ever be convicted of a violation of this act, the effect of such illegal conduct on the position taken on the qualification of the organization under section 501(c)(4) would have to be reconsidered. Since this ruling enunciates the Service position in an area requiring clarification and this position has been a long-standing one, the proposed Ruling deserves publication in its present form. [Add: (

* Note repeal of this provision and its incorporation in the Federal Election Campaign Act Amendments of 1976, Subsequent to the preparation of This B.I.N.)) (Words illegible)

Chief, Exempt Organizations Technical Branch

Date:

PART I

SECTION 501.--EXEMPTION [*12] FROM TAX ON CORPORATIONS, CERTAIN TRUSTS, ETC.

26 CFR 1.501(c)(4)-1: Civic organizations and local associations of employees.

Rev. Rul.

ISSUE

[Delete: The Internal Revenue Service has been asked] what effect engaging in political activities will have on an organization that is exempt from Federal income tax under section 501(c)(4) of the Internal

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Revenue Code of 1954.

FACTS

[Delete: The] [Add: An unincorporated] organization is primarily engaged in activities designed to promote social welfare. In addition, it carries on certain activities involving participation and intervention in political campaigns on behalf of or in opposition to candidates for nomination or election to public office. These political activities takes the form of both financial assistance and in kind services.

LAW AND ANALYSIS

Section 501(c)(4) of the Code provides for the exemption from Federal income tax of civic leagues not organized for profit but operated exclusively for the promotion of social welfare.

Section 1.501(c)(4)-1(a)(2)(i) of the Income Tax Regulations provides that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some [*13] way the common good and general welfare of the people of the community.

Section 1.501(c)(4)-1(a)(2)(ii) of the regulations provides 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.

Section 527(b) of the Code imposes a tax on the taxable income of certain political organizations.

Section 527(f) of the Code provides, in part, that organizations described in *section 501(c)*, which are exempt from tax under *section 501(a)*, that expend any amount for political activities described in *section 527(e)(2)* shall be subject to tax as if the amount constituted political organization taxable income.

Section 527(e)(2) of the Code describes the type of political activities for which an exempt organization will be subject to tax. These activities are 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, [*14] nominated, elected, or appointed.

In order to qualify for exemption under *section 501(c)(4) of the Code*, an organization must be primarily engaged in activities that promote social welfare. Although political activities do not promote social welfare, the regulations do not impose a complete ban on such activities for [Delete: social welfare] [Add: *section 501(c)(4)*] organizations. Thus, an organization that is exempt under *section 501(c)(4)* may carry on some political activities so long as the organization's primary activities [Delete: remain those] [Add: are activities] that [Delete: constitute the] [Delete: promotion of] [Add: promote] social welfare.

For an example of an organization whose participation and intervention in political campaigns [Delete: comprises its primary] [Add: bars its exemption under] [Delete: activity] [Add: *section 501(c)(4)*], see *Rev. Rul. 67-368, 1967-2 C.B. 194*. That Revenue Ruling holds that an organization [Delete: that rates political] [Add: whose primary activity is rating] candidates [Add: for public office] does not qualify for exemption under *section 501(c)(4)* because [Delete: its primary activities are not those that promote] [Add: such activity] [*15] does not constitute the promotion of social welfare.

[Delete: In this case,] Since the organization's primary [Add: activities] [Delete: is the promotion of] [Add: promote] social welfare, its participation or intervention in political campaigns on behalf of or in opposition to candidates for public office will not adversely affect its exempt status under *section 501(c)(4) of the Code*.

[Delete: While the organization's participation and intervention in political campaigns will not adversely affect its exempt status,]

The enactment of *section 527 of the Code* by P.L. 93-625 affects the treatment of political activities of exempt organizations. *Section 527(f)*, *** which is effective for all taxable years beginning after December 31, 1974, provides, that organizations exempt under *section 501(a)* and described in *section 501(c)* are subject to tax on amounts expended for certain political activities. In the Report of the Senate Finance Committee on P.L. 93-625, Congress specifically indicated that the provisions of *section 527(f)* apply to organizations that are exempt under *section 501(c)(4)*. The Report states:

"Exempt organizations which are not political organizations. - Under present [*16] law, certain tax-

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exempt organizations (such as *sec. 501(c)(4)* organizations) may engage in political campaign activities. The bill generally treats these organizations on an equal basis for tax purposes with political organizations. Under the bill organizations which are exempt under *section 501(a)* and are described in *section 501(c)*, that engage in political activity, are to be taxed on their net investment income in part as if they were political organizations...." S. Rep. No. 92-1357, 93d Cong., 2d Sess., 29 (1974). 1975-10, I.R.B. 37, March 10, 1975.

[Delete: Consequently] [Add: HOLDING INSERT]

The organization will be subject to tax in the manner and extent provided in *section 527(f)* on any of its political activities that come within the meaning of *section 527(e)(2)*.

PART I

SECTION 527.--POLITICAL ORGANIZATIONS

Taxation of certain political activities of organizations exempt from Federal income tax under *section 501(a) of the Code* and described in *section 501(c)(4)*. See Rev. Rul. page ***.

Internal Revenue Service

memorandum

CC:PKS

date: December 6, 1979

to: Jerome D. Sebastian Director, Interpretative Division

from: Technical Advisor to the Chief Counsel

subject: ***

I [*17] agree with the recommendation in your memorandum dated March 31, 1978, that no project to amend the regulations under § 501(c)(4) be undertaken at this time. I have coordinated the matter with the EE Division, which also agrees with that conclusion as noted in Mr. Jelly's November 21, 1979 memorandum. There seems to be no particular reason to undertake this project independently of a § 501(c)(3) project, and the problems with the § 501(c)(4) "primary activities" test are clearly lessened by § 527 and the extension of the unrelated business income tax to these organizations. EP:EO has indicated that they see no particular need for this project at present and that they would like to resume processing the *** ruling.

Accordingly, I am returning EP:EO's file in the *** case and the study on the § 501(c)(4) regulations so that the proposed G.C.M. can be finalized and the proposed ruling returned to EP:EO for processing. In the event the dormant project to amend the § 501(c)(3) regulations becomes active, EE will consider including the related amendment to § 501(c)(4) as part of that project. However, no independent project will be initiated at this time.

Peter K. Scott

Internal Revenue [*18] Service

memorandum

CC:EE-131-79

Br3:JJMcGovern

date: 21 NOV 1979

to: Technical Adviser to Deputy Chief Counsel (Technical) CC

from: Director, Employee Plans and Exempt Organizations Division CC:EE

subject: *** Proposal to Amend I.R.C. § 501(c)(4) Regulations

This responds to your request for our views as to whether the Regulations under I.R.C. § 501(c)(4) should be amended to remove the apparent use of a "primary" activities test in determining whether an organization is "exclusively" devoted to social welfare purposes.

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We concur with the recommendation of the Interpretative Division that any proposal to amend the Regulations under *section 501(c)(4)* be dropped at this time, and that the position reflected in *Rev. Rul. 67-368, 1967-2 C.B. 194*, continue to be followed so far as any quantitative test for non-qualifying activities of a social welfare organization is concerned.

We agree that the most serious problems emanating from the "primary" test have been eliminated by the extension of the unrelated business income tax to *section 501(c)(4)* organizations if the non-qualifying, but less than primary, activity of a social welfare organization is business activity. We also agree [*19] that *section 527(f)* helps to resolve the specific type of political activity problem that was involved in the *** case.

The March 31, 1978, memorandum from the Interpretative Division made reference to a previous effort to amend the *section 501(c)(3) Regulations*, and speculated that such project was apparently "abandoned" or dormant." That project was established in part to modify the regulations under *I.R.C. § 501(c)(3)* by removing the use of a "primary" activities test in determining whether an organization is "exclusively" devoted to charitable purposes. While the successor to that project is presently pending in this division, we are carefully considering whether sufficient justification exists to propose modification of the regulations under *section 501(c)(3)*. At this time we are not satisfied that we can demonstrate that such change is absolutely essential. However, should justification for the *section 501(c)(3)* project be found, we would then consider making a corresponding amendment to the *section 501(c)(4) regulations*.

GEORGE H. JELLY

Internal Revenue Service

memorandum

date: MAR 31 1978

to: Deputy Chief Counsel (Technical)

from: Director, Interpretative Division

subject: [*20] *I.R.C. § 501(c)(4)* and *Treas. Reg. § 1.501(c)(4)-1* ***

A proposed revenue ruling based on *** that was forwarded for our concurrence or comment on October 1, 1975, prompted a reexamination of a perennially troublesome question:

Should the Regulations implementing *section 501(c)(4)* be changed?

This memorandum will acquaint you with the problem and its background, and offer our recommended answer to the question. You may wish to bring the matter to the Chief Counsel's attention in view of the prior Chief Counsel's direct involvement in it.

The question arises because the statute describes "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare..." as organizations exempt under *section 501(a)*. (Emphasis added)

The Regulations were developed and issued in 1959 in conjunction with the Regulations under *section 501(c)(3)* and have remained unchanged to date, although it has long been recognized that they are an unduly broad interpretation of the statute. They say, in pertinent part,

"An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common [*21] good and general welfare of the community... 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. Nor is an organization operated primarily for the promotion of social welfare if its primary activity is operating a social club... or is carrying on a business with the general public in a manner similar to organizations which are operated for profit." (Emphasis added)

The "primary" test of the Regulations was interpreted by Chief Counsel's office in 1962 (*G.C.M. 32394*, *** *I-564* (Sep. 14, 1962), and *G.C.M. 32395*, *** *I-543* (Sep. 14, 1962)), and the interpretation was repeated in 1967 (*G.C.M. 33495*, Definition and Scope of Term "Social Welfare," *I-1695* (Nov. 9, 1967)). Briefly, those *G.C.M.s* say that, as we read the Regulations, their cumulative effect requires the interpretation that anything less than primary engagement in activities that are not in furtherance of exempt purposes by an otherwise

GCM 38215; 1979 GCM LEXIS 269, *

qualified organization will not bar its exemption under *section 501(c)(4)*. Stated otherwise, if an organization is primarily engaged in activities promoting [*22] the social welfare, there is no additional quantitative test to be applied to its activities that are not promoting the social welfare that would operate to bar the organization's exemption under *section 501(c)(4)*. G.C.M. 32395 also questioned whether the Regulations were a valid interpretation of the statutory requirements and suggested that there should be a policy decision whether the language of the statute or that of the Regulations controls. Regulations projects to amend the Regulations were initiated in 1963 (T:P:IA-R-895 and R-918) and were then referred to the Exempt Organizations Council created by former Commissioner Caplin which is no longer extant. No further formal action was taken on them.

In 1967, *Rev. Rul. 67-368, 1967-2 C.B. 194* relied on Chief Counsel's interpretation in a case presenting the reverse of the *** holding. The *Rev. Rul.* holds that an organization primarily engaged in political activity does not qualify under *section 501(c)(4)*.

The *** revenue ruling would say that since the organization's primary activity is the promotion of social welfare, its participation or intervention in political campaigns on behalf of or in opposition to candidates for [*23] public office will not bar its exemption under *section 501(c)(4)*.

A proposed G.C.M. in *** withholding concurrence in publication was submitted to the Exempt Organizations Division in April 1976 (copy attached). The proposed G.C.M. suggested that a current decision should be made whether the language of the statute or that of the Regulations controls. If the decision is made that the statute controls, the Regulations should be amended. If the outstanding Regulations control, then, with some modifications, the proposed revenue ruling could be published.

On August 18, 1976, the Director of the Exempt Organizations Division, the then Chief Counsel and several other representatives from each office held a reconciliation conference. The E.O. representatives pointed out the need for published guidance and explained that they objected to modifying the rulings position that they have followed for more than a dozen years now unless the Regulations are to be changed. Several questions raised by the outstanding Regulations were discussed, and a very brief history of their development was given. The impact of *section 527*, enacted in 1974 and relating to the taxation of political organizations, [*24] on the limitations imposed by the *section 501(c)(4) Regulations* on political activities of social welfare organizations was tentatively explored. Although the principal focus of the conferees was on the issue raised by *** -- that is, the quantum of political activities exempt social welfare organizations may engage in, mention was also made of the fact that the unrelated business income tax provisions had been extended to *section 501(c)(4)* organizations by the Tax Reform Act of 1969.

The upshot of the meeting was that the Chief Counsel suggested, and the Director, Exempt Organizations Division, agreed, that EO and Chief Counsel personnel would work up a memorandum to go to Treasury tracing the history and development of the present Regulations, outlining the problems they are creating, and recommending to Treasury that they be reconsidered.

On October 19, 1976, E.O. forwarded their study of the Regulations to Chief Counsel's office. The study generally suggests that it be recommended to Treasury that the "primary activities" test be eliminated from the Regulations and an "exclusive" test tolerating no more than an insubstantial amount of activities not in promotion of the social [*25] welfare be substituted. A copy of their study is attached.

For a number of reasons, we recommend that any proposal to amend the Regulations under *section 501(c)(4)* be dropped at this time and the position reflected in *Rev. Rul. 67-638* continue to be followed so far as any quantitative test for non-qualifying activities of a social welfare organization is concerned.

We believe it is highly unlikely that initiation of a Regulations project under *section 501(c)(4)* will be approved at this time even though there may be substantial agreement that the current Regulations are deficient. There are many issues in the exempt organizations area that have a higher priority, let alone those in other areas of the Code.

Further, we believe a project to amend the *section 501(c)(4) Regulations* should not be undertaken independently of a project to amend the *section 501(c)(3) Regulations*. It is clear from the files underlying *T.D. 6391* by which both Regulations were promulgated in 1959 that the *section 501(c)(4) Regulations* were very significantly shaped by reference to, and in conjunction with, decisions made with respect to the *section 501(c)(3) Regulations*. The "primary" test as an interpretation [*26] of the "exclusively" requirement of the

GCM 38215; 1979 GCM LEXIS 269, *

statute is one example. A number of memoranda in the T.D. files are addressed to the fact that the statute says "exclusively" and the Regulations say "primarily." These memoranda were focusing on drafts of the section 501(c)(3) Regulations. Nevertheless, in tracing the development of both Regulations it is clear that the words "primary" and "primarily" found their way into the early drafts of the section 501(c)(4) Regulations at exactly the same time they were getting into the section 501(c)(3) Regulations, and never thereafter disappeared. The big difference between the "primary" tests of the respective Regulations provisions as finally adopted is that under the section 501(c)(3) Regulations it is stated that an organization will not be regarded as "operated exclusively" for *section 501(c)(3)* exempt purposes "if more than an insubstantial part of its activities is not in furtherance of an exempt (c)(3) purpose." Treas. Reg. § 1.501(c)(3)-1(c)(1). Thus, at least, no 51% - 49% dichotomy between the quantum of qualifying activities and nonqualifying activities will be tolerated under the section 501(c)(3) Regulations, as it seems to be under [*27] the section 501(c)(4) Regulations.

While we believe the test in Treas. Reg. § 1.501(c)(3)-1(c)(1) is wrong as applied to *section 501(c)(3)* organizations, and has and will continue to cause the Service trouble in the administration of *section 501(c)(3)*, we are inclined to think it might be a reasonable test under *section 501(c)(4)*. In any event, we do not believe the section 501(c)(4) Regulations should be amended without amending the section 501(c)(3) Regulations as well because the development and structure of the former were shaped in so many significant respects by the latter. In this connection, it should be noted that extensive and protracted efforts, extending over a period from early in 1975 to the Spring of 1977, were made to amend the section 501(c)(3) Regulations. That effort has, apparently, now been abandoned, or is dormant.

Another factor influencing our recommendation against a section 501(c)(4) Regulations project at this time is that the impact of the current Regulations has been significantly diluted by subsequent legislation. The unrelated business income tax provisions of the Code were extended to *section 501(c)(4)* organizations, among others, by P.L. 91-172, [*28] the Tax Reform Act of 1969, § 121(a)(1), effective for taxable years beginning after December 31, 1970; and the "political" expenditures of *section 501(c)(4)* organizations, among others, were subjected to tax by P.L. 93-625, § 10, (now *section 527 of the Code*), effective for taxable years beginning after December 31, 1974. Thus if the non-qualifying, but less than primary, activity of a social welfare organization is business activity, the income from it may be taxable under *section 511*, and if the non-qualifying, but less than primary, activity is political activity, expenditures for such activity by a *section 501(c)(4)* organization will be subject to tax as provided in *section 527*. The proposed Rev. Rul. in *** reflects the provisions of *section 527*.

We recognize that this legislation is only a partial solution to problems created by the section 501(c)(4) Regulations. There are and will continue to be cases in which the Regulations language requires an extremely difficult balancing act. For example, many cases involve a weighing of private interest against the community's interest and deciding which is "primary." *G.C.M. 37169* *** I-85-73 (June 17, 1977) considered whether an [*29] organization formed to clear up oil spillages in a port area qualified under *section 501(c)(4)*. The community clearly benefited from the organization's activities but the benefit to its members was also substantial. On balance, it was concluded that the community benefit predominated. See also *Rev. Rul. 75-286, 1975-2 C.B. 210*, which describes an organization formed by residents of a single city block to beautify public areas of the block and holds that the organization qualifies for exemption as a social welfare organization.

A copy of the proposed Rev. Rul. based on *** is attached. We will resume processing the case when you have had an opportunity to consider this memorandum and give us your suggestions and instructions.

(signed) Jerome D. Sebastian

JEROME D. SEBASTIAN

Director

11058S

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TAX EXEMPT AND GOVERNMENT ENTITIES

EXEMPT ORGANIZATIONS

LETTER FROM THE DIRECTOR

Dear Colleagues:

Exempt Organizations (EO) respects the nonprofit sector's work and supports its efforts by helping to ensure that the public maintains trust in the exempt sector. Over this past year, our leadership and staff have continued to support these efforts through a robust educational program, a more efficient determination process, and a comprehensive compliance program. We also have continued to communicate the importance of organizational governance and its expected impact on compliance with the tax law.

As we move forward into a new year, we view Fiscal Year 2011 as an opportunity to build on our recent efforts, fine-tune certain projects and programs, and prepare for the inevitable changes in the landscape of exempt organizations. Our work for this year comes together around three major themes:

- **EO Integrates.** In recent years, EO initiated several projects focusing on specific segments of the sector, as well as particular compliance issues affecting a cross-section of exempt organizations. We believe it is now appropriate to incorporate these projects and lessons learned into the overall EO processes, rather than keeping these efforts as separate projects.
- **EO Supports and Collaborates.** In the coming year, IRS leadership will focus agency-wide attention on certain critical issues, including international activities and compliance with the passage of recent legislation. These important efforts require significant resources from EO. Other key projects will involve collaborative work with the National Research Program and non-filer initiatives.
- **EO Invests.** In order to keep up with the ever-changing exempt organization sector, EO will invest time and resources in a wide array of initiatives, which will touch a broader audience.

This report provides updated statistics and discussions of our accomplishments in FY 2010, as well as a preview of our programs in FY 2011. We look forward to working with the exempt community and our stakeholders and continuing to share what we learn.

Respectfully yours,

Lois G. Lerner

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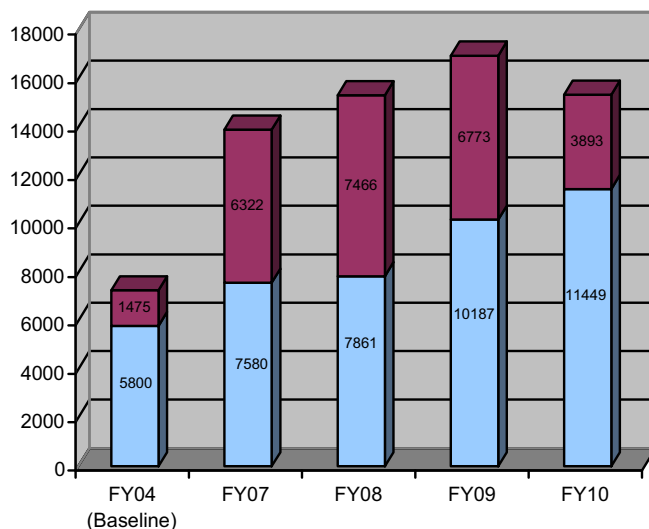
Lois G. Lerner
Director, Exempt Organizations

Compliance

This graph displays the combined total number of returns examined through the traditional examination process and the less resource-intensive compliance checks.

Compliance checks inquire about an item on a return or solicit information about an organization's operations, enabling us to touch more organizations than we could by using an exclusively exam-based strategy.

Total number of returns examined



■ Traditional Examinations ■ Compliance Checks

EO Examinations

EO Examinations is responsible for enforcement activities, including both compliance checks and audits of exempt organizations. EO Examinations is made up of field exam groups; the Exempt Organization Compliance Unit (EOCU), which conducts compliance checks; Review of Operations (ROO), which does follow-up reviews of organizations; and Compliance Strategies Critical Initiative (CSCI), which coordinates EO's strategic planning, monitors progress of critical initiatives, and analyzes the results of these projects.



Nan Downing
Director, EO Examinations

EO's traditional examinations, coupled with less resource-intensive compliance checks, continue to deliver impressive compliance results.* By expanding our collaboration with outside agencies — including the Social Security Administration and the states — we obtained valuable electronic data that allowed us to more readily identify potential nonfilers and to focus our exam resources on noncompliant organizations. Our methods of case selection for examinations resulted in a higher percentage of cases selected involving significant issues and agents securing a considerably higher number of delinquent returns than in any recent year.

**2010 legislation provisions necessitated a higher ratio of traditional exams to compliance checks than in the past, resulting in fewer overall closures.*

Applications for Tax Exemption

Rulings and Agreements

EO Rulings and Agreements (R&A), made up of Determinations and Technical, is responsible for reviewing applications for exemption, issuing private letter rulings, providing technical advice, and collaborating with Chief Counsel's office and the Department of the Treasury to deliver formal guidance.

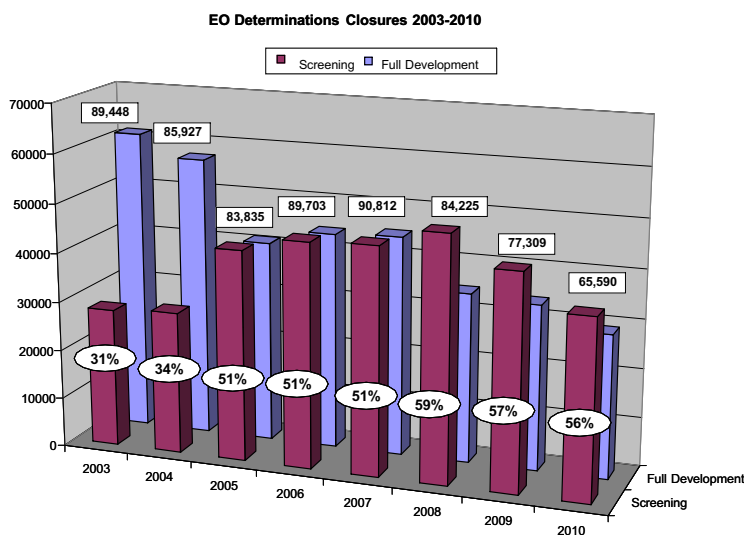


Rob Choi, Director
EO Rulings & Agreements

In 2008, the revision of the Form 990 eliminated the need for the advance ruling process for section 501(c)(3) organizations. Under the former process, an applicant organization was granted public charity status conditionally for its first five years, after which it had to come back and demonstrate it had sufficient public support to be classified as a public charity rather than a private foundation.

Under the new process, in lieu of coming back in five years, an organization shows that it has met and continues to meet the public support test on either Schedule A (Public Charity Status and Public Support) of Form 990 or Form 990-EZ.

The new process eliminated about 20,000 follow-up cases from the workload, which traditionally were disposed of through the screening process. While the number of cases went down, those remaining were more complex.



This chart compares the number of cases closed through the screening process and cases closed after in-depth development in FY 2003-2010.

Despite a more difficult caseload, experience gained and efficiencies initiated to the screening program over the last several years have enabled us to continue to maintain a high level of screening.

Education & Formal Guidance

With the expanded responsibilities imposed by new legislation and a growing customer base, EO continued its extensive education and communication efforts in FY 2010.

- Provided an online toolkit to internal and external stakeholders to alert the tax-exempt community of the filing relief program available to small organizations at risk for losing their tax exemption for failure to file
- Prepared and distributed information about new legislation, including the American Recovery and Reinvestment Act and Affordable Care Act, to the tax-exempt community
- Hosted the inaugural joint workshops with Seton Hall University, West Virginia University and Lawrence Technological University to kick off the work of the Academic Institution Initiative
- Hosted 18 Small & Midsize 501(c)(3) Workshops nationwide, which offered guidance on a variety of topics such as EO filing requirements, unrelated business income, and public inspection and disclosure requirements
- Released an updated gaming publication, *Tax-Exempt Organizations and Gaming*, which helps organizations understand how their activities impact their tax-exempt status by describing the unique reporting and filing responsibilities of each type of exempt organization

Customer Education and Outreach

Customer Education and Outreach (CE&O) offers specialized education and outreach programs to help exempt organizations understand their tax responsibilities. CE&O oversees the Charities and Nonprofits pages of IRS.gov, develops publications and web-based materials, manages the Academic Institution Initiative, and offers face-to-face workshops and seminars on EO tax laws. In addition to CE&O core staff, subject-area experts from Examinations and R&A support EO outreach efforts and augment CE&O's mission.



Bobby Zarin, Director
EO Customer Education & Outreach

The table below shows FY 2010 outreach efforts, as well as the changes from FY 2009.

EO Education and Outreach Efforts

Outreach Efforts	FY 2008 Total (Baseline)	FY 2009 Total	FY 2010 Total*	Change from FY 2009
EO Update subscribers	75,473	101,730	130,176	28%
Speeches, Tax Forums and Workshops*	289	305	194	-36%
IRS.gov/eoH website views	4,960,256	4,994,022	5,333,380	7%

*The number of outreach events, most of which are generated externally, reached an all-time high in FY2008/2009, due to presentations describing the redesigned Form 990, a major EO initiative.

Education & Formal Guidance (cont.)

EO makes technical interpretations of the laws and procedures publicly available through regulations, revenue rulings, revenue procedures, announcements, and notices.

In FY 2010, published guidance highlights included:

One-Time Filing Relief for Small Organizations

May 17, 2010, was the first filing deadline to trigger revocation under the Pension Protection Act (PPA) for organizations that failed to file for three consecutive years.

On July 26, 2010, IRS Commissioner Doug Schulman announced a one-time, two-part filing relief program to provide an additional opportunity for small organizations at risk for revocation to file.

The IRS posted a list of names and last-known addresses of possible at-risk organizations on the IRS.gov website and provided guidance on coming back into compliance. This guidance included details about completing filing requirements, along with frequently asked questions.

The guidance extended that the deadline to file to October 15, 2010, for the smallest organizations. Those with gross receipts of \$25,000 or less could retain exemption by filing the simple Form 990-N, the e-Postcard, by the October 15 date.

Organizations eligible to file the Form 990-EZ for the past three years could save their tax-exempt status by filing their three delinquent returns and pay a small compliance fee by October 15, 2010.

Notice 2010-39

The Affordable Care Act (ACA) imposed four additional requirements for hospitals to qualify as section 501(c)(3) organizations. Notice 2010-39 explained the new requirements and additional reporting and excise taxes enacted in the ACA, and requested comments from the public on how the IRS should provide guidance on the new provisions.

Regulation 4965 - Prohibited Tax Shelter Transactions

Section 4965 imposes an excise tax on tax-exempt organizations and associated employees who engage in prohibited tax shelter transactions. These regulations explain the tax and the associated disclosure rules. The regulations finalized temporary regulations issued in 2007.

Announcement 2010-19

The announcement explains procedures that a trust may use to request a ruling that it was-- and continues to be-- a Type III supporting organization. It further describes how to request a refund for private foundation excise taxes paid in 2008.

This announcement also describes the procedure under which a private foundation can terminate its private foundation status by operating as a public charity for 60 months.

Organizational Information

EO Staffing

The EO Rulings and Agreements office (R&A) processes applications for tax exemption and provides direction through private letter rulings and technical guidance.

The EO Examinations office (Exam) promotes compliance by analyzing operational and financial activities of exempt organizations. These activities include developing processes to identify areas of noncompliance, developing corrective strategies and assisting other EO functions in implementing these strategies.

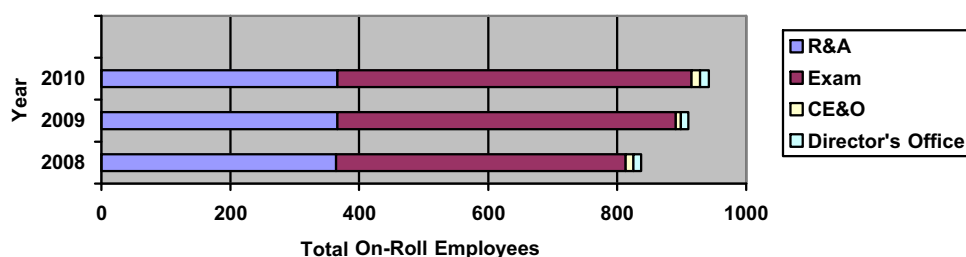
The EO Customer Education and Outreach office (CE&O) coordinates, assists and supports the development of internal and external communications, forms and publications and external education and outreach efforts.

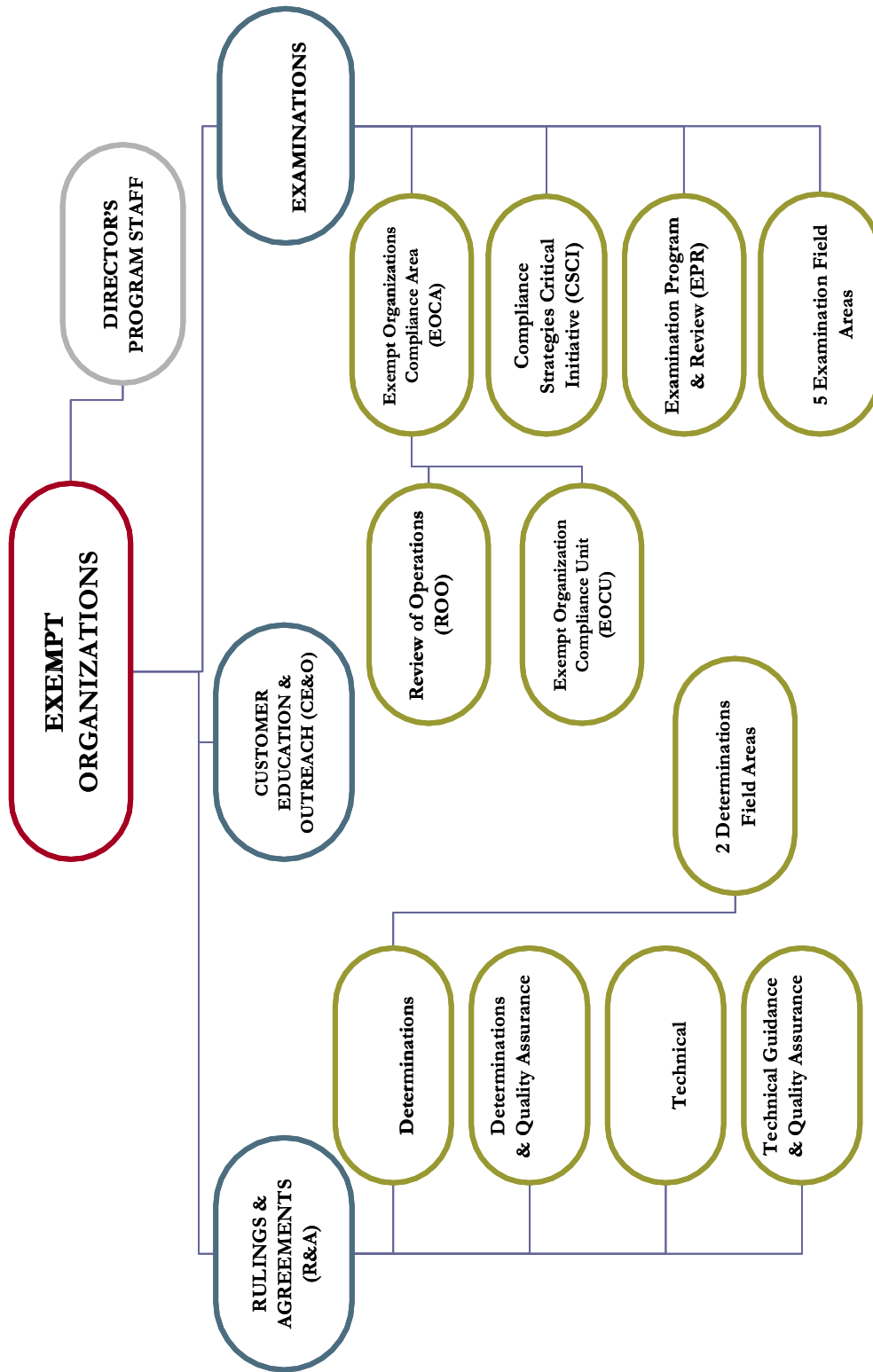
EO continues to grow in order to meet the needs of the tax-exempt community.

Table of EO On-Roll Employees over a 3-Year Period

	Rulings & Agreements	Examinations	Customer Education & Outreach	Director's Office	Total
2008	364	449	12	12	837
2009	366	525	8	11	910
2010	366	549	14	13	942

EO On-Roll Employee Growth over a 3-Year Period





Spotlight: Filing Relief Program

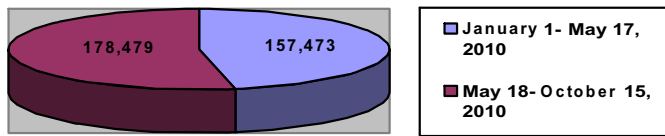
Background: The Pension Protection Act of 2006 made two important changes affecting tax-exempt organizations, effective the beginning of 2007. First, it requires all tax-exempt organizations, other than churches and church-related organizations, must file an annual return with the IRS. That includes small tax-exempt organizations with gross receipts of \$25,000 or less and had not previously had a filing requirement. They now are required to submit a Form 990-N, also known as an e-Postcard. Second, it mandates that any tax-exempt organization that fails to file for three consecutive years automatically loses its federal tax-exempt status.

Current Efforts: The **first three-year filing deadline** that could trigger revocation for failure to file was May 17, 2010. Despite an extensive outreach effort for the past three years, once the filing date arrived, the IRS realized that many organizations continued to be unaware of the tax law changes. On May 18, Commissioner Shulman announced that the IRS would provide additional guidance to help these small organizations maintain their tax-exempt status—even if they had missed the filing deadline. The Commissioner encouraged them to continue filing and reassured them that the IRS would do what it could to help them avoid losing their tax-exempt status.

On July 26, 2010, the IRS announced a **one-time two-part relief program** to bring these small nonprofit organizations back into compliance. First, the program extended the filing deadline to October 15 for the smallest organizations, those eligible to file the Form 990-N, the e-Postcard. Second, it provided for a voluntary compliance program for those eligible to file the Form 990-EZ for the past three years. Under this program, an organization had to file its three delinquent returns and pay a small fee by October 15. Form 990 and 990-PF filers were not eligible to participate in this program.

The IRS posted a **list of the names and last-known addresses of more than 300,000 at risk organizations** with filing due dates from May 17 through October 15, 2010, and no record of having filed a required annual return or notice for 2007, 2008 or 2009.

Immediately following the Commissioner's announcement, the IRS expanded its **outreach efforts** to alert the tax-exempt sector of the relief program. As a result, during the Filing Relief Program (between May 18 and October 15), more organizations filed 990-Ns than during the previous five-month period.



Total: 335,952 990-Ns filed by October 15, 2010

**These figures only reflect the number of 990-Ns filed, not the number of organizations that have filed or the number that originally were not filed timely and took advantage of the filing relief program. In addition, 4,621 organizations filed the 990-EZ form during the at-risk period.*

Post-October 15: Eligible organizations that properly filed according to the Filing Relief Program will remain tax exempt.

Revocation: By operation of law, organizations that failed to file annual information returns for three consecutive years, and organizations eligible to participate in the filing relief program that failed to do so by the October 15 deadline, automatically will be revoked as of the original due date of their third return. In early 2011, the IRS will notify these organizations, and will publish their names by posting a list of revoked organizations on IRS.gov.

Each month, as subsequent filing due dates pass, the IRS will expand the list to include the names of additional organizations that are revoked for failure to file for three consecutive years.

Contributions and tax deductions: Donors who contribute to organizations otherwise eligible to receive tax-deductible contributions can continue to take a tax deduction until the IRS publishes the name of the organization on the list of revoked organizations. A contribution to an organization listed on the IRS site as having lost its tax-exempt status is not tax deductible.

Reinstatement: An organization that wishes to retain its tax-exempt status must apply to have its tax-exempt status reinstated, even if it was not originally required to file an application for exemption. To do so, it must:

- File either Form 1023 or 1024, as appropriate;
- Pay the appropriate user fee; and
- Write automatically revoked on the top of the application and envelope.

EO Determinations will review the applications received in the normal course of business.

On-going Education: EO will continue its aggressive educational program to alert tax-exempt organizations of their annual filing requirements and the consequences of not filing.

Compliance Review: EO will conduct a compliance review of organizations that filed a Form 990-N but previously reported financial activity indicated they were ineligible to do so.

Spotlight: Redesigned 2008 Form 990 Filings

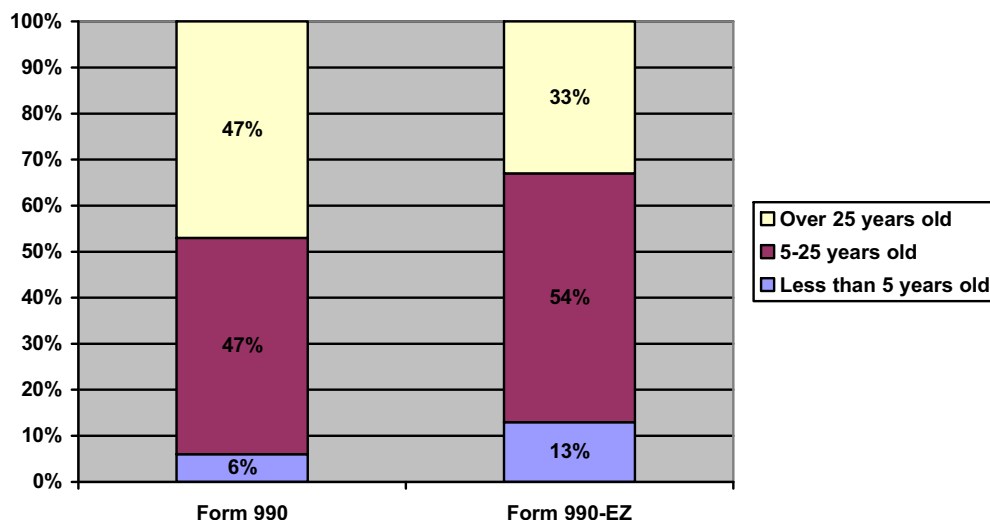
Statistics and Demographics for Redesigned 2008 Form 990 Filings

The IRS significantly redesigned Form 990, *Return of Organization Exempt From Income Tax*, for tax year 2008. Now that the filing season for tax year 2008 is nearly complete, the IRS has compiled the following demographic and statistical information on 2008 Form 990 (along with certain statistics on Forms 990-EZ and 990-N) filings and filing organizations, based on data available through September 30, 2010:

Demographics of Filing Population

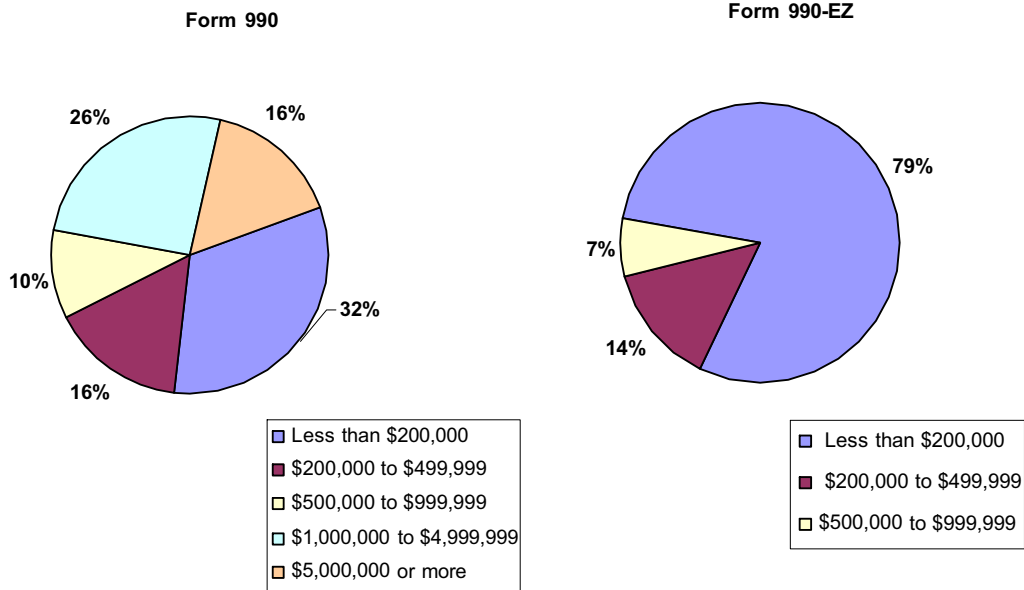
AGE OF ORGANIZATIONS

Age of Tax-Exempt Organizations Filing 2008 Form 990-Series Returns*

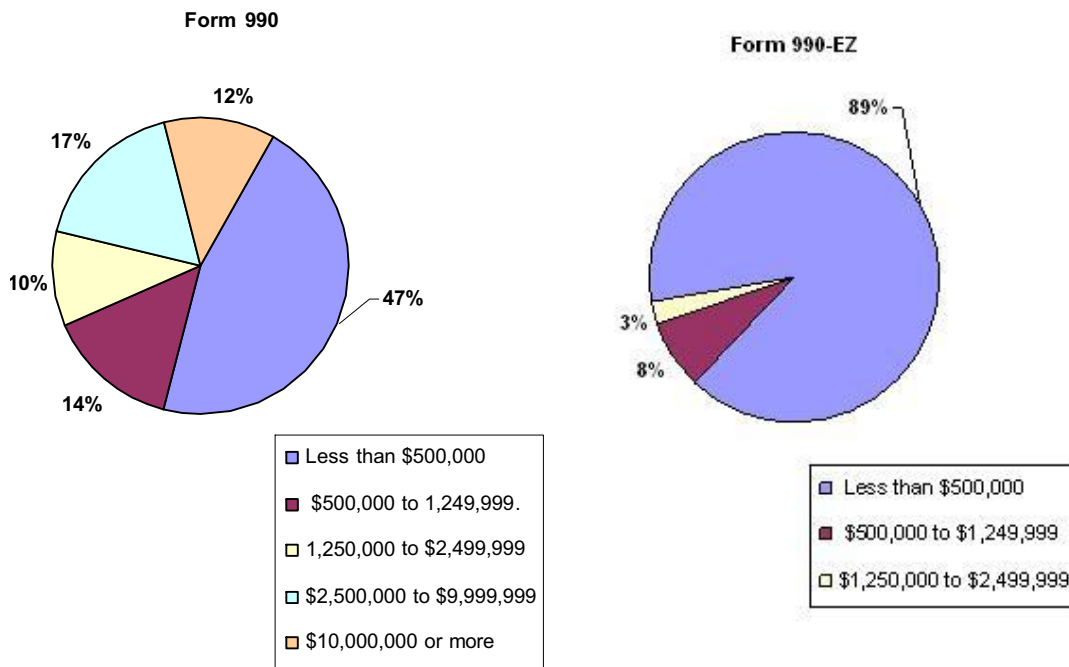


* Age reflects the date on which the organization's federal Employer Identification Number (EIN) was assigned. This does not necessarily reflect the date on which the organization was formally organized, received recognition of exemption by the IRS or filed its first return with the IRS.

SIZE OF ORGANIZATION by Gross Annual Receipts, as Reported by 2008 Filers of:



SIZE OF ORGANIZATION by End of Year Total Assets, as Reported by 2008 Filers of:



GEOGRAPHY OF ORGANIZATIONS by U.S. Regions, Tax Year 2008:

Geography by U.S. Regions*		
	Form 990	Form 990-EZ
	%	%
Northeast	18%	19%
Mid Atlantic	22%	22%
Gulf Coast	21%	19%
Great Lakes	18%	16%
Pacific Coast	21%	24%
Total	100%	100%

* For more information on identification of U.S. states in the geographical regions, go to:
<http://www.irs.gov/charities/article/0,,id=137767,00.html>

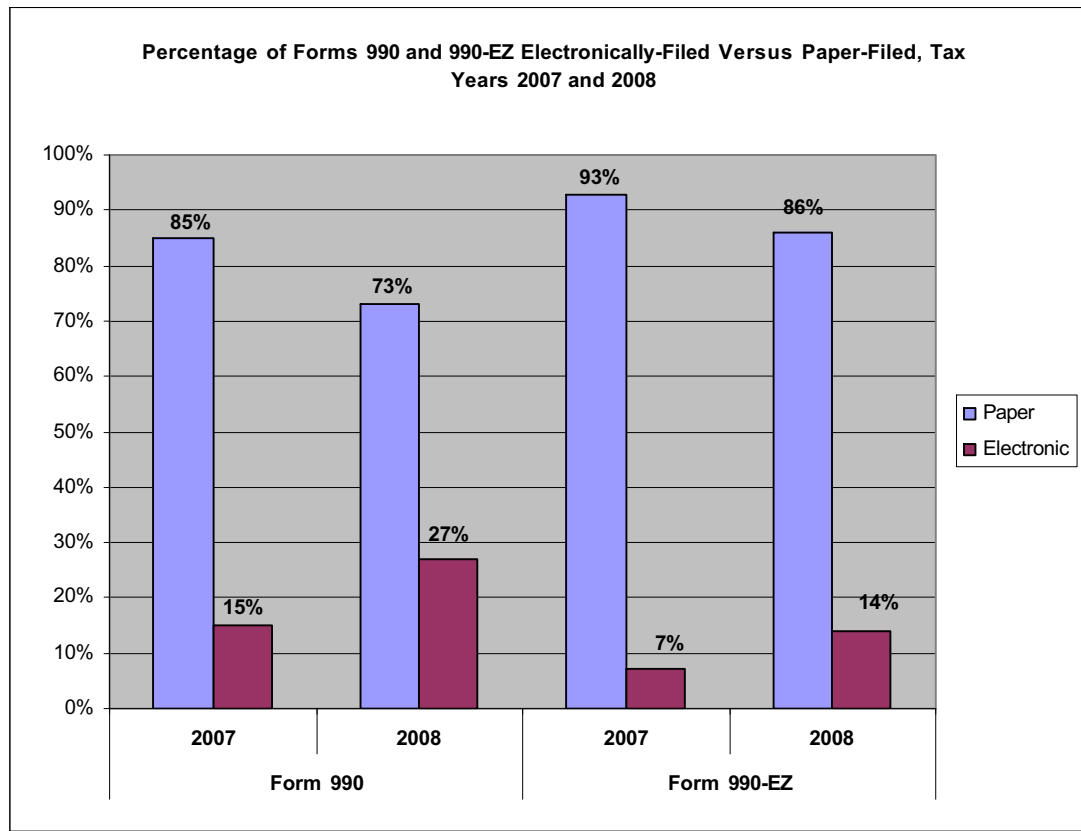
2008 Forms 990 and 990-EZ Statistics

Paper v. Electronic Filing*

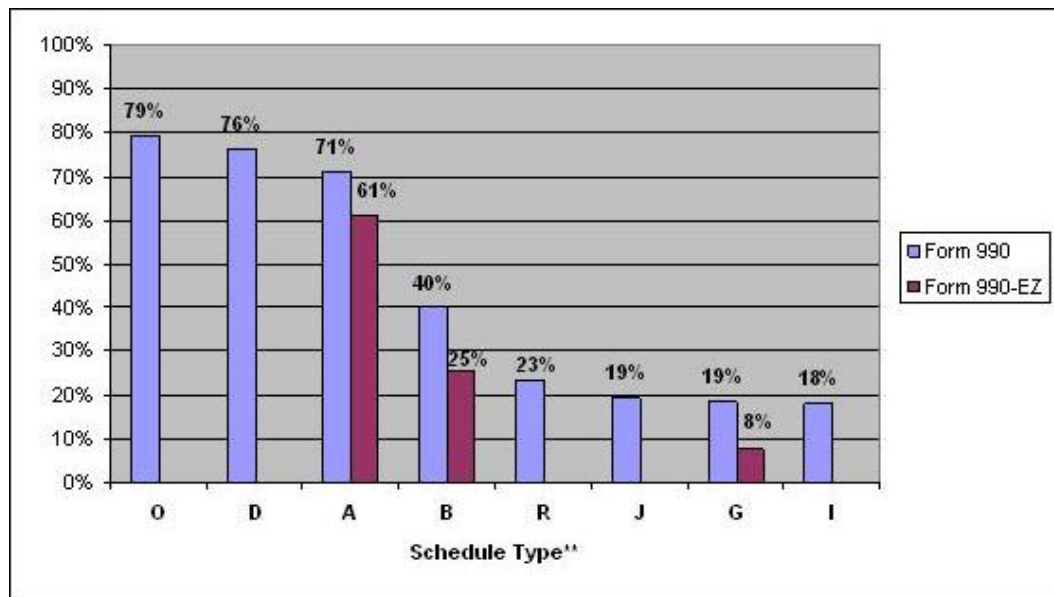
	Form 990		Form 990-EZ		Form 990-N (electronically filed)	
	2007	2008	2007	2008	2007	2008
Paper Returns	327,579	160,362	147,960	266,008		
Electronic Returns	59,664	57,975	11,864	44,362	242,614	292,002

Note: 52% of the organizations that filed the Form 990 for tax year 2008 could have filed the Form 990-EZ, based on assets and gross receipts thresholds for filing Form 990-EZ.

*Number of returns posted to IRS Business Master File as of September 30, 2010



Most Commonly Filed Form 990 and 990-EZ Schedules for Tax Year 2008*



Note: To date, approximately 90 percent of 2009 Form 990 filers have filed Schedule O, as compared to 79.4 percent for tax year 2008. All Form 990 filers are required to file Schedule O.

* Number of returns posted to IRS Business Master File as of September 30, 2010

** This chart includes the most commonly filed of the 16 Form 990 schedules:

Schedule A: *Public Charity Status and Public Support*

Schedule B: *Schedule of Contributors*

Schedule D: *Supplemental Financial Statements*

Schedule G: *Supplemental Information Regarding Fundraising or Gaming Activities*

Schedule I: *Grants and Other Assistance to Organizations, Governments, and Individuals in the United States*

Schedule J: *Compensation Information*

Schedule O: *Supplemental Information to Form 990*

Schedule R: *Related Organizations*

Schedules D, I, J, R, and O apply only to Form 990 filers.

Preparer Statistics

Paid-Prepared v. Self-Prepared				
	Form 990		Form 990-EZ	
	2007	2008	2007	2008
Paid-Prepared	81%	87%	50%	68%
Self-Prepared	19%	13%	50%	32%

Internet resources available to help with preparation of Form 990

To help filers complete the Forms 990, 990-EZ and 990-N, the IRS offers the following free, web-based resources available on www.irs.gov/charities and www.stayexempt.org:

- [Interactive virtual workshops and mini-courses](#) on multiple topics, including Form 990
- Compiled [FAQs](#) listing annual reporting requirements for tax-exempt organizations
- [Case Study videos](#) featuring a hypothetical tax-exempt organization and step-by-step instructions for completing that organization's Form 990
- [The NEW Form 990: What Tax-Exempt Organizations Need to know](#): publication and related checklist
- [EO Update](#), a periodic newsletter with information of interest to tax-exempt organizations and tax practitioners who represent them, including Form 990-related updates

The IRS encourages comments and suggestions on how to improve the Form 990, schedules, and/or instructions. Please send to:
Form990Revision@irs.gov

FY 2011 WORKPLAN

EO Integrates – Project to Process

Through our project work, EO has developed extensive knowledge and improved skills on a wide range of subjects, allowing us to develop training materials and tools to help our staff effectively address these issues when they encounter them. It is now time to take a “project to process” approach by winding down these separate, formal projects, and assimilating them into our general casework. Below are the brief descriptions and reporting results of some of the projects that we are merging into our overall process.

- *Combined Annual Wage Reporting – The “CAWR” Project.* In FY 2007-2010, EO took a close look at employment tax reporting by exempt organizations using CAWR data, which compares information reported to the Social Security Administration (SSA) on Form W-2 with information reported to the IRS by employers on Form 941. EO CAWR populations consisted of approximately 4,000 organizations each year. Using CAWR, EO was able to identify organizations that reported wages on their W-2s but had not filed Form 941; other organizations showed officer compensation on Form 990, but had not filed Forms W-2 or 941, and non-501(c)(3) organizations that had not filed Form 940 to report and pay federal unemployment tax. (Section 501(c)(3) organizations are exempt from this tax.)

This project helped EO improve case selection and focus examination resources on organizations with high potential for non-compliance.

- *Consumer Credit Counseling Project.* One of EO's most complex and wide-ranging efforts has been its multi-year focus on consumer credit counseling organizations. Throughout the course of this project, the IRS developed enhancements to its tax-exempt Examination program and refined its Determinations program to better identify potential abuses.

During the initial phase of the project, the IRS examined the 63 largest credit counseling organizations, based on their revenues. The IRS revoked, terminated or proposed revoking the exemptions of 41 of these organizations.

In light of high levels of abuse, we sent questionnaires to the remaining organizations that appeared to be involved in credit counseling activities. EO examined the most egregious, and has revoked, terminated, or proposed revocation of over 59 percent of the group to date. This project helped to stimulate the Pension Protection Act law change, in which Congress strengthened the tax rules governing exempt credit counseling organizations.

Our experience in this area and the lessons learned prepared us to deal with a new type of organization that increased in numbers as a result of the economic downturn in the area of mortgage foreclosure assistance organizations.

- *Down Payment Assistance Project.* Traditional down-payment assistance (DPA) programs provide financial and educational assistance to low-income homebuyers who cannot afford to make the minimum down payment on a home or to pay the closing costs involved in obtaining a mortgage. Traditionally, these tax-exempt homeowner assistance programs are funded through grants or contributions from the general public, use accepted eligibility criteria to ensure that recipients are low-income individuals, and conduct financial counseling and educational activities to prepare potential homebuyers for the responsibilities of home ownership.

The IRS began to see a rise in applications for tax exemption from organizations that varied from the traditional DPA model by relying solely on service fees and payments – often referred to as “donations” – from builders and homesellers to fund their activities. In 2006, the IRS issued a revenue ruling holding that such seller-financed DPA programs primarily serve the private interests of home sellers by funneling down-payment assistance from sellers to buyers through self-serving arrangements. The revenue ruling further held that DPA organizations structured in this manner do not accomplish a primary charitable purpose and should not receive or be able to maintain 501(c)(3) tax exemption.

EO examined those DPA organizations that were funded solely by homesellers, and revoked, terminated or proposed revocation for 87 of 91 organizations.

To prevent additional seller-financed DPA organizations from obtaining tax-exempt status, EO initiated a screening program to identify applicants that planned to conduct DPA activities, and required them to answer detailed questions about their proposed activities to determine whether they were eligible for tax exemption. Of the nearly 600 DPA applications reviewed, over half were denied, closed for failure to respond, or withdrawn.

In 2008, Congress passed legislation prohibiting the use of down-payment assistance programs funded by those who have a financial interest in the sale in order to qualify for FHA insured mortgages.

- *Executive Compensation Compliance Initiative: Loans Project.* In 2004, the Internal Revenue Service, through the Exempt Organizations Office of the Tax Exempt and Government Entities Division (EO), implemented the Executive Compensation Compliance Initiative (the Project). A report

discussing the results was issued in March 2007. That report raised concerns about substantial loans to officers, directors, trustees and key employees with issues involving proper reporting and potential excess benefit issues. Consequently, we opened the Loans Project; the report is what follows.

The loan project began with 200 compliance checks and 50 single-issue examinations. Based upon the results of the compliance checks, additional organizations were selected for single-issue examinations for a total of 169 examinations.

The issues identified in these examinations include the following:

- Assessment of over \$5.5 million in section 4958 taxes.
- Assessment of over \$480 thousand in employment taxes reported on Form 941 and Form 945 for items of income not previously reported for disqualified persons and other employees.
- Assessment of over \$400 thousand in discrepancy adjustments for omitted income on Form 1040.
- Agents determined that loans to officers were not correctly reported on Form 990 in 91 instances. The errors were predominantly due either to misclassification on the balance sheet or to section 4958 adjustments.

The results of the 169 examinations were as follows:

Examination Results	# of Orgs	% of Total
No Change	37	22%
Written Advisory Issued	75	44%
Change or Delinquent Return Secured (Including Related Returns)	39	23%
Proposed Revocation or Termination	18	11%
Total	169	100%

The information gained from the Loans Project will be valuable as we continue to evaluate compensation in future projects.

- *Investment Income – IRC 501(c)(7) Compliance Project.* Investment income – interest on bank deposits, stock dividends, royalties and the like – is generally non-taxable for many types of exempt organizations. This is not true for section 501(c)(7) organizations (social clubs), whose income is taxed unless it comes directly from a member of the club, or has been “set aside” for certain charitable purposes.

EO reviewed Form 990 filings from section 501(c)(7) organizations to determine whether some were reporting investment income, but not reporting income on Form 990-T or paying the tax, and examined over 80 organizations. We secured delinquent Forms 990-T and collected the tax,

revoked the tax-exempt status or changed the subsection of 60 percent of the examined organizations.

- *Non-Exempt Charitable Trust Project.* Although not exempt under section 501(a), a non-exempt charitable trust (NECT) must devote all of its assets and income to charitable purposes, according to the terms of its trust document. The grantor can claim a charitable deduction for contributions of money or other assets placed into the trust.

A NECT has unique filing requirements. Because it is a trust, it must file Form 1041 and pay tax on its taxable income. However, because of its charitable purpose, it is subject to many of the same restrictions and excise taxes as section 501(c)(3) organizations, and it must file either a Form 990 or 990-PF.

Because some organizations were filing Forms 990 or 990-PF but not Form 1041, EO sent compliance check letters, seeking the missing returns or an explanation as to why they were not required.

Some older NECTs proved that they were established before 1969, when the regulations permitted “setting aside” amounts earmarked for charitable contributions, eliminating the Form 1041 filing requirement. Others were determined to have been misclassified in IRS records or had applied for and received tax exemption. The remaining entities filed the required returns and paid the delinquent tax, or were referred for further examination.

The chart below details the findings of the compliance check letters:

	Number
Eligible for set-aside deduction	125
Filed correct returns	10
Required examinations	15
IRS classification corrected	20

- *Political Activities Compliance Initiative (PACI).* This initiative addressed allegations of prohibited political campaign activities by 501(c)(3) organizations.

Treasury and the IRS issued a revenue ruling to educate section 501(c)(3) exempt organizations about permissible and impermissible activities in the political arena. Additionally, EO updated Publication 1828, *Tax Guide for Churches and Religious Organizations*. EO also provided guidance about

political activities in public presentations, including the IRS Nationwide Tax Forums and *Tax Talk Today*, the IRS web-based program for practitioners.

In addition to guidance and education, EO has examined over 250 organizations based on allegations of political activity during the 2004, 2006 and 2008 federal election years. EO substantiated the allegations in over half of the examinations and closed most of these with a warning to comply with the ban on political activities in the future. EO revoked the tax-exempt status of seven non-compliant organizations.

The chart below tracks the most common types of PACI allegations: *

ALLEGATION	2004	2006	2008
1. Exempt organization distributed printed documents supporting candidates.	24	14	24
2. Church official made a statement during normal services endorsing candidates.	19	14	47
3. Candidate spoke at an official EO function.	11	16	2
4. Organization distributed improper voter guides or candidate ratings.	14	8	3
5. Organization posted a sign on its property endorsing a candidate.	12	13	11
6. Organization endorsed candidates on its website or through links on its website.	15	11	16
7. Organization official verbally endorsed a candidate.	8	5	2
8. Organization made a political contribution to a candidate.	7	11	12
9. Organization allowed a non-candidate to endorse a candidate during a speech at the organization function.	4	2	1
10. Other	0	16	15
TOTAL	114	110	133

** Because the majority of complaints for the 2010 election year came in during the later part of the year, they are still going through the classification process, so they are not included in the chart.*

As we move review of allegations of political campaign intervention from project to process, the guidance and expertise developed over the past few election cycles will enable us to continue to handle these allegations appropriately, both at the classification stage and through the examination process.

- *Qualified State and Local Political Organizations (QSLPO) Project.* In 2002, Congress enacted legislation creating a sub-category of IRC section 527

political organizations known as Qualified State and Local Political Organizations, or QSLPOs. These organizations were required to notify the IRS of their "QSLPO" status by electronically filing Form 8871. This status exempts them from the requirement to file Form 8872.

After the law change, approximately 3,600 organizations identified themselves as QSLPOs and stopped filing Forms 8872.

In response, EO launched the QSLPO project to ascertain the accuracy of these organizations' claims. EO identified a statistically valid sample of QSLPOs and sent each one a compliance questionnaire.

Overall, our findings indicate that organizations are correctly identifying themselves as QSLPOs and therefore have no Form 8872 filing requirements.

- *Supporting Organizations- The 509(a)(3) Compliance Project.* Supporting organizations (SOs) are charities that carry out their exempt purposes by assisting other exempt organizations, usually other public charities. The key feature of an SO is a strong relationship with the organization that it supports.

Prior to the Pension Protection Act of 2006, some promoters encouraged individuals to establish and operate SOs for their own benefit. Some of these scenarios involved purported charitable contributions made to the supporting organization, which were then returned to the donor, often in the form of a loan. To disguise this abuse, the transaction was sometimes routed through intermediary organizations controlled by the promoter.

EO took a two-pronged approach to combat this abuse. First, EO issued new instructions to Determinations agents to identify potentially noncompliant SOs at the application stage. Then, over the span of the project, EO selected over 300 organizations for examination; of the 280 examinations closed thus far, 30 were terminated, 72 had their exempt status revoked and 59 were reclassified as either private foundations or public charities.

The Pension Protection Act drastically changed the legal landscape and rules regarding the operation of supporting organizations. Congress imposed additional restrictions on certain types of SOs and addressed certain abuses.

In light of what we have learned through the various enforcement activities discussed above, the resources we have developed for our staff and the public, and changes resulting from legislation, we are winding down separate projects and incorporating them into overall compliance processes.

EO Supports and Collaborates

Support of IRS Initiatives – This year, EO will support five overarching IRS focus areas:

- *Impact of Recent Legislation.* With the passage of several pieces of legislation, EO is working with the whole of IRS to implement effective changes and laws.
 - The Affordable Care Act (ACA) was enacted on March 23, 2010. It contains certain tax provisions that take effect this year and more that will be implemented during the next several years.

Several provisions, primarily those involving tax-exempt hospitals and exempt organizations as employers, fall under the purview of EO.

Each of the EO offices has a role in putting together a comprehensive program to implement the changes and fulfill ACA requirements. Customer Education and Outreach (CE&O), working with the other IRS Communication offices, will educate the public on those aspects of the ACA impacting exempt organizations; Rulings & Agreements will analyze new legal issues raised by the legislation, work with Chief Counsel and Treasury on related guidance, and coordinate with other IRS offices to implement appropriate form changes; Determinations anticipates an increase in tax-exempt applications; and Examinations will establish a separate EOCA group to focus on healthcare-related compliance issues.

- The Hiring Incentives to Restore Employment (HIRE) Act was signed into law on March 18, 2010. The legislation identified tax-exempt organizations as employers eligible to claim the payroll tax exemption and new hire retention credit for eligible newly-hired employees.

Beginning in July 2010, the EOCA began conducting examinations of these credits claimed under the HIRE Act.

- The American Recovery and Reinvestment Act (ARRA) established a 65 percent subsidy on COBRA health insurance premiums to help workers who lost their jobs as a result of the recession maintain their employer sponsored health insurance.

The Continuing Extension Act of 2010, enacted April 15, reinstated the ARRA COBRA subsidy, which had expired on March 31.

Employers, including tax-exempt organizations other than churches and some religious organizations, were required to provide COBRA coverage to eligible individuals who pay 35 percent of the COBRA

premium. Employers were reimbursed for the other 65 percent by claiming a credit for the subsidy on their Form 941 or Form 944. Employers, including tax-exempt organizations, are required to maintain supporting documentation for the claimed credit.

EO will be examining the employment tax returns of organizations claiming the credit for the subsidy.

- *International Focus.* International tax enforcement is an ongoing priority for the IRS. Taxpayers with international activities, transactions and accounts pose unique compliance issues for the IRS. Globalization of markets, taxpayers and transactions affect all segments of our economy, including the exempt sector.

EO's concern in this area is whether charitable assets of exempt organizations are being diverted internationally for non-charitable purposes. We have efforts underway that will explore:

- foreign entities receiving IRS recognition of exemption from US tax;
- information referred from the Joint International Tax Shelter Information Center (JITSIC);
- charities reporting foreign addresses on Forms 990;
- charities that participate in "Gifts-in-Kind" programs, where valuation issues surface when charities send non-cash items to foreign organizations; and
- large private foundations with international operations or international transactions.

To help educate the sector, EO is developing new publications describing the special rules that apply to both foreign charities and domestic charities that conduct activities abroad.

- *Medical Residents.* IRS worked with Government Entities, the Chief Counsel's Office, Wage & Investment, Small Business/Self-Employed and the Social Security Administration to develop a comprehensive program to except medical residents from FICA (Social Security and Medicare tax) taxes based on the student exception for certain tax periods.

Beginning in May 2010, the Service began contacting hospitals, universities and medical residents who filed FICA refund claims, in order to provide them with additional information and procedures for obtaining their refunds.

- *National Research Program – Study of Employment Tax Returns.* IRS estimates employment tax misreporting constitutes a large part of the tax gap—close to \$54 billion per year. In light of this sizeable amount, the Service has updated its understanding of compliance in this area and has implemented a comprehensive IRS-wide study to measure compliance,

improve IRS ability to detect and reduce non-compliance, and ensure the fairness of the tax system. Specifically, the National Research Program (NRP) project looks at employment tax on both taxable and tax-exempt organizations, large and small businesses, and the government sector.

Because tax-exempt organizations have the same responsibilities as for-profit businesses to properly classify workers and report and pay employment taxes, EO has been participating with other IRS operating divisions in the NRP.

EO's portion of the project involves examining the employment tax returns of 1500 organizations, with 500 selected randomly each year over a three-year period. Specific areas of interest during the examinations are worker classification, fringe benefits, officer compensation, employee expense reimbursements, and non-filers. Tax year 2008 returns are currently being examined, and examinations of tax year 2009 returns will begin in early FY 2011.

The results of this project will contribute toward developing and refining Servicewide procedures for auditing, processing and resolving employment tax return cases.

- *Non-filer Initiatives.* The goals of the IRS' Servicewide Non-filer Strategy are to:
 - Help taxpayers understand and meet their filing obligations;
 - Improve voluntary compliance by reducing taxpayer burden;
 - Leverage technology to identify non-filers; and
 - Effectively use enforcement resources to deter non-filers.

EO will pursue several avenues to help support this Servicewide effort. Working with the TE/GE Research Office, we are collecting data about organizations with erratic filing patterns. To begin this effort, the EOCA will conduct compliance checks on intermittent filers in early FY 2011.

Collaboration With External Stakeholders – Collaborating with external stakeholders and leveraging their resources makes us more efficient and improves the final product. For FY 2011, we have planned the following joint efforts:

- *Academic Institutions Initiative.* In 2009, EO established its Academic Institutions Initiative to work with educational entities that work to develop, cultivate and promote professionals who shape the non-profit sector. Our goal is to help prepare the non-profit leaders of the future by providing consistent training about federal tax law responsibilities.

A September 2009 kick-off meeting generated a number of helpful ideas from educational institutions. In FY 2010, EO began implementing those recommendations by placing resources for educators on StayExempt.IRS.gov, co-sponsoring workshops for small and mid-size exempt organizations with universities, and identifying and collaborating with existing educational networks, such as the National Association of Schools of Public Affairs and Administration (NASPAA) and the Nonprofit Academic Centers Council (NACC).

In FY 2010, CE&O hosted its first-ever workshop for small and mid-size 501(c)(3) organizations in conjunction with an academic host institution. In FY 2011, CE&O will continue to expand its partnerships with existing educational networks across the country. At least eight additional similar workshops have been scheduled for the first half of FY 2011.

Also in FY 2011, CE&O will develop a page on IRS.gov specifically geared toward educators. Additionally, we will begin offering an internship program for graduate students whose concentration lies in nonprofit leadership and management. The graduate student internship program will broaden our reach to interact with a new generation of non-profit leaders. EO hopes to gain a better understanding of current nonprofit education while offering students the chance to deepen their knowledge base and become familiar with Federal tax provisions that govern exempt organizations.

- *Gaming Non-Filer Project.* Beginning in 2007, EO secured information from 17 state gaming regulatory tax agencies to cross-reference with its own Form 990 database. We discovered a large number of organizations had filed at the state level in order to maintain eligibility to continue gaming activities, but had not filed Form 990 with the IRS.

In response, we initiated examinations and have thus far secured over 1,300 delinquent returns in the cases closed. These include information, tax and employment returns.

EO will continue to expand its cooperative efforts with state regulators to identify organizations conducting gaming activities that may have federal filing requirements, and educate these organizations about their filing obligations

EO Invests

EO will continue to invest time in both new and ongoing initiatives in order to keep up with the ever-changing exempt organization sector. With these initiatives, EO will touch a broader audience of exempt organizations.

- *Controlling Organizations- The IRC §512(b)(13) Project.* The tax treatment of payments between controlled entities and their controlling tax-exempt parent organizations touches on several areas of tax law including unrelated business income, the allocation of income and deductions among taxpayers, and the transfer of property to controlled organizations.

PPA 2006 made changes to the tax treatment of certain payments from a controlled entity to its exempt parent. The IRS is gathering information on this issue through the Colleges and Universities project and other exam initiatives. The information collected will give us a better understanding of the prevalence of 512(b)(13) and related issues.

- *Charitable Spending Initiative.* This is a study to learn more about sources and uses of funds in the charitable sector and their relationship to the accomplishment of charitable purposes. Under the first phase of this project, organizations selected for examination include those with high levels of fundraising expenses, organizations reporting unrelated trade or business activity with relatively low levels of program service expenditures, organizations with high ratios of officer compensation in comparison to program service expenditures, and organizations with low levels of program service expenditures in comparison to total revenue. These examinations began in FY 2010 and will continue into FY 2011.
- *Colleges and Universities.* In September 2008, EO sent 400 questionnaires to public and private four-year colleges and universities asking about their unrelated business income, endowments and executive compensation practices. The goal is to gain a better understanding of one of the largest, most complex segments in our sector and identify issues and areas that may need more outreach and education or further scrutiny. EO analyzed the responses and an interim report was published in May 2010. The interim report contained preliminary information on the respondents' organizational structures, demographics, exempt and unrelated business activities, endowments, executive compensation and governance practices.

In addition, over 30 entities are undergoing examinations that focus on unrelated business income and compensation practices. Because some of the issues under consideration may affect other areas of TE/GE (specifically, Employee Plans and Federal State and Local Governments), we are coordinating with those offices when appropriate, along with utilizing engineering assistance.

- *Exempt Organizations Services and Assistance (EOSA).* The objective of EOSA research project is to study the communications preferences and educational needs of small tax-exempt organizations and to develop a targeted multi-year outreach plan to provide improved education and outreach services to these organizations.

CE&O, working with TE/GE Research, initiated this project which involves three phases: 1) focus groups; 2) a quantitative analysis based on telephone surveys; and 3) a cost-benefit analysis.

- *Form 990-N Mis-filers.* The Pension Protection Act of 2006 added the Form 990-N filing requirement to ensure that the IRS and potential donors have current information about exempt organizations. Small tax-exempt organizations whose annual gross receipts are normally \$25,000 or less may be required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ. The failure of an organization that is required to file a Form 990 series return for three consecutive years results in automatic revocation of the organization's exempt status.

The objective of this project is to identify organizations that incorrectly file the Form 990-N.

- *Form 990 as a Compliance Tool.* The Form 990 is the IRS' primary tool to increase transparency and to promote and enforce compliance with Federal tax law. The recent design brings the Form 990 into the 21st century, reflecting changes in the tax-exempt sector and the tax law. It helps secure fuller, more relevant compliance data and provides a more comprehensive picture of each filing organization.

As more organizations file the redesigned Form 990, EO Examinations will use the updated form to identify non-compliant and potentially non-compliant organizations for examination, to develop targeted compliance projects and to inform and supplement educational efforts.

In FY 2011, EO will continue to work with our research office to develop more robust risk models and refine compliance queries to promote a more finely-tuned compliance approach and more tailored education efforts.

- *Governance.* Starting in FY 2010, EO began using a check sheet to capture governance practices and the related internal controls of the organizations being examined. EO will analyze the data over the long term to gain a better understanding of the intersection between governance practices and tax compliance.

- *Mortgage Foreclosure Assistance.* Over the past few years, there has been an increase in foreclosures, as well as exempt organizations that have become involved in foreclosure assistance activities. This project is modeled after the successful EO credit counseling project that took place several years ago. EO is developing enhancements to its examinations program and refining its determinations program to better identify potential abuses in the system.

The focus of the project will be to determine whether organizations are engaged in foreclosure assistance activities, whether their activities are fulfilling their exempt purpose in accordance with the Internal Revenue Code section under which they are recognized as tax-exempt, and whether they are complying with the requirements of section 501(q) of the Code (when applicable).

- *"Mutual" Organizations- The IRC §501(c)(12) Project.* Organizations exempt under section 501(c)(12) include benevolent life insurance associations of a purely local character, mutual ditch or irrigation companies, or cooperative telephone companies. An organization that performs any comparable service can also qualify.

These organizations must use their income solely to cover losses and expenses, with any excess being returned to members or retained for future losses and expenses. They must collect at least 85 percent of their income from members for the sole purpose of meeting losses and expenses. The results of the member-income "test" determine the organization's yearly filing requirement. An organization should file Form 990 for the years in which it meets the 85 percent member-income test, and it should file Form 1120 for the years in which it fails to meet the test.

The Forms 990 filed by some section 501(c)(12) organizations indicate that these organizations are not meeting the 85 percent member-income test every year. To address this issue, questionnaires were mailed to affected organizations in early FY 2010, and 40 percent of the questionnaire respondents were selected for examination. In FY 2011, we will begin conducting these examinations.

- *Section 501(c)(4), (5) and (6) Organizations.* In recent years, our examination program has concentrated on section 501(c)(3) organizations. Beginning in FY 2011, we are increasing our focus on section 501(c)(4), (5) and (6) organizations. With the additional information available on the new Form 990, we will look at issues including political activity, inurement and the extent of compliance with the requirements for tax exemption by organizations that self-identified themselves as a section 501(c)(4), (5) or (6) organization

- *Voluntary Employees' Beneficiary Associations (VEBAs)*. A voluntary employees' beneficiary association is defined under Internal Revenue Code section 501(c)(9) as an organization designed to pay life, sick, accident and similar benefits to members, their dependents or designated beneficiaries as long as no part of the net earnings of the association inures to the benefit of any private shareholder or individual.

Working with EP and IRS Counsel, EO developed a project to learn more about VEBAs and their compliance under this section of the code. In FY 2010, EO developed training materials and initiated its training program. These activities will continue during FY 2011. EO Examinations will begin a statistically valid sample of 100 organizations with assets greater than \$100,000 in FY 2011.



Internal Revenue Service
Tax Exempt and Government Entities
Exempt Organizations

tax guide for
**Churches
and
Religious
Organizations**

*benefits and responsibilities
under the federal tax law*

Congress has enacted special tax laws applicable to churches, religious organizations, and ministers in recognition of their unique status in American society and of their rights guaranteed by the First Amendment of the Constitution of the United States. Churches and religious organizations are generally exempt from income tax and receive other favorable treatment under the tax law; however, certain income of a church or religious organization may be subject to tax, such as income from an unrelated business.

The Internal Revenue Service (IRS) offers this quick reference guide of federal tax law and procedures for churches and religious organizations to help them voluntarily comply with tax rules. The contents of this publication reflect the IRS interpretation of tax laws enacted by Congress, Treasury regulations, and court decisions. The information given is not comprehensive, however, and does not cover every situation. Thus, it is not intended to replace the law or be the sole source of information. The resolution of any particular issue may depend on the specific facts and circumstances of a given taxpayer. In addition, this publication covers subjects on which a court may have made a decision more favorable to taxpayers than the interpretation by the IRS. Until these differing interpretations are resolved by higher court decisions, or in some other way, this publication will present the interpretation of the IRS.

For more detailed tax information, the IRS has assistance programs and tax information products for churches and religious organizations, as noted in the back of this publication. Most IRS publications and forms can be downloaded from the IRS Web site at www.irs.gov, or ordered by calling toll-free (800) 829-3676. Specialized information can be accessed through the Exempt Organizations (EO) Web site under the IRS Tax Exempt and Government Entities division via www.irs.gov/eo or by calling EO Customer Account Services toll-free at (877) 829-5500.

The IRS considers this publication a living document, one that will be revised to take into account future developments and feedback. Comments on the publication may be submitted to the IRS at the following address:

*Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224
Attn: T:EO:CE&O*

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Introduction

This publication explains the benefits and the responsibilities under the federal tax system for churches and religious organizations. The term church is found, but not specifically defined, in the Internal Revenue Code (IRC). The term is not used by all faiths; however, in an attempt to make this publication easy to read, we use it in its generic sense as a place of worship including, for example, mosques and synagogues. With the exception of the special rules for church audits, the use of the term church throughout this publication also includes conventions and associations of churches as well as integrated auxiliaries of a church.

Because special tax rules apply to churches, it is important to distinguish churches from other religious organizations. Therefore, when this publication uses the term “religious organizations,” it is not referring to churches or integrated auxiliaries. Religious organizations that are not churches typically include non-denominational ministries, interdenominational and ecumenical organizations, and other entities whose principal purpose is the study or advancement of religion.

Churches and religious organizations may be legally organized in a variety of ways under state law, such as unincorporated associations, nonprofit corporations, corporations sole, and charitable trusts.

Certain terms used throughout this publication—church, integrated auxiliary of a church, minister, and IRC section 501(c)(3)—are defined in the Glossary on page 23.

Tax-Exempt Status

Churches and religious organizations, like many other charitable organizations, qualify for exemption from federal income tax under IRC section 501(c)(3) and are generally eligible to receive tax-deductible contributions. To qualify for tax-exempt status, such an organization must meet the following requirements (covered in greater detail throughout this publication):

- the organization must be organized and operated exclusively for religious, educational, scientific, or other charitable purposes,
- net earnings may not inure to the benefit of any private individual or shareholder,
- no substantial part of its activity may be attempting to influence legislation,
- the organization may not intervene in political campaigns, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy.

Recognition of Tax-Exempt Status

Automatic Exemption for Churches

Churches that meet the requirements of IRC section 501(c)(3) are automatically considered tax exempt and are not required to apply for and obtain recognition of tax-exempt status from the IRS.

Although there is no requirement to do so, many churches seek recognition of tax-exempt status from the IRS because such recognition assures church leaders, members, and contributors that the church is recognized as exempt and qualifies for related tax benefits. For example, contributors to a church that has been recognized as tax exempt would know that their contributions generally are tax-deductible.

Church Exemption Through a Central/Parent Organization

A church with a parent organization may wish to contact the parent to see if it has a *group ruling*. If the parent holds a group ruling, then the IRS may already recognize the church as tax exempt. Under the group exemption process, the parent organization becomes the holder of a group ruling that identifies other affiliated churches or other affiliated organizations. A church is recognized as tax exempt if it is included in a list provided by the parent organization. If the church or other affiliated organization is included on such a list, it does not need to take further action to obtain recognition of tax-exempt status.

An organization that is not covered under a group ruling should contact its parent organization to see if it is eligible to be included in the parent's application for the group ruling. For general information on the group exemption process, see Publication 4573, *Group Exemptions*, and Revenue Procedure 80-27, 1980-1 C.B. 677.

Religious Organizations

Unlike churches, religious organizations that wish to be tax exempt generally must apply to the IRS for tax-exempt status unless their gross receipts do not normally exceed \$5,000 annually.

Applying for Tax-Exempt Status

Employer Identification Number (EIN)

Every tax-exempt organization, including a church, should have an employer identification number (EIN), whether or not the organization has any employees. There are many instances in which an EIN is necessary. For example, a church needs an EIN when it opens a bank account, in order to be listed as a subordinate in a group ruling, or if it files returns with the IRS (e.g., Forms W-2, 1099, 990-T).

An organization may obtain an EIN by filing Form S-4, *Application for Employer Identification Number*, in

accordance with the instructions . If the organization is submitting IRS Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code* (see below), Form SS-4 should be included with the application .

Application Form

Organizations, including churches and religious organizations, applying for recognition as tax exempt under IRC section 501(c)(3) must use Form 1023 .

A religious organization must submit its application within 27 months from the end of the month in which the organization is formed in order to be considered tax exempt and qualified to receive deductible contributions as of the date the organization was formed . On the other hand, a church may obtain recognition of exemption from the date of its formation as a church, even though that date may be prior to 27 months from the end of the month in which its application is submitted .

Cost for applying for exemption. The IRS is required to collect a non-refundable fee from any organization seeking a determination of tax-exempt status under IRC section 501(c)(3) . Although churches are not required by law to file an application for exemption, if they choose to do so voluntarily, they are required to pay the fee for determination .

The fee must be submitted with Form 1023; otherwise, the application will be returned to the submitter . Fees change periodically. The most recent user fee can be found at the Exempt Organizations (EO) Web site under the IRS Tax Exempt and Government Entities division via www.irs.gov/eo (key word "user fee") or by calling EO Customer Account Services toll-free at (877) 829-5500 .

IRS Approval of Exemption Application

If the application for tax-exempt status is approved, the IRS will notify the organization of its status, any requirement to file an annual information return, and its eligibility to receive deductible contributions . The IRS does not assign a special number or other identification as evidence of an organization's tax-exempt status .

Public Listing of Tax-Exempt Organizations

The IRS lists organizations that are qualified to receive tax-deductible contributions in IRS Publication 78, *Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986* . This publication is sold to the public through the Superintendent of Documents, U.S. Government Printing Office, Washington, DC. Publication 78 can also be downloaded from the IRS Web site at www.irs.gov. Note that not every organization that is eligible to receive tax-deductible contributions is listed in Publication 78 . For example, churches that have not applied for recognition of tax-exempt status are not included in the publication . Only the parent organization in a group ruling is included by name in Publication 78 .

If you have questions about listing an organization, correcting an erroneous entry, or deleting a listing in Publication 78, contact EO Customer Account Services toll-free at (877) 829-5500 .

Jeopardizing Tax-Exempt Status

All IRC section 501(c)(3) organizations, including churches and religious organizations, must abide by certain rules:

- their net earnings may not inure to any private shareholder or individual,
- they must not provide a substantial benefit to private interests,
- they must not devote a substantial part of their activities to attempting to influence legislation,
- they must not participate in, or intervene in, any political campaign on behalf of (or in opposition to) any candidate for public office, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy .

Inurement and Private Benefit

Inurement to Insiders

Churches and religious organizations, like all exempt organizations under IRC section 501(c)(3), are prohibited from engaging in activities that result in inurement of the church's or organization's income or assets to insiders (i.e., persons having a personal and private interest in the activities of the organization). *Insiders* could include the minister, church board members, officers, and in certain circumstances, employees. Examples of prohibited inurement include the payment of dividends, the payment of unreasonable compensation to insiders, and transferring property to insiders for less than fair market value. The prohibition against inurement to insiders is absolute; therefore, any amount of inurement is, potentially, grounds for loss of tax-exempt status. In addition, the insider involved may be subject to excise tax. See the following section on *Excess benefit transactions*. Note that prohibited inurement does not include reasonable payments for services rendered, payments that further tax-exempt purposes, or payments made for the fair market value of real or personal property.

Excess benefit transactions. In cases where an IRC section 501(c)(3) organization provides an excess economic benefit to an insider, both the organization and the insider have engaged in an *excess benefit transaction*. The IRS may impose an excise tax on any insider who improperly benefits from an excess benefit transaction, as well as on organization managers who participate in such a transaction knowing that it is improper. An insider who benefits from an excess benefit transaction is also required to return the excess benefits to the organization. Detailed rules on excess benefit transactions are contained in the Code of Federal Regulations, Title 26, sections 53.4958-0 through 53.4958-8.

Private Benefit

An IRC section 501(c)(3) organization's activities must be directed exclusively toward charitable, educational, religious, or other exempt purposes. Such an organization's activities may not serve the private interests of any individual or organization. Rather, beneficiaries of an organization's activities must be recognized objects of charity (such as the poor or the distressed) or the community at large (for example, through the conduct of religious services or the promotion of religion). Private benefit is different from inurement to insiders. Private benefit may occur even if the persons benefited are not insiders. Also, private benefit must be substantial in order to jeopardize tax-exempt status.

Substantial Lobbying Activity

In general, no organization, including a church, may qualify for IRC section 501(c)(3) status if a substantial part of its activities is attempting to influence legislation (commonly known as lobbying). An IRC section 501(c)(3) organization may engage in some lobbying, but too much lobbying activity risks loss of tax-exempt status.

Legislation includes action by Congress, any state legislature, any local council, or similar governing body, with respect to acts, bills, resolutions, or similar items (such as legislative confirmation of appointive offices), or by the public in a referendum, ballot initiative, constitutional amendment, or similar procedure. It does not include actions by executive, judicial, or administrative bodies.

A church or religious organization will be regarded as *attempting to influence legislation* if it contacts, or urges the public to contact, members or employees of a legislative body for the purpose of proposing, supporting, or opposing legislation, or if the organization advocates the adoption or rejection of legislation.

Churches and religious organizations may, however, involve themselves in issues of public policy without the activity being considered as lobbying. For example, churches may conduct educational meetings, prepare and distribute educational materials, or otherwise consider public policy issues in an educational manner without jeopardizing their tax-exempt status.

Measuring Lobbying Activity

Substantial part test. Whether a church's or religious organization's attempts to influence legislation constitute a substantial part of its overall activities is determined on the basis of all the pertinent facts and circumstances in each case. The IRS considers a variety of factors, including the time devoted (by both compensated and volunteer workers) and the expenditures devoted by the organization to the activity, when determining whether the lobbying activity is substantial. Churches must use the substantial part test since they are not eligible to use the expenditure test described in the next section.

Under the , a church or religious organization that conducts excessive lobbying activity in any taxable year may lose its tax-exempt status, resulting in all of its income being subject to tax. In addition, a

religious organization is subject to an excise tax equal to five percent of its lobbying expenditures for the year in which it ceases to qualify for exemption. Further, a tax equal to five percent of the lobbying expenditures for the year may be imposed against organization managers, jointly and severally, who agree to the making of such expenditures knowing that the expenditures would likely result in loss of tax-exempt status.

Expenditure test. Although churches are not eligible, religious organizations may elect the expenditure test under IRC section 501(h) as an alternative method for measuring lobbying activity. Under the expenditure test, the extent of an organization's lobbying activity will not jeopardize its tax-exempt status, provided its expenditures, related to such activity, do not normally exceed an amount specified in IRC section 4911. This limit is generally based upon the size of the organization and may not exceed \$1,000,000.

Religious organizations electing to use the expenditure test must file IRS Form 5768, *Election/Revocation of Election by an Eligible IRC Section 501(c)(3) Organization To Make Expenditures To Influence Legislation*, at any time during the tax year for which it is to be effective. The election remains in effect for succeeding years unless it is revoked by the organization. Revocation of the election is effective beginning with the year following the year in which the revocation is filed. Religious organizations may wish to consult their tax advisors to determine their eligibility for, and the advisability of, electing the expenditure test.

Under the , a religious organization that engages in excessive lobbying activity over a four-year period may lose its tax-exempt status, making all of its income for that period subject to tax. Should the organization exceed its lobbying expenditure dollar limit in a particular year, it must pay an excise tax equal to 25 percent of the excess.

Political Campaign Activity

Under the Internal Revenue Code, all IRC section 501(c)(3) organizations, including churches and religious organizations, are absolutely prohibited from directly or indirectly participating in, or intervening in, any political campaign on behalf of (or in opposition to) any candidate for elective public office. Contributions to political campaign funds or public statements of position (verbal or written) made by or on behalf of the organization in favor of or in opposition to any candidate for public office clearly violate the prohibition against political campaign activity. Violation of this prohibition may result in denial or revocation of tax-exempt status and the imposition of certain excise tax.

Certain activities or expenditures may not be prohibited depending on the facts and circumstances. For example, certain voter education activities (including the presentation of public forums and the publication of voter education guides) conducted in a non-partisan manner do not constitute prohibited political campaign activity. In addition, other activities intended to encourage people to participate in the electoral process, such as voter registration and get-out-the-vote drives, would not constitute prohibited political campaign activity if conducted in a non-partisan manner. On the other hand, voter education or registration activities with evidence of bias that: (a) would favor one candidate over another; (b) oppose a candidate in some manner; or (c) have the effect of favoring a candidate or group of candidates, will constitute prohibited participation or intervention.

Individual Activity by Religious Leaders

The political campaign activity prohibition is not intended to restrict free expression on political matters by leaders of churches or religious organizations speaking for themselves, as *individuals*. Nor are leaders prohibited from speaking about important issues of public

policy. However, for their organizations to remain tax exempt under IRC section 501(c)(3), religious leaders cannot make partisan comments in official organization publications or at official church functions. To avoid potential attribution of their comments outside of church functions and publications, religious leaders who speak or write in their individual capacity are encouraged to clearly indicate that their comments are personal and not intended to represent the views of the organization. The following are examples of situations involving endorsements by religious leaders.

Example 1: Minister A is the minister of Church J, a section 501(c)(3) organization, and is well known in the community. With their permission, Candidate T publishes a full-page ad in the local newspaper listing five prominent ministers who have personally endorsed Candidate T, including Minister A. Minister A is identified in the ad as the minister of Church J. The ad states, "Titles and affiliations of each individual are provided for identification purposes only." The ad is paid for by Candidate T's campaign committee. Since the ad was not paid for by Church J, the ad is not otherwise in an official publication of Church J, and the endorsement is made by Minister A in a personal capacity, the ad does not constitute political campaign intervention by Church J.

Example 2: Minister B is the minister of Church K, a section 501(c)(3) organization, and is well known in the community. Three weeks before the election, he attends a press conference at Candidate V's campaign headquarters and states that Candidate V should be reelected. Minister B does not say he is speaking on behalf of Church K. His endorsement is reported on the front page of the local newspaper and he is identified in the article as the minister of Church K. Because Minister B did not make the endorsement at an official church function, in an official church publication or otherwise use the church's assets, and did not state that he was speaking as a representative of Church K, his actions do not constitute political campaign intervention by Church K.

Example 3: Minister C is the minister of Church I, a section 501(c)(3) organization. Church I publishes a monthly church newsletter that is distributed to all church members. In each issue, Minister C has a column titled “My Views.” The month before the election, Minister C states in the “My Views” column, “It is my personal opinion that Candidate U should be reelected.” For that one issue, Minister C pays from his personal funds the portion of the cost of the newsletter attributable to the “My Views” column. Even though he paid part of the cost of the newsletter, the newsletter is an official publication of the church. Because the endorsement appeared in an official publication of Church I, it constitutes political campaign intervention by Church I.

Example 4: Minister D is the minister of Church M, a section 501(c)(3) organization. During regular services of Church M shortly before the election, Minister D preached on a number of issues, including the importance of voting in the upcoming election, and concluded by stating, “It is important that you all do your duty in the election and vote for Candidate W.” Because Minister D’s remarks indicating support for Candidate W were made during an official church service, they constitute political campaign intervention by Church M.

Issue Advocacy vs. Political Campaign Intervention

Like other section 501(c)(3) organizations, some churches and religious organizations take positions on public policy issues, including issues that divide candidates in an election for public office. However, section 501(c)(3) organizations must avoid any issue advocacy that functions as political campaign intervention. Even if a statement does not expressly tell an audience to vote for or against a specific candidate, an organization delivering the statement is at risk of violating the political campaign intervention prohibition if there is any message favoring or opposing a candidate. A statement can identify a candidate not only by stating the candidate’s name but also by other means such as showing a picture of the candidate, referring to political party affiliations, or other distinctive features of a candidate’s platform or biography. All the facts and circumstances need to be considered to determine if the advocacy is political campaign intervention.

Key factors in determining whether a communication results in political campaign intervention include the following:

- whether the statement identifies one or more candidates for a given public office;
- whether the statement expresses approval or disapproval for one or more candidates’ positions and/or actions;
- whether the statement is delivered close in time to the election;
- whether the statement makes reference to voting or an election;
- whether the issue addressed in the communication has been raised as an issue distinguishing candidates for a given office;
- whether the communication is part of an ongoing series of communications by the organization on the same issue that are made independent of the timing of any election; and
- whether the timing of the communication and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate for public office.

A communication is particularly at risk of political campaign intervention when it makes reference to candidates or voting in a specific upcoming election. Nevertheless, the communication must still be considered in context before arriving at any conclusions.

Example 1: Church O, a section 501(c)(3) organization, prepares and finances a full page newspaper advertisement that is published in several large circulation newspapers in State V shortly before an election in which Senator C is a candidate for nomination in a party primary. Senator C is the incumbent candidate in a party primary. The advertisement states that a pending bill in the United States Senate would provide additional opportunities for State V residents to participate in faith-based programs by providing funding to such church-affiliated programs. The advertisement ends with the statement “Call or write Senator C to tell him to vote for this bill, despite his opposition in the past.” Funding for faith-based programs has not been raised as an issue distinguishing Senator C from any opponent. The bill is scheduled for a vote before the election. The advertisement identifies Senator C’s position as contrary to O’s position. Church O has not violated the political campaign intervention prohibition: The advertisement does not mention the election or the candidacy of Senator C or distinguish Senator C from any opponent. The timing of the advertising and the identification of Senator C are directly related to a vote on the identified legislation. The candidate identified, Senator C, is an officeholder who is in a position to vote on the legislation.

Example 2: Church R, a section 501(c)(3) organization, prepares and finances a radio advertisement urging an increase in state funding for faith-based education in State X, which requires a legislative appropriation. Governor E is the governor of State X. The radio advertisement is first broadcast on several radio stations in State X beginning shortly before an election in which Governor E is a candidate for re-election. The advertisement is not part of an ongoing series of substantially similar advocacy communications by Church R on the same issue. The advertisement cites numerous statistics indicating that faith-based education in State X is underfunded. Although the advertisement does not say anything about Governor E’s position on funding for faith-based education, it ends with “Tell Governor E what you think about our under-funded schools.” In public appearances and campaign literature, Governor E’s opponent has made funding of faith-based education an issue in the campaign by focusing on Governor E’s veto of an income tax increase to increase funding for faith-based education. At the time the advertisement is broadcast, no legislative vote or other major legislative activity is scheduled in the State X legislature on state funding of faith-based education. Church R has violated the political campaign prohibition: The advertisement identifies Governor E, appears shortly before an election in which Governor E is a

candidate, is not part of an ongoing series of substantially similar advocacy communications by Church R on the same issue, is not timed to coincide with a non-election event such as a legislative vote or other major legislative action on that issue, and takes a position on an issue that the opponent has used to distinguish himself from Governor E.

Example 3: Candidate A and Candidate B are candidates for the state senate in District W of State X. The issue of State X funding for a faith-based indigent hospital care in District W is a prominent issue in the campaign. Both candidates have spoken out on the issue. Candidate A supports funding such care; Candidate B opposes the project and supports increasing State X funding for public hospitals instead. P is the head of the board of elders at Church C, a section 501(c)(3) organization located in District W. At C’s annual fundraising dinner in District W, which takes place in the month before the election, P gives a long speech about health care issues including the health care issues, including the issue of funding for faith-based programs. P does not mention the name of any candidate or any political party. However, at the end of the speech, P makes the following statement, “For those of you who care about quality of life in District W and the desire of our community for health care responsive to their faith, there is a very important choice coming up next month. We need more funding for health care. Increased public hospital funding will not make a difference. You have the power to respond to the needs of this community. Use that power when you go to the polls and cast your vote in the election for your state senator.” C has violated the political campaign intervention prohibition as a result of P’s remarks at C’s official function shortly before the election, in which P referred to the upcoming election after stating a position on an issue that is a prominent issue in a campaign that distinguishes the candidates.

Inviting a Candidate to Speak

Depending on the facts and circumstances, a church or religious organization may invite political candidates to speak at its events without jeopardizing its tax-exempt status. Political candidates may be invited in their capacity as candidates, or individually (not as a candidate). Candidates may also appear without an invitation at organization events that are open to the public.

Speaking as a candidate. Like any other IRC section 501(c)(3) organization, when a candidate is invited to speak at a church or religious organization event as a political candidate, factors in determining whether the organization participated or intervened in a political campaign include the following:

- whether the church provides an equal opportunity to the political candidates seeking the same office,
- whether the church indicates any support of or opposition to the candidate. (This should be stated explicitly when the candidate is introduced and in communications concerning the candidate's appearance.)
- whether any political fundraising occurs
- whether the individual is chosen to speak solely for reasons other than candidacy for public office,
- whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and
- whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

Equal opportunity to participate. Like any other IRC section 501(c)(3) organization, in determining whether candidates are given an equal opportunity to participate, a church or religious organization should consider the nature of the event to which each candidate is invited, in addition to the manner of presentation. For example, a church or religious organization that invites one candidate to speak at its well attended annual banquet, but invites the opposing candidate to speak at a sparsely attended general meeting, will likely be found to have violated the political campaign prohibition, even if the manner of presentation for both speakers is otherwise neutral.

Public forum. Sometimes a church or religious organization invites several candidates to speak at a public forum. A public forum involving several candidates for public office may qualify as an exempt educational activity. However, if the forum is operated to show a bias for or against any candidate, then the forum would be prohibited campaign activity, as it would be considered intervention or participation in a political campaign. When an organization invites several candidates to speak at a forum, among the factors it should consider are:

- whether questions for the candidate are prepared and presented by an independent nonpartisan panel,
- whether the topics discussed by the candidates cover a broad range of issues that the candidates would address if elected to the office sought and are of interest to the public,
- whether each candidate is given an equal opportunity to present his or her views on the issues discussed,
- whether the candidates are asked to agree or disagree with positions, agendas, platforms or statements of the organization, and
- whether a moderator comments on the questions or otherwise implies approval or disapproval of the candidates.

A candidate may seek to reassure the organization that it is permissible for the organization to do certain things in connection with the candidate's appearance. An organization in this position should keep in mind that the candidate may not be familiar with the organization's tax-exempt status and that the candidate may be focused on compliance with the election laws that apply to the candidate's campaign rather than the federal tax law that applies to the organization. The organization will be in the best position to ensure compliance with the prohibition on political campaign intervention if it makes its own independent conclusion about its compliance with federal tax law.

The following are examples of situations where a church or religious organization invites a candidate(s) to speak before the congregation.

Example 1: Minister E is the minister of Church N, a section 501(c)(3) organization. In the month prior to the election, Minister E invited the three Congressional candidates for the district in which Church N is located to address the congregation, one each on three successive Sundays, as part of regular worship services. Each candidate was given an equal opportunity to address and field questions on a wide variety of topics from the congregation. Minister E's introduction of each candidate included no comments on their qualifications or any indication of a preference for any candidate. The actions do not constitute political campaign intervention by Church N.

Example 2: The facts are the same as in the preceding example except that there are four candidates in the race rather than three, and one of the candidates declines the invitation to speak. In the publicity announcing the dates for each of the candidate's speeches, Church N includes a statement that the order of the speakers was determined at random and the fourth candidate declined the church's invitation to speak. Minister E makes the same statement in his opening remarks at each of the meetings where one of the candidates is speaking. Church N's actions do not constitute political campaign intervention.

Example 3: Minister F is the minister of Church O, a section 501(c)(3) organization. The Sunday before the November election, Minister F invited Senate Candidate X to preach to her congregation during worship services. During his remarks, Candidate X stated, "I am asking not only for your votes, but for your enthusiasm and dedication, for your willingness to go the extra mile to get a very large turnout on Tuesday." Minister F invited no other candidate to address her congregation during the Senatorial campaign. Because these activities took place during official church services, they are by Church O. By selectively providing church facilities to allow Candidate X to speak in support of his campaign, Church O's actions constitute political campaign intervention.

Speaking as a non-candidate. Like any other IRC section 501(c)(3) organization, a church or religious organization may invite political candidates (including church members) to speak in a non-candidate capacity. For instance, a political candidate may be a public figure because he or she: (a) currently holds, or formerly held, public office; (b) is considered an expert in a non-political field; or (c) is a celebrity or has led a distinguished military, legal, or public service career. A candidate may choose to attend an event that is open to the public, such as a lecture, concert or worship service. The candidate's presence at a church-sponsored event does not, by itself, cause the organization to be involved in political campaign intervention. However, if the candidate is publicly recognized by the organization, or if the candidate is invited to speak, factors in determining whether the candidate's appearance results in political campaign intervention include the following:

- whether the individual speaks only in a non-candidate capacity,
- whether either the individual or any representative of the church makes any mention of his or her candidacy or the election,
- whether any campaign activity occurs in connection with the candidate's attendance,
- whether the individual is chosen to speak solely for reasons other than candidacy for public office,
- whether the organization maintains a nonpartisan atmosphere on the premises or at the event where the candidate is present, and
- whether the organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event.

In addition, the church or religious organization should clearly indicate the capacity in which the candidate is appearing and should not mention the individual's political candidacy or the upcoming election in the communications announcing the candidate's attendance at the event . Below are examples of situations where a public official appears at a church or religious organization .

Example 1: Church P, a section 501(c)(3) organization, is located in the state capital . Minister G customarily acknowledges the presence of any public officials present during services . During the state gubernatorial race, Lieutenant Governor Y, a candidate, attended a Wednesday evening prayer service in the church . Minister G acknowledged the Lieutenant Governor's presence in his customary manner, saying, "We are happy to have worshiping with us this evening Lieutenant Governor Y ." Minister G made no reference in his welcome to the Lieutenant Governor's candidacy or the election. Minister G's actions do not constitute political campaign intervention by Church P.

Example 2: Minister H is the minister of Church Q, a section 501(c)(3) organization . Church Q is building a community center . Minister H invites Congressman Z, the representative for the district containing Church Q, to attend the groundbreaking ceremony for the community center . Congressman Z is running for reelection at the time. Minister H makes no reference in her introduction to Congressman Z's candidacy or the election . Congressman Z also makes no reference to his candidacy or the election and does not do any fundraising while at Church Q . Church Q has not intervened in a political campaign .

Example 3: Church X is a section 501(c)(3) organization . X publishes a member newsletter on a regular basis . Individual church members are invited to send in updates about their activities which are printed in each edition of the newsletter . After receiving an update letter from Member Q, X prints the following: "Member Q is running for city council in Metropolis ." The newsletter does not contain any reference to this election or to Member Q's candidacy other than this statement of fact . Church X has not intervened in a political campaign .

Example 4: Mayor G attends a concert performed by a choir of Church S, a section 501(c)(3) organization, in City Park . The concert is free and open to the public . Mayor G is a candidate for reelection, and the concert takes place after the primary and before the general election . During the concert, S's minister addresses the crowd and says, "I am pleased to see Mayor G here tonight . Without his support, these free concerts in City Park would not be possible. We will need his help if we want these concerts to continue next year so please support Mayor G in November as he has supported us." As a result of these remarks, Church S has engaged in political campaign intervention .

Voter Education, Voter Registration and Get-Out-the-Vote Drives

Section 501(c)(3) organizations are permitted to conduct certain voter education activities (including the presentation of public forums and the publication of voter education guides) if they are carried out in a non-partisan manner. In addition, section 501(c)(3) organizations may encourage people to participate in the electoral process through voter registration and get-out-the-vote drives, conducted in a non-partisan manner. On the other hand, voter education or registration activities conducted in a biased manner that favors (or opposes) one or more candidates is prohibited.

Like other IRC section 501(c)(3) organizations, some churches and religious organizations undertake voter education activities by distributing *voter guides*. Voter guides, generally, are distributed during an election campaign and provide information on how all candidates stand on various issues. These guides may be distributed with the purpose of educating voters; however, they may not be used to attempt to favor or oppose candidates for public elected office.

A careful review of the following facts and circumstances may help determine whether or not a church or religious organization's publication or distribution of voter guides constitutes prohibited political campaign activity:

- whether the candidates' positions are compared to the organization's position,

- whether the guide includes a broad range of issues that the candidates would address if elected to the office sought,
- whether the description of issues is neutral,
- whether all candidates for an office are included, and
- whether the descriptions of candidates' positions are either:
 - the candidates' own words in response to questions, or
 - a neutral, unbiased and complete compilation of all candidates' positions.

The following are examples of situations where churches distribute voter guides.

Example 1: Church R, a section 501(c)(3) organization, distributes a voter guide prior to elections. The voter guide consists of a brief statement from the candidates on each issue made in response to a questionnaire sent to all candidates for governor of State I. The issues on the questionnaire cover a wide variety of topics and were selected by Church R based solely on their importance and interest to the electorate as a whole. Neither the questionnaire nor the voter guide, through their content or structure, indicate a bias or preference for any candidate or group of candidates. Church R is not participating or intervening in a political campaign.

Example 2: Church S, a section 501(c)(3) organization, distributes a voter guide during an election campaign. The voter guide is prepared using the responses of candidates to a questionnaire sent to candidates for major public offices. Although the questionnaire covers a wide range of topics, the wording of the questions evidences a bias on certain issues. By using a questionnaire structured in this way, Church S is participating or intervening in a political campaign.

Example 3: Church T, a section 501(c)(3) organization, sets up a booth at the state fair where citizens can register to vote. The signs and banners in and around the booth give only the name of the church, the date of the next upcoming statewide election, and notice of the opportunity to register. No reference to any candidate or political party is made by volunteers staffing the booth or in the materials available in the booth, other than the official voter registration forms which allow registrants to select a party affiliation. Church T is not engaged in political campaign intervention when it operates this voter registration booth.

Example 4: Church C is a section 501(c)(3) organization. C's activities include educating its members on family issues involving moral values. Candidate G is running for state legislature and an important element of her platform is challenging the incumbent's position on family issues. Shortly before the election, C sets up a telephone bank to call registered voters in the district in which Candidate G is seeking election. In the phone conversations, C's representative tells the voter about the moral importance of family issues and asks questions about the voter's views on these issues. If the voter appears to agree with the incumbent's position, C's representative thanks the voter and ends the call. If the voter appears to agree with Candidate G's position, C's representative reminds the voter about the upcoming election, stresses the importance of voting in the election and offers to provide transportation to the polls. C is engaged in political campaign intervention when it conducts this get-out-the-vote drive.

Business Activity

The question of whether an activity constitutes participation or intervention in a political campaign may also arise in the context of a business activity of the church or religious organization, such as the selling or renting of mailing lists, the leasing of office space, or the acceptance of paid political advertising. (The tax treatment of income from unrelated business activities follows.) In this context, some of the factors to be considered in determining whether the church or religious organization has engaged in prohibited political campaign activity include the following:

- whether the good, service, or facility is available to the candidates on an equal basis,
- whether the good, service, or facility is available only to candidates and not to the general public,
- whether the fees charged are at the organization's customary and usual rates, and
- whether the activity is an ongoing activity of the organization or whether it is conducted only for the candidate.

Example 1: Church K is a section 501(c)(3) organization . It owns a building that has a large basement hall suitable for hosting dinners and receptions . For several years, Church K has made the hall available for rent to members of the public . It has standard fees for renting the hall based on the number of people in attendance, and a number of different organizations have rented the hall . Church K rents the hall on a first come, first served basis . Candidate P's campaign pays the standard fee for the dinner . Church K is not involved in political campaign intervention as a result of renting the hall to Candidate P for use as the site of a campaign fundraising dinner.

Example 2: Church L is a section 501(c)(3) organization . It maintains a mailing list of all of its members . Church L has never rented the mailing list to a third party . The campaign committee of Candidate Q, who supports funding for faith-based programs, approaches Church L . Candidate A's campaign committee offers to rent Church L's mailing list for a fee that is comparable to fees charged by other similar organizations . Church L rents the list to Candidate A's campaign committee, but declines similar requests from campaign committees of other candidates . Church L has intervened in a political campaign .

Web Sites: The Internet has become a widely used communications tool. Section 501(c)(3) organizations use their own web sites to disseminate statements and information. They also routinely link their web sites to web sites maintained by other organizations as a way of providing additional information that the organizations believe is useful or relevant to the public .

A web site is a form of communication . If an organization posts something on its web site that favors or opposes a candidate for public office, the organization will be treated the same as if it distributed printed material, oral statements or broadcasts that favored or opposed a candidate.

An organization has control over whether it establishes a link to another site . When an organization establishes a link to another web site, the organization is responsible for the consequences of establishing and maintaining that link, even if the organization does not have control over the content of the linked site . Because the linked content may change over time, an organization may reduce

the risk of political campaign intervention by monitoring the linked content and adjusting the links accordingly .

Links to candidate-related material, by themselves, do not necessarily constitute political campaign intervention. All the facts and circumstances must be taken into account when assessing whether a link produces that result. The facts and circumstances to be considered include, but are not limited to, the context for the link on the organization's web site, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of the links between the organization's web site and the web page that contains material favoring or opposing a candidate for public office .

Example 1: Church P, a section 501(c)(3) organization, maintains a web site that includes such information as biographies of its ministers, times of services, details of community outreach programs, and activities of members of its congregation . B, a member of the congregation of Church P, is running for a seat on the town council . Shortly before the election, Church P posts the following message on its web site, "Lend your support to B, your fellow parishioner, in Tuesday's election for town council ." Church P has intervened in a political campaign on behalf of B .

Example 2: Church N, a section 501(c)(3) organization, maintains a web site that includes such information as staff listings; directions to the church; and descriptions of its community outreach programs, schedules of services, and school activities . On one page of the web site, Church N describes a particular type of treatment program for homeless veterans . This section includes a link to an article on the web site of O, a major national newspaper, praising Church N's treatment program for homeless veterans . The page containing the article on O's web site does not refer to any candidate or election and has no direct links to candidate or election information. Elsewhere on O's web site, there is a page displaying editorials that O has published . Several of the editorials endorse candidates in an election that has not yet occurred . Church N has not intervened in a political campaign by maintaining a link on O's web site because the link is provided for the exempt purpose of educating the public about its programs; the context for the link, the relationship between Church N and O and the arrangement of the links going from Church N's web site to the endorsement on O's web site do not indicate that Church N was favoring or opposing any candidate.

Example 3: Church M, a section 501(c)(3) organization, maintains a web site and posts an unbiased, nonpartisan voter guide that is prepared with the principles discussed on pages 12 and 13 of this publication. For each candidate covered in the voter guide, M includes a link to that candidate's official campaign web site. The links to the candidate web sites are presented on a consistent neutral basis for each candidate, with text saying "For more information on Candidate X, you may consult [URL]." M has not intervened in a political campaign because the links are provided for the exempt purpose of educating voters and are presented in a neutral, unbiased manner that includes all candidates for a particular office.

Correction. Correction of a political expenditure requires the recovery of the expenditure, to the extent possible, and establishment of safeguards to prevent future political expenditures.

Please note that a church or religious organization that engages in any political campaign activity also needs to determine whether it is in compliance with the appropriate federal, state or local election laws, as these may differ from the requirements under IRC section 501(c)(3).

Consequences of Political Campaign Activity

When it participates in political campaign activity, a church or religious organization jeopardizes both its tax-exempt status under IRC section 501(c)(3) and its eligibility to receive tax-deductible contributions. In addition, it may become subject to an excise tax on its political expenditures. This *excise tax* may be imposed in addition to revocation, or it may be imposed instead of revocation. Also, the church or religious organization should correct the violation.

Excise tax. An initial tax is imposed on an organization at the rate of 10 percent of the political expenditures. Also, a tax at the rate of 2.5 percent of the expenditures is imposed against the organization managers (jointly and severally) who, without reasonable cause, agreed to the expenditures knowing they were political expenditures. The tax on management may not exceed \$5,000 with respect to any one expenditure.

In any case in which an initial tax is imposed against an organization, and the expenditures are not corrected within the period allowed by law, an additional tax equal to 100 percent of the expenditures is imposed against the organization. In that case, an additional tax is also imposed against the organization managers (jointly and severally) who refused to agree to make the correction. The additional tax on management is equal to 50 percent of the expenditures and may not exceed \$10,000 with respect to any one expenditure.

Unrelated Business Income Tax (UBIT)

Net Income Subject to the UBIT

Churches and religious organizations, like other tax-exempt organizations, may engage in income-producing activities unrelated to their tax-exempt purposes, as long as the unrelated activities are not a substantial part of the organization's activities. However, the net income from such activities will be subject to the UBIT if the following three conditions are met:

- the activity constitutes a trade or business,
- the trade or business is regularly carried on, and
- the trade or business is not substantially related to the organization's exempt purpose. (The fact that the organization uses the income to further its charitable or religious purposes does not make the activity substantially related to its exempt purposes.)

Exceptions to UBIT

Even if an activity meets the above three criteria, the income may not be subject to tax if it meets one of the following exceptions: (a) substantially all of the work in operating the trade or business is performed by volunteers; (b) the activity is conducted by the organization primarily for the convenience of its members; or (c) the trade or business involves the selling of merchandise substantially all of which was donated.

In general, rents from real property, royalties, capital gains, and interest and dividends are not subject to the unrelated business income tax unless financed with borrowed money.

Examples of Unrelated Trade or Business Activities

Unrelated trade or business activities vary depending on types of activities, as shown below.

Advertising

Many tax-exempt organizations sell advertising in their publications or other forms of public communication. Generally, income from the sale of advertising is unrelated trade or business income. This may include the sale of advertising space in weekly bulletins, magazines or journals, or on church or religious organization web sites.

Gaming

Most forms of gaming, if regularly carried on, may be considered the conduct of an unrelated trade or business. This can include the sale of pull-tabs and raffles. Income derived from bingo games may be eligible for a special tax exception (in addition to the exception regarding uncompensated volunteer labor covered above), if the following conditions are met: (a) the bingo game is the traditional type of bingo (as opposed to instant bingo, a variation of pull-tabs); (b) the conduct of the bingo game is not an activity carried out by for-profit organizations in the local area; and (c) the operation of the bingo game does not violate any state or local law.

Sale of merchandise and publications

The sale of merchandise and publications (including the actual publication of materials) can be considered the conduct of an unrelated trade or business if the

items involved do not have a substantial relationship to the exempt purposes of the organization .

Rental income

Generally, income derived from the rental of real property and incidental personal property is excluded from unrelated business income . However, there are certain situations in which rental income may be unrelated business taxable income:

- if a church rents out property on which there is debt outstanding (for example, a mortgage note), the rental income may constitute unrelated debt-financed income subject to UBIT. (However, if a church or convention or association of churches acquires debt-financed land for use in its exempt purposes within 15 years of the time of acquisition, then income from the rental of the land may not constitute unrelated business income .)
- if personal services are rendered in connection with the rental, then the income may be unrelated business taxable income, or
- if a church charges for the use of the parking lot, the income may be unrelated business taxable income .

Parking lots

If a church owns a parking lot that is used by church members and visitors while attending church services, any parking fee paid to the church would not be subject to UBIT. However, if a church operates a parking lot that is used by members of the general public, parking fees would be taxable, as this activity would not be substantially related to the church's exempt purpose, and parking fees are not treated as rent from real property . If the church enters into a lease with a third party who operates the church's parking lot and pays rent to the church, such payments would not be subject to tax, as they would constitute rent from real property .

Whether an income-producing activity is an unrelated trade or business activity depends on all the facts

and circumstances. For more information, see IRS Publication 598, *Tax on Unrelated Business Income of Exempt Organizations* .

Tax on Income-Producing Activities

If a church, or other exempt organization, has gross income of \$1,000 or more for any taxable year from the conduct of any unrelated trade or business, it is required to file IRS Form 990-T, *Exempt Organization Business Income Tax Return* , for that year. If the church is part of a larger entity (such as a diocese), it must file a separate Form 990-T if it has a separate EIN . Form 990-T is due the 15th day of the 5th month following the end of the church's tax year. (IRC section 512(b)(12) provides a special rule for parishes and similar local units of a church. A specific deduction is provided, which is equal to the lower of \$1,000 or the gross income derived from any unrelated trade or business regularly carried on by such parish or local unit of a church .) See Filing Requirements on page 22 .

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Employment Tax

Generally, churches and religious organizations are required to withhold, report, and pay income and Federal Insurance Contributions Act (FICA) taxes for their employees. Employment tax includes income tax withheld and paid for an employee and FICA taxes withheld and paid on behalf of an employee. Substantial penalties may be imposed against an organization that fails to withhold and pay the proper employment tax. Whether a church or religious organization must withhold and pay employment tax depends upon whether the church's workers are employees. *Determination of worker status* is important. Several facts determine whether a worker is an employee. For an in-depth explanation and examples of the common law employer-employee relationship, see IRS Publication 15-A, *Employer's Supplemental Tax Guide*. If a church or a worker wants the IRS to determine whether the worker is an employee, the church or worker should file IRS Form SS-8, *Determination of Employee Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding*, with the IRS.

Social Security and Medicare Taxes — Federal Insurance Contributions Act (FICA)

FICA taxes consist of Social Security and Medicare taxes. Wages paid to employees of churches or religious organizations are subject to FICA taxes unless *one* of the following exceptions applies:

- wages are paid for services performed by a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, or by a member of a religious order in the exercise of duties required by such order,

- the church or religious organization pays the employee wages of less than \$108.28 in a calendar year, or

- a church that is opposed to the payment of Social Security and Medicare taxes for religious reasons files IRS Form 8274, *Certification by Churches and Qualified Church Controlled Organizations Electing Exemption From Employer Social Security and Medicare Taxes*. Very specific timing rules apply to filing Form 8274. It must be filed before the *first* date on which the electing entity is required to file its first quarterly employment tax return. This election does not relieve the organization of its obligation to withhold income tax on wages paid to its employees. In addition, if such an election is made, affected employees must pay Self-Employment Contributions Act (SECA) tax. For further information, see Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*.

Withheld employee income tax and FICA taxes are reported on IRS Form 941, *Employer's Quarterly Federal Tax Return*. Some small employers are eligible to file an annual Form 944 instead of quarterly returns. For more information about employment tax, see IRS Publication 15, *Circular E, Employer's Tax Guide*, and IRS Publication 15-A, *Employer's Supplemental Tax Guide*. See also, IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*. See the instructions to Form 944 for more information.

Federal Unemployment Tax Act (FUTA)

Churches and religious organizations are not liable for FUTA tax. For further information on FUTA, see IRS Publication 15, *Circular E, Employer's Tax Guide*, and IRS Publication 15-A, *Employer's Supplemental Tax Guide*. See also, IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*.

Special Rules for Compensation of Ministers

Withholding Income Tax for Ministers

Unlike other exempt organizations or businesses, a church is not required to withhold income tax from the compensation that it pays to its duly ordained, commissioned, or licensed ministers for performing services in the exercise of their ministry. An employee minister may, however, enter into a voluntary withholding agreement with the church by completing IRS Form W-4, *Employee's Withholding Allowance Certificate*. A church should report compensation paid to a minister on Form W-2, *Wage and Tax Statement*, if the minister is an employee, or on IRS Form 1099-MISC, *Miscellaneous Income*, if the minister is an independent contractor.

Parsonage or Housing Allowances

Generally, a minister's gross income does not include the fair rental value of a home (parsonage) provided, or a housing allowance paid, as part of the minister's compensation for services performed that are ordinarily the duties of a minister.

A minister who is furnished a *parsonage* may exclude from income the fair rental value of the parsonage, including utilities. However, the amount excluded cannot be more than the reasonable pay for the minister's services.

A minister who receives a *housing allowance* may exclude the allowance from gross income to the extent it is used to pay expenses in providing a home. Generally, those expenses include rent, mortgage payments, utilities, repairs, and other expenses directly relating to providing a home. If a minister owns a home, the amount excluded from the minister's gross income as a housing allowance is limited to the least of the following: (a) the amount actually used to provide a home; (b) the amount officially designated as a housing allowance; or (c) the fair rental value of the home. The minister's church or other qualified organization must designate the housing allowance pursuant to official action taken *in advance* of the payment. If a minister is employed and paid by a local congregation, a designation by a national church

agency will not be effective. The local congregation must make the designation. A national church agency may make an effective designation for ministers it directly employs. If none of the minister's salary has been officially designated as a housing allowance, the full salary must be included in gross income.

The fair rental value of a parsonage or housing allowance is excludable from income only for income tax purposes. These amounts are *not* excluded in determining the minister's net earnings from self-employment for Self-Employment Contributions Act (SECA) tax purposes. Retired ministers who receive either a parsonage or housing allowance are not required to include such amounts for SECA tax purposes.

As mentioned above, a minister who receives a parsonage or rental allowance excludes that amount from his income. The portion of expenses allocable to the excludable amount is not deductible. This limitation, however, does not apply to interest on a home mortgage or real estate taxes, nor to the calculation of net earnings from self-employment for SECA tax purposes.

IRS Publication 517, *Social Security and Other Information for Members of the Clergy and Religious Workers*, has a detailed example of the tax treatment for a housing allowance and the related limitations on deductions. IRS Publication 525, *Taxable and Nontaxable Income*, has information on particular types of income for ministers.

Social Security and Medicare Taxes — Federal Insurance Contributions Act (FICA) vs. Self-Employment Contributions Act (SECA)

The compensation that a church or religious organization pays to its ministers for performing services in the exercise of ministry is not subject to FICA taxes. However, income that a minister earns in performing services in the exercise of his ministry is subject to SECA tax, unless the minister has timely applied for and received an exemption from SECA tax.

Payment of Employee Business Expenses

A church or religious organization is treated like any other employer as far as the tax rules regarding employee business expenses. The rules differ depending upon whether the expenses are paid through an accountable or non-accountable plan, and these plans determine whether the payment for these expenses is included in the employee's income.

Accountable Reimbursement Plan

An arrangement that an employer establishes to reimburse or advance employee business expenses will be an accountable plan if it meets three requirements: (1) involves a business connection; (2) requires the employee to substantiate expenses incurred; and (3) requires the employee to return any excess amounts.

Employees must provide the organization with sufficient information to identify the specific business nature of each expense and to substantiate each element of an expenditure. It is not sufficient for an employee to aggregate expenses into broad categories such as travel or to report expenses through the use of non-descriptive terms such as *miscellaneous business expenses*. Both the substantiation and the return of excess amounts must occur within a reasonable period of time.

Employee business expenses reimbursed under an accountable plan are: (a) excluded from an employee's gross income; (b) not required to be reported on the employee's IRS Form W-2, *Wage and Tax Statement*; and (c) exempt from the withholding and payment of wages subject to FICA taxes and income tax withholdings.

Non-accountable Reimbursement Plan

If the church or religious organization reimburses or advances the employee for business expenses, but the arrangement does not satisfy the three requirements of an accountable plan, the amounts paid to the employees are considered wages subject to FICA taxes and income tax withholding, if applicable, and are reportable on Form W-2. (Amounts paid to employee ministers are

treated as wages reportable on Form W-2, but are not subject to FICA taxes or income tax withholding.)

For example, if a church or religious organization pays its secretary a \$200 per month allowance to reimburse monthly business expenses the secretary incurs while conducting church or religious organization business, and the secretary is not required to substantiate the expenses or return any excess, then the entire \$200 must be reported on Form W-2 as wages subject to FICA taxes and income tax withholding. In the same situation involving an employee-minister, the allowance must be reported on the minister's Form W-2, but no FICA or income tax withholding is required. For further information see IRS Publication 463, *Travel, Entertainment, Gift and Car Expenses*.

One common business expense reimbursement is for *automobile mileage*. If a church or religious organization pays a mileage allowance at a rate that is less than or equal to the federal standard rate, the amount of the expense is deemed substantiated. (Each year, the federal government establishes a standard mileage reimbursement rate.) There are no income or employment tax consequences to the reimbursed individual provided that the employee substantiates the time, place, and business purposes of the automobile mileage for which reimbursement is sought. Of course, reimbursement for automobile mileage incurred for personal purposes is includible in the individual's income.

If a church or religious organization reimburses automobile mileage at a rate exceeding the standard mileage rate, the excess is treated as paid under a non-accountable plan. This means that the excess is includible in the individual's income and is subject to the withholding and payment of income and employment taxes, if applicable.

In addition, any mileage reimbursement that is paid without requiring the individual to substantiate the time, place, and business purposes of each trip is included in the individual's income, regardless of the rate of reimbursement.

No income is attributed to an employee or a volunteer who uses an automobile owned by the church or religious organization to perform church-related work.

Recordkeeping Requirements

Books of Accounting and Other Types of Records

All tax-exempt organizations, including churches and religious organizations (regardless of whether tax-exempt status has been officially recognized by the IRS), are required to maintain books of accounting and other records necessary to justify their claim for exemption in the event of an audit. See [Special Rules Limiting IRS Authority to Audit a Church](#) on page 26. Tax-exempt organizations are also required to maintain books and records that are necessary to accurately file any federal tax and information returns that may be required.

There is no specific format for keeping records. However, the types of required records frequently include organizing documents (charter, constitution, articles of incorporation) and bylaws, minute books, property records, general ledgers, receipts and disbursements journals, payroll records, banking records, and invoices. The extent of the records necessary generally varies according to the type, size, and complexity of the organization's activities.

Length of Time to Retain Records

The law does not specify a *length of time* that records must be retained; however, the following guidelines should be applied in the event that the records may be material to the administration of any federal tax law.

Records of revenue and expenses, including payroll records.	Retain for at least four years after filing the return(s) to which they relate.
Records relating to acquisition and disposition of property (real and personal, including investments).	Retain for at least four years after the filing of the return for the year in which disposition occurs.

It is important for every tax-exempt organization to maintain accurate records to avoid losing its tax-exempt status by engaging in activity that violates the Internal Revenue Code.

Filing Requirements

Information and Tax Returns — Forms to File and Due Dates

Churches and religious organizations may be required to report certain payments or information to the IRS . The following is a list of the most frequently required returns, who should use them, how they are used, and when they should be filed.

<i>Returns</i>	<i>Who Should Use Them</i>	<i>How They are Used</i>	<i>When to File</i>
Form W-2 <i>Wage and Tax Statement</i> Form W-3 <i>Transmittal of Wage and Tax Statement</i>	Organizations with employees .		Furnish each employee with a completed Form W-2 by January 31; and file all Forms W-2 and Form W-3 with the Social Security Administration (SSA) by the last day of February.
Form W-2G <i>Certain Gaming Winnings</i> <small>For more information on reporting requirements for gaming activities, see IRS Publication 3079, <i>Gaming Publication for Tax-Exempt Organizations</i>.</small>	Any charitable or religious organization, including a church, that sponsors a gaming event (raffles, bingo) must file Form W-2G when a participant wins a prize over a specific value amount .	The requirements for reporting and withholding depend on the type of gaming, the amount of winnings, and the ratio of winnings to the wager.	For each winner meeting the filing requirement, the church or religious organization must furnish Form W-2G by January 31; and file Copy A of Form W-2G with the IRS by February 28.
Form 941 <i>Employer's Quarterly Federal Tax Return</i> <i>or</i> Form 944 <i>Employer's Annual Federal Tax Return</i>	Small employers that have been notified by the IRS to file Form 944 (see form instructions) may use that form; other employers required to file must use Form 941 .	Use Form 941 or 944 to report Social Security and Medicare taxes and income taxes withheld by the organization, and Social Security and Medicare taxes paid by the organization.	See form instructions for due dates .
Form 945 <i>Annual Return of Withheld Federal Income Tax</i>		If a church or religious organization withholds income tax, including backup withholding, from non-payroll payments, it must file Form 945.	File Form 945 by January 31 . This form is not required for those years in which there is no non-payroll tax liability.
Form 990 <i>Return of Organization Exempt from Income Tax</i> Form 990-EZ <i>Short Form Return of Organization Exempt From Income Tax</i> Form 990-N (electronic postcard), Electronic Notice for Tax Exempt Organizations Not Required to File Form 990 or 990-EZ.	<p>Generally, all religious organizations (see exceptions to file Form 990 below) must file Form 990, Form 990-EZ or Form 990-N .</p> <p><i>Exceptions to file Form 990, 990-EZ and 990-N</i></p> <p>The following is a list of some of the organizations that are not required to file Form 990, 990-EZ or 990-N .</p> <ul style="list-style-type: none"> ■ Churches (as opposed to "religious organizations," defined earlier) ■ Inter-church organizations of local units of a church ■ Mission societies sponsored by or affiliated with one or more churches or church denomination, if more than half of the activities are conducted in, or directed at, persons in foreign countries ■ An exclusively religious activity of any religious order <p>See the form instructions for a list of other organizations that are not required to file .</p>	<p>For tax years 2008 through 2010, the thresholds for determining whether an organization should file Form 990, 990-EZ or 990-N will vary. See www.irs.gov/eo for the specific thresholds .</p>	<p>Form 990, 990-EZ or 990-N must be filed on or before the 15th day of the 5th month following the end of the organization's tax year.</p> <p>Form 990-N must be electronically filed.</p>

<i>Returns</i>	<i>Who Should Use Them</i>	<i>How They are Used</i>	<i>When to File</i>
Form 990-T Exempt Organization Business Income Tax Return For more information on unrelated business income, see Unrelated Business Income Tax (UBIT) on page 16.	Churches and religious organizations.	Churches and religious organizations must file Form 990-T if they generate gross income from an unrelated business of \$1,000 or more for a taxable year.	Form 990-T must be filed by the 15th day of the 5th month after the organization's accounting period ends (May 15 for a calendar year accounting period).
Form 990-W Estimated Tax on Unrelated Business Taxable Income for Tax-Exempt Organizations	Churches and religious organizations.	<p>If the tax on unrelated business income is expected to be \$500 or more, the church or religious organization must make estimated tax payments.</p> <p>Use Form 990-W to compute the estimated tax liability.</p>	
Form 1096 Annual Summary and Transmittal of U.S. Information Returns	Churches and religious organizations.	Use Form 1096 to transmit Forms 1099-MISC, W-2G, and certain other forms to the IRS.	Form 1096 must be filed by February 28 in the year following the calendar year in which the payments were made.
Form 1099 - MISC Miscellaneous Income See the Instructions for Form 1099-MISC for details.	Churches and religious organizations.	A church or religious organization must use Form 1099-MISC if it pays an unincorporated individual or entity \$600 or more in any calendar year for one of the following payments: gross rents; commissions, fees, or other compensation paid to non-employees; prizes and awards; or other fixed and determinable income.	Churches or religious organizations must furnish each payee with a copy of Form 1099-MISC by January 31; and file Copy A of Form 1099-MISC with the IRS by February 28.
Form 5578 Annual Certification of Racial Nondiscrimination for a Private School Exempt from Federal Income Tax For information on racial and ethnic nondiscriminatory policies, see Revenue Procedure 75-50, 1975-2 C.B. 587 at www.irs.gov .	<p>A church or religious organization that operates a private school, whether separately incorporated or operated as part of its overall operations, that teaches secular subjects and generally complies with state law requirements for public education.</p> <p><i>Note:</i> It is not considered racially discriminatory for a parochial school to select students on the basis of membership in a religious denomination if membership in the denomination is open to all on a racially nondiscriminatory basis. Further, a seminary, or other purely religious school, that primarily teaches religious subjects usually with the purpose of training students for the ministry, is not subject to the racially nondiscriminatory requirements because it is considered to be a religious rather than an educational organization.</p>	A church or religious organization must file Form 5578 to certify that it does not discriminate based on race or ethnic origin.	<p>Form 5578 must be filed on or before the 15th day of the 5th month following the end of the organization's taxable year (May 15 for a calendar year).</p> <p>If an organization files Form 990 or Form 990-EZ, the certification must be made on Schedule A (Form 990 or Form 990-EZ).</p>
Form 8282 Donee Information Return	Churches and religious organizations.	A church or religious organization must file Form 8282 if it sells, exchanges, transfers, or otherwise disposes of certain non-cash donated property within three years of the date it originally received the donation. This applies to non-cash property that had an appraised value of more than \$5,000 at time of donation.	The church or religious organization must file Form 8282 with the IRS within 125 days of date of disposition of the property; and furnish the original donor with a copy of the form.
Treasury Form 90.22.1, Report of Foreign Bank and Financial Accounts	See form instructions	See form instructions	See form instructions

Charitable Contributions — Substantiation and Disclosure Rules

Recordkeeping

A church or religious organization should be aware of the recordkeeping and substantiation rules imposed on donors of charities that receive certain quid pro quo contributions.

Recordkeeping Rules

A donor cannot claim a tax deduction for any contribution of cash, a check or other monetary gift made on or after January 1, 2007 unless the donor maintains a record of the contribution in the form of either a bank record (such as a cancelled check) or a written communication from the charity (such as a receipt or a letter) showing the name of the charity, the date of the contribution, and the amount of the contribution.

Substantiation Rules

A donor cannot claim a tax deduction for any single contribution of \$250 or more unless the donor obtains a contemporaneous, written acknowledgment of the contribution from the recipient church or religious organization. A church or religious organization that does not acknowledge a contribution incurs no penalty; but without a written acknowledgment, the donor cannot claim a tax deduction. Although it is a donor's responsibility to obtain a written acknowledgment, a church or religious organization can assist the donor by providing a timely, written statement containing the following information:

- name of the church or religious organization,
- date of the contribution,
- amount of any cash contribution, and
- description (but not the value) of non-cash contributions.

In addition, the timely, written statement must contain one of the following:

- statement that no goods or services were provided by the church or religious organization in return for the contribution,

- statement that goods or services that a church or religious organization provided in return for the contribution consisted entirely of intangible religious benefits, or
- description and good faith estimate of the value of goods or services other than intangible religious benefits that the church or religious organization provided in return for the contribution.

The church or religious organization may either provide separate acknowledgments for each single contribution of \$250 or more or one acknowledgment to substantiate several single contributions of \$250 or more. Separate contributions are not aggregated for purposes of measuring the \$250 threshold.

Disclosure Rules that Apply to Contributions

A contribution made by a donor in exchange for goods or services is known as a *quid pro quo* contribution. A donor may only take a contribution deduction to the extent that his or her contribution exceeds the fair market value of the goods and services the donor receives in return for the contribution. Therefore, donors need to know the value of the goods or services. A church or religious organization must provide a written statement to a donor who makes a payment exceeding \$75 partly as a contribution and partly for goods and services provided by the organization.

Example 1: If a donor gives a church a payment of \$100 and, in return, receives a ticket to an event valued at \$40, this is a contribution, and only \$60 is deductible by the donor (\$100 - \$40 = \$60). Even though the deductible amount does not exceed \$75, since the contribution the church received is in excess of \$75, the church must provide the donor with a written disclosure statement. The statement must: (1) inform the donor that the amount of the contribution that is deductible for federal income tax purposes is limited to the excess of money (and the fair market value of any property other than money) contributed by the donor over the value of goods or services provided by the church or religious organization; and (2) provide the donor with a good-faith estimate of the value of the goods or services.

The church or religious organization must provide the written disclosure statement with either the solicitation or the receipt of the contribution and in a manner that is likely to come to the attention of the donor. For example, a disclosure in small print within a larger document may not meet this requirement.

Exceptions to Disclosure Statement

A church or religious organization is not required to provide a disclosure statement for *quid pro quo* contributions when: (a) the goods or services meet the standards for *insubstantial value*; or (b) the only benefit received by the donor is an *intangible religious benefit*. Additionally, if the goods or services the church or religious organization provides are *intangible religious benefits* (examples follow), the acknowledgment for contributions of \$250 or more does not need to describe those benefits.

Generally, intangible religious benefits are benefits provided by a church or religious organization that are not usually sold in commercial transactions outside a donative (gift) context.

Intangible religious benefits include:

- admission to a religious ceremony
- de minimis tangible benefits, such as wine used in religious ceremony

Benefits that are not intangible religious benefits include:

- tuition for education leading to a recognized degree
- travel services
- consumer goods

*IRS Publication 1771,
Charitable Contributions:
Substantiation and
Disclosure Requirements,
provides more information
on substantiation and
disclosure rules.*

*Order Publication 1771
free through the IRS at
(800) 829-3676.*

Special Rules Limiting IRS Authority to Audit a Church

Tax Inquiries and Examinations of Churches

Congress has imposed special limitations, found in IRC section 7611, on how and when the IRS may conduct civil tax inquiries and examinations of churches. The IRS may only initiate a *church tax inquiry* if an appropriate high-level Treasury Department official reasonably believes, based on a written statement of the facts and circumstances, that the organization: (a) may not qualify for the exemption; or (b) may not be paying tax on an unrelated business or other taxable activity.

Restrictions on Church Inquiries and Examinations

Restrictions on church inquiries and examinations apply only to churches (including organizations claiming to be churches if such status has not been recognized by the IRS) and conventions or associations of churches. They do not apply to related persons or organizations. Thus, for example, the rules do not apply to schools that, although operated by a church, are organized as separate legal entities. Similarly, the rules do not apply to integrated auxiliaries of a church.

Restrictions on church inquiries and examinations do not apply to all church inquiries by the IRS. The most common exception relates to routine requests for information. For example, IRS requests for information from churches about filing of returns, compliance with income or Social Security and Medicare tax withholding requirements, supplemental information needed to process returns or applications, and other similar inquiries are not covered by the special church audit rules.

Restrictions on church inquiries and examinations do not apply to criminal investigations or to investigations of the tax liability of any person connected with the church, e.g., a contributor or minister.

The procedures of IRC section 7611 will be used in initiating and conducting any inquiry or examination into whether an excess benefit transaction (as that term is used in IRC section 4958) has occurred between a church and an insider.

Audit Process

The following is the sequence of the audit process.

1. If the *reasonable belief* requirement is met, the IRS must begin an inquiry by providing a church with written notice containing an explanation of its concerns.
2. The church is allowed a reasonable period in which to respond by furnishing a written explanation to alleviate IRS concerns.
3. If the church fails to respond within the required time, or if its response is not sufficient to alleviate IRS concerns, the IRS may, generally within 90 days, issue a second notice, informing the church of the need to examine its books and records.
4. After issuance of a second notice, but before commencement of an examination of its books and records, the church may request a conference with an IRS official to discuss IRS concerns. The second notice will contain a copy of all documents collected or prepared by the IRS for use in the examination and subject to disclosure under the Freedom of Information Act, as supplemented by IRC section 6103 relating to disclosure and confidentiality of tax return information.
5. Generally, examination of a church's books and records must be completed within two years from the date of the second notice from the IRS.

If at any time during the inquiry process the church supplies information sufficient to alleviate the concerns of the IRS, the matter will be closed without examination of the church's books and records. There are additional safeguards for the protection of churches under IRC section 7611. For example, the IRS cannot begin a subsequent examination of a church for a five-year period unless the previous examination resulted in a revocation, notice of deficiency or assessment, or a request for a significant change in church operations, including a significant change in accounting practices.

Glossary

Church. Certain characteristics are generally attributed to churches. These attributes of a church have been developed by the IRS and by court decisions. They include: distinct legal existence; recognized creed and form of worship; definite and distinct ecclesiastical government; formal code of doctrine and discipline; distinct religious history; membership not associated with any other church or denomination; organization of ordained ministers; ordained ministers selected after completing prescribed courses of study; literature of its own; established places of worship; regular congregations; regular religious services; Sunday schools for the religious instruction of the young; schools for the preparation of its ministers. The IRS generally uses a combination of these characteristics, together with other facts and circumstances, to determine whether an organization is considered a church for federal tax purposes.

The IRS makes no attempt to evaluate the content of whatever doctrine a particular organization claims is religious, provided the particular beliefs of the organization are truly and sincerely held by those professing them and the practices and rites associated with the organization's belief or creed are not illegal or contrary to clearly defined public policy.

Integrated Auxiliary Of A Church. The term *integrated auxiliary* of a church refers to a class of organizations that are related to a church or convention or association of churches, but are not such organizations themselves. In general, the IRS will treat an organization that meets the following three requirements as an integrated auxiliary of a church. The organization must:

- be described both as an IRC section 501(c)(3) charitable organization and as a public charity under IRC sections 509(a)(1), (2), or (3),
- be affiliated with a church or convention or association of churches, and
- receive financial support primarily from internal church sources as opposed to public or governmental sources.

Men's and women's organizations, seminaries, mission societies, and

youth groups that satisfy the first two requirements above are considered integrated auxiliaries whether or not they meet the internal support requirements. More guidance as to the types of organizations the IRS will treat as integrated auxiliaries can be found in the Code of Regulations, 26 CFR section 1.6033-2(h).

The same rules that apply to a church apply to the integrated auxiliary of a church, with the exception of those rules that apply to the audit of a church. See section [Special Rules Limiting IRS Authority To Audit A Church](#) on page 26.

Minister. The term *minister* is not used by all faiths; however, in an attempt to make this publication easy to read, we use it because it is generally understood. As used in this booklet, the term minister denotes members of clergy of all religions and denominations and includes priests, rabbis, imams, and similar members of the clergy.

IRC Section 501(c)(3). IRC section 501(c)(3) describes charitable organizations, including churches and religious organizations, which qualify for exemption from federal income tax and generally are eligible to receive tax-deductible contributions. This section provides that:

- an organization must be organized and operated exclusively for religious or other charitable purposes,
- net earnings may not inure to the benefit of any private individual or shareholder,
- no substantial part of its activity may be attempting to influence legislation,
- the organization may not intervene in political campaigns, and
- the organization's purposes and activities may not be illegal or violate fundamental public policy.

These requirements are set forth in greater detail throughout this publication.

Help From The IRS

IRS Tax Publications to Order

The IRS provides free tax publications and forms. Order publications and forms by calling toll-free (800) 829-3676, or download publications and forms from the IRS Web site at www.irs.gov. The following list of publications may provide further information for churches and other religious organizations:

Publication 1	<i>Your Rights as a Taxpayer</i>
Publication 15	<i>Circular E, Employer's Tax Guide</i>
Publication 15-A	<i>Employer's Supplemental Tax Guide</i>
Publication 334	<i>Tax Guide for Small Business</i> <i>(For Individuals Who Use Schedule C or C-EZ)</i>
Publication 463	<i>Travel, Entertainment, Gift, and Car Expenses</i>
Publication 517	<i>Social Security and Other Information</i> <i>for Members of the Clergy and Religious Workers</i>
Publication 525	<i>Taxable and Nontaxable Income</i>
Publication 526	<i>Charitable Contributions</i>
Publication 557	<i>Tax-Exempt Status for Your Organization</i>
Publication 561	<i>Determining the Value of Donated Property</i>
Publication 571	<i>Tax-Sheltered Annuity Programs for Employees</i> <i>of Public Schools and Certain Tax-Exempt</i> <i>Organizations</i>
Publication 598	<i>Tax on Unrelated Business Income</i> <i>of Exempt Organizations</i>
Publication 910	<i>Guide to Free Tax Services</i>
Publication 1771	<i>Charitable Contributions: Substantiation and</i> <i>Disclosure</i>
Publication 3079	<i>Gaming Publication for Tax-Exempt Organizations</i>
Publication 4221-PC	<i>Compliance Guide for 501(c)(3) Public Charities</i>
Publication 4573	<i>Group Exemptions</i>
Publication 4630	<i>Exempt Organizations Products and Services</i> <i>Navigator</i>

IRS Customer Service

Telephone assistance for general tax information is available by calling:

IRS Customer Service

toll-free at (800) 829-1040.

EO Customer Service

Telephone assistance specific to exempt organizations is available by calling:

IRS Exempt Organizations Customer

Account Services toll-free at

(877) 829-5500.

EO Web Site

Visit the IRS Exempt Organizations

Web site at www.irs.gov/eo.

Stay Exempt - Tax Basics for 501(c)(3)s - a free on-line IRS workshop covering tax compliance issues confronted by small and mid-sized tax-exempt organizations, available at www.stayexempt.irs.gov.

EO Update

To receive IRS EO Update, a periodic newsletter with information for tax-exempt organizations and tax practitioners who represent them, visit www.irs.gov/eo and click on "EO Newsletter."

Congress has enacted special tax laws applicable to churches, religious organizations, and ministers in recognition of their unique status in American society and of their rights guaranteed by the First Amendment of the Constitution of the United States. Churches and religious organizations are generally exempt from income tax and receive other favorable treatment under the tax law; however, certain income of a church or religious organization may be subject to tax, such as income from an unrelated business. It is also important for a church or religious organization to understand the tax law to avoid losing its tax-exempt status by engaging in activity that violates the Internal Revenue Code.

- What is the breakdown of 501(c)(4), (5) and (6) organizations sent questionnaires in the self-declarer study?

Curr Subject Cd	Total
4	513
5	296
6	509
Grand Total	1,318

- Breakdown of employees in EOCU, ROO and Exam
Lois will check with Brian
- Of the 1.5 million exempt organizations, how many are 501(c)(4)?
Ask NaLee to check SOI data
- What percentage of 501(c)(4) orgs seek recognition vs. self -declare
Check w/ NaLee
- Provide copy of GCM re percentage of non -social welfare
GCM 38215 (attached)
- Where do we get the facts and circumstances test – is this a general IRS test?
- Counsel
- Update information on 22 cases with political activity PIC codes
Lois is checking with Nan
- Provide copy of Church pub
See attached (Also, do we want to get a hard copy from CE&O)
- Provide copy of GCM re 501(c)(5) and (6) orgs and political campaign intervention
GCM 34233 (attached)
- Update information regarding 42 organizations that were revoked
Lois is checking with Nan
- Provide additional information regarding 10 denials provided in Nov 23, 2012 letter
 - What was the reason for the length of time between proposed and final denial (8 years) in 4 of the cases
 - Did they hold themselves out as tax -exempt while application pending
 - What tax was paid by or assessed on these organizations
 Check w/ NaLee and Holly

- Provide copies of approved applications for [REDACTED] 6103
[REDACTED] EIN [REDACTED] 6103) and [REDACTED] 6103 (EIN [REDACTED] 6103)
Holly (while I could [REDACTED] 6103 [REDACTED] 6103)
- Provide copies of PACI reports
Work w/ CE&O to get copies of 2004 and 2006 reports. See pages 19 and 20 of
attached 2010 workplan for 2008 report.

From: Marks Nancy J
Sent: Monday, May 13, 2013 6:38 AM
To: Kindell Judith E
Subject: Re: Thanks for Your Support!

Thanks

Sent using BlackBerry

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

From: Kindell Judith E
Sent: Sunday, May 12, 2013 10:43 PM Eastern Standard Time
To: Marks Nancy J
Subject: Fw: Thanks for Your Support!

Sorry, I got a little distracted

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

From: Kindell Judith E
Sent: Thursday, May 09, 2013 11:45 AM Eastern Standard Time
To: Cook Janine
Cc: Brown Susan D <Susan.D.Brown@irs.counsel.treas.gov>
Subject: RE: Thanks for Your Support!

Here is the latest version of my notes.

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

From: Cook Janine [<mailto:Janine.Cook@irs.counsel.treas.gov>]
Sent: Thursday, May 09, 2013 9:15 AM
To: Kindell Judith E
Subject: RE: Thanks for Your Support!

now i'm running behind. Have meeting at 10 and will turn to this at 11.

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

From: Kindell Judith E [<mailto:Judith.E.Kindell@irs.gov>]
Sent: Wednesday, May 08, 2013 5:11 PM
To: Cook Janine
Subject: RE: Thanks for Your Support!

I'm still slogging my way through (still getting sidetracked), but I thought I would share what I have so far.

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

From: Cook Janine [<mailto:Janine.Cook@irs.counsel.treas.gov>]
Sent: Wednesday, May 08, 2013 8:56 AM
To: Kindell Judith E
Subject: Re: Thanks for Your Support!

I understand. :)

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]

Sent: Wednesday, May 08, 2013 08:30 AM

To: Cook Janine

Cc: Brown Susan D

Subject: RE: Thanks for Your Support!

I'm sorry - I meant to finish up my notes yesterday but got sidetracked. I'm working on them now and will get them to you as soon as possible.

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

From: Kindell Judith E

Sent: Tuesday, May 07, 2013 8:50 AM

To: Cook Janine

Cc: Brown Susan D

Subject: RE: Thanks for Your Support!

I'm still finishing them up, but I will as soon as I finish.

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

From: Cook Janine [mailto:Janine.Cook@irscounsel.treas.gov]

Sent: Tuesday, May 07, 2013 8:45 AM

To: Kindell Judith E

Cc: Brown Susan D

Subject: RE: Thanks for Your Support!

Judy, if you want to send your notes to me first, I can do a quick scan of my 14 pages and see if I have any thing to add before sending to Nikole?

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

From: Kindell Judith E [mailto:Judith.E.Kindell@irs.gov]

Sent: Tuesday, May 07, 2013 12:33 AM

To: Barre Catherine M; Cook Janine

Cc: Flax Nikole C

Subject: Re: Thanks for Your Support!

Yes

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

From: Barre Catherine M

Sent: Monday, May 06, 2013 11:05 PM Eastern Standard Time

To: Kindell Judith E; Cook Janine

Cc: Flax Nikole C

Subject: RE: Thanks for Your Support!

Today Steve asked if he could get set of meeting notes by late Wednesday or Thursday. Is that possible?

Thanks

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

From: Kindell Judith E

Sent: Wednesday, May 01, 2013 4:29 PM

To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne

Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M

Subject: RE: Thanks for Your Support!

I will circulate my notes once I get them typed up, but in the meantime, I thought I would circulate our to-do list. Lois and I talked last night about getting the info and I have included our thoughts on who would get it. Let me know if I have missed anything.

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

From: Cook Janine [<mailto:Janine.Cook@irscounsel.treas.gov>]

Sent: Wednesday, May 01, 2013 12:48 PM

To: Lerner Lois G; Flax Nikole C; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

14 pages worth....

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

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]

Sent: Wednesday, May 01, 2013 12:20 PM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I didn't. I know Judy and Nan took some --not sure they are comprehensive. I'm guessing Janine also had some

Lois G. Lerner

Director of Exempt Organizations

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

From: Flax Nikole C

Sent: Wednesday, May 01, 2013 12:16 PM

To: Lerner Lois G; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: RE: Thanks for Your Support!

I thought it went well. Did anyone take good notes that we can type up for Steve? We will also set up some time to talk him through the discussion before his hearing.

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

From: Lerner Lois G

Sent: Wednesday, May 01, 2013 10:26 AM

To: Flax Nikole C; Cook Janine; Marks Nancy J; Kindell Judith E; Brown Susan D; Barre Catherine M; Sinno Suzanne

Subject: Thanks for Your Support!

Yesterday's marathon went well thanks to "the village." Glad to have all of you as part of that village.

Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

From: Cook Janine <Janine.Cook@irscounsel.treas.gov>
Sent: Monday, May 13, 2013 9:55 AM
To: Marks Nancy J
Subject: RE: Thanks for Your Support!

getting scanned now.

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

From: Cook Janine
Sent: Monday, May 13, 2013 6:49 AM
To: Marks Nancy J
Subject: Re: Thanks for Your Support!

Yes, will scan and send today

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

From: Marks Nancy J [mailto:Nancy.J.Marks@irs.gov]
Sent: Sunday, May 12, 2013 10:57 AM
To: Cook Janine
Subject: FW: Thanks for Your Support!

Could I get your fourteen pages worth? Would be helpful in prep for a hill meeting on a different but not unrelated issue that I will probably have to do tomorrow. Thanks

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

From: Kindell Judith E
Sent: Wednesday, May 01, 2013 4:29 PM
To: Cook Janine; Lerner Lois G; Flax Nikole C; Marks Nancy J; Brown Susan D; Barre Catherine M; Sinno Suzanne
Cc: Park Nalee; Paz Holly O; Megosh Andy; Downing Nanette M
Subject: RE: Thanks for Your Support!

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Subject: Thanks for Your Support!

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Lois G. Lerner----- Sent from my BlackBerry Wireless Handheld

(b)(7)(A); (b)(6); (b)(7)(C)

(b)(7)(A); (b)(6); (b)(7)(C)

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From: Keith Frank
Sent: Friday, February 17, 2012 11:04 AM
To: Williams Floyd L; Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L
Cc: Norton William G Jr; Landes Scott S; Lemons Terry L; Eldridge Michelle L
Subject: RE: Request for Briefing on section 501(c)(4) Application Process

Rep. Jordan is from Ohio. I would bet that this is the organization he has heard about.

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

From: Williams Floyd L

Sent: Friday, February 17, 2012 11:06 AM

To: Miller Steven T; Davis Jonathan M (Wash DC); Flax Nikole C; Grant Joseph H; Lerner Lois G; Urban Joseph J; Fish David L

Cc: Keith Frank; Norton William G Jr; Landes Scott S

Subject: Request for Briefing on section 501(c)(4) Application Process

I just received a call from Kristina Moore, Senior Counsel to House Committee on Oversight and Government Reform. She wants a briefing on the section 501(c)(4) determination process. This request is prompted by a concern that was brought to the attention of Rep. Jim Jordan, who is Chair of the Subcommittee on Regulatory Affairs, Stimulus, and Government Spending. The specific concern involved an

(b)(3)/6103

Kristina would like to understand why this should take so long and wants to know more, in general, about the determination process.

I want to be as responsive as possible here and would like to be able to get back to her next week. I think Lois and her team are probably the key people here. Can I get some times to offer her a briefing next week?

From: Lemons Terry L
Sent: Friday, May 10, 2013 10:25 AM
To: Vozne Jennifer L; Flax Nikole C; Miller Steven T; Eldridge Michelle L; Barre Catherine M
Subject: RE: c4s

Edits in red below. This work?

IRS Statement:

[REDACTED]

(b)(5)/DP

[REDACTED]

From: Vozne Jennifer L
Sent: Friday, May 10, 2013 11:16 AM
To: Flax Nikole C; Miller Steven T; Lemons Terry L; Eldridge Michelle L; Barre Catherine M
Subject: Re: c4s

I do think we should tailor a bit in light of the tone. I like Nikole's suggestion.

From: Flax Nikole C
Sent: Friday, May 10, 2013 11:14 AM Eastern Standard Time
To: Miller Steven T; Lemons Terry L; Vozne Jennifer L; Eldridge Michelle L; Barre Catherine M
Subject: RE: c4s

Given the tone – should we add that [REDACTED] (b)(3)/6103 ? And that the [REDACTED]
[REDACTED] (b)(5)/DP ?

From: Miller Steven T
Sent: Friday, May 10, 2013 11:06 AM
To: Lemons Terry L; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Barre Catherine M
Subject: Re: c4s

I am good

Sent using BlackBerry

From: Lemons Terry L
Sent: Friday, May 10, 2013 11:01 AM Eastern Standard Time

To: Miller Steven T; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Barre Catherine M

Subject: c4s

AP story just hit a few minutes ago. Multiple inquiries. CBS and Fox among those. Any objections to sharing the top -line statement?

IRS Statement:

[REDACTED]

(b)(5)/DP

[REDACTED]

IRS apologizes for targeting conservative groups

AP By STEPHEN OHLEMACHER | Associated Press – 13 mins ago

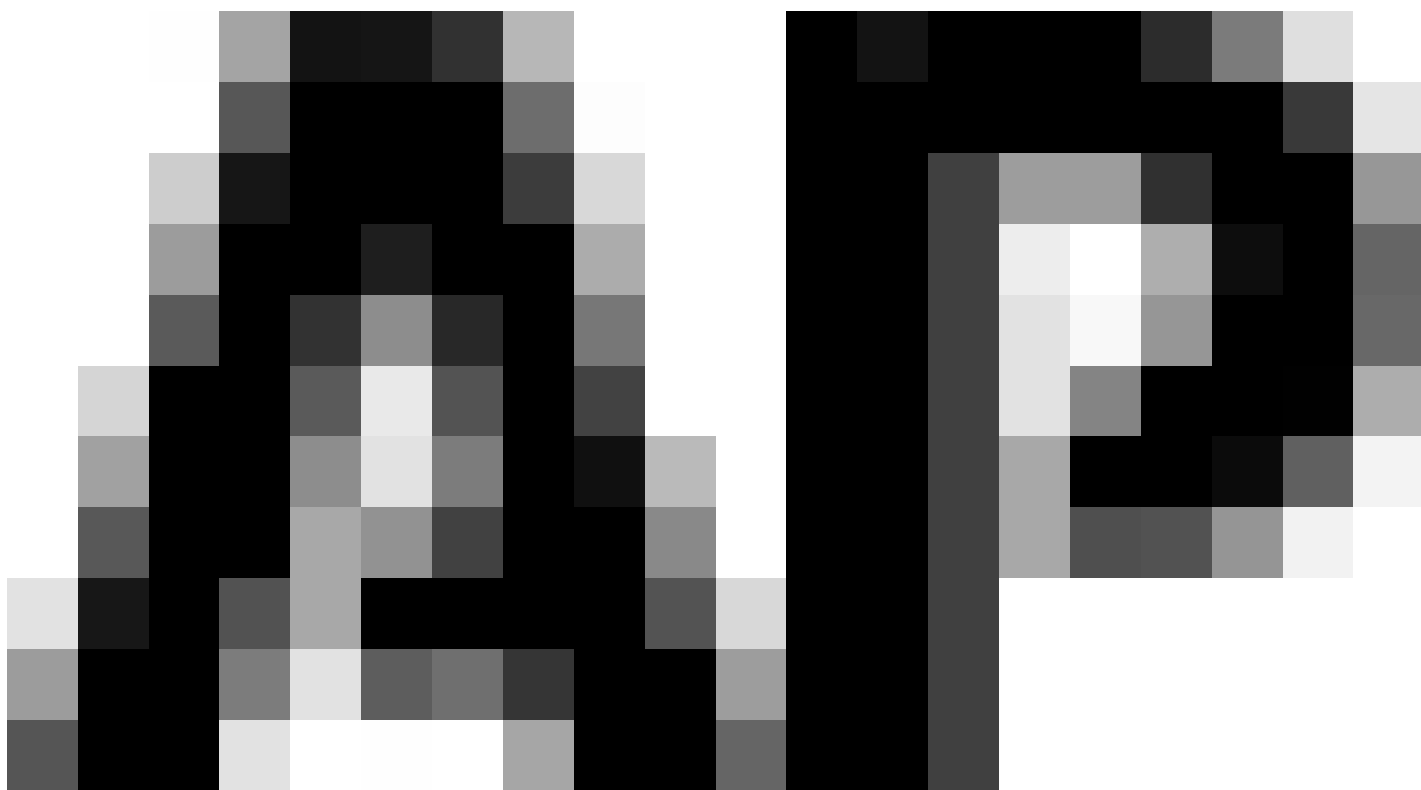
WASHINGTON (AP) — The [Internal Revenue Service](#) is apologizing for inappropriately [flagging conservative political groups](#) for additional reviews during the 2012 election to see if they were violating their [tax-exempt status](#).

[Lois Lerner](#), who heads the IRS unit that oversees [tax-exempt groups](#), said organizations that included the words "tea party" or "patriot" in their applications for tax -exempt status were singled out for additional reviews.

Lerner said the practice, initiated by low -level workers in Cincinnati, was wrong and she apologized while speaking at a conference in Washington.

Many conservative groups complained during the election that they were being harassed by the IRS. They said the agency asked them an inordinate number of questions to justify their tax -exempt status.

Certain tax-exempt charitable groups can conduct political activities but it cannot be their primary activity.



From: Lemons Terry L
Sent: Friday, May 10, 2013 10:23 PM
To: Miller Steven T; Tucker Beth; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Barre Catherine M
Subject: Times

Fyi, appearing on Page A11 of the Times in the morning.

Sent from my BlackBerry Wireless Handheld

From: Terry (b)(6); (b)(7)... Lemons [mailto:(b)(6); (b)(7)(C)]
Sent: Friday, May 10, 2013 11:20 PM Eastern Standard Time
To: Lemons Terry L
Subject: Times

I.R.S. Apologizes to Tea Party Groups Over Audits of Applications for Tax Exemption

By [JONATHAN WEISMAN](#)

Published: May 10, 2013

WASHINGTON — The Internal Revenue Service apologized to Tea Party groups and other conservative organizations on Friday for what it now says were overzealous audits of their applications for tax -exempt status.

Lois Lerner, the director of the I.R.S. division that oversees tax -exempt groups, acknowledged that the agency had singled out nonprofit applicants with the terms “Tea Party” or “patriots” in their titles in an effort to respond to a surge in applications for tax-exempt status between 2010 and 2012.

She insisted that the move was not driven by politics, but she added, “We made some mistakes; some people didn’t use good judgment.”

“For that we’re apologetic,” she told reporters on a conference call.

Republicans seized on the acknowledgment, demanding more information and adding it to a growing list of steps by the Obama administration that they say prove political interference, from allegations of hiding the terrorist origins of the attack in Benghazi, Libya, to the demand for disclosure of donors to conservative “super PACs.”

Senator Mitch McConnell of Kentucky, the Republican leader, called for “a transparent, governmentwide review aimed at assuring the American people that these thuggish practices are not under way at the I.R.S. or elsewhere in the administration against anyone, regardless of their political views.”

The apology and the ensuing reaction could be a turning point for the I.R.S., which has been caught between Congressional Democrats pressing the agency to more aggressively protect tax-exempt status from overtly political groups and [conservative groups claiming harassment](#).

Campaign finance watchdogs have said for years that 501(c)(4) tax exemptions are widely abused by conservative and liberal groups whose primary purpose is to influence elections, not to promote “social welfare,” as tax-exempt status mandates.

But Ms. Lerner said the examinations of the Tea Party groups were not a response to such pressure. She portrayed it more as a bureaucratic mix-up. Between 2010 and 2012, applications for 501(c)(4) tax exemptions nearly doubled, to more than 2,400. As the agency has done in the past, it centralized the processing of the surge at its Cincinnati office, where about 300 were flagged for further examination.

Staff members at that office singled out the terms “Tea Party” and “patriot,” she said, but not out of political bias; it was “just their shortcut.” Only about a quarter of the 300 cases flagged for scrutiny were Tea Party-related, she said, but she called the singling out of those groups “absolutely inappropriate and not the way we should do things.”

Ms. Lerner indicated that no disciplinary action had been taken against the low-level employees she said were responsible; when pressed, she said she could not comment on personnel matters. But, she said, policy changes had been made to ensure that similar episodes would not occur. For instance, high-level I.R.S. officials must now approve efforts to lump similar applications or audits into one centralized location for processing.

To the conservative groups and their defenders, the acknowledgment confirmed their worst accusations. In early 2012, numerous Tea Party-affiliated groups came forward to charge the I.R.S. with harassment for demanding that they fill out extensive — and intrusive — questionnaires before their tax-exempt applications could be approved. The questionnaires demanded detailed membership lists, donors, contact information, logs of activities and other information about the groups’ intentions.

Many of those groups found representation with the conservative [American Center for Law and Justice](#) and its outspoken lead lawyer, Jay Sekulow, who accused the I.R.S. of “McCarthyism” intended to stifle conservative speech.

The center called the apology “a significant victory for free speech.”

But the leader of one of the groups that cried foul, the [Kentucky 9/12 Project](#), said he had received no such admission from the agency. Eric Wilson, the group’s director, said he never complied with the I.R.S. questionnaire.

Nonetheless, the I.R.S. sent the group a one-paragraph letter on April 1 granting nonprofit status, with no explanation for the protracted process and no regrets, he said.

Organizations that had been pressing for more aggressive enforcement of tax -exemption laws reacted with alarm. Lisa Gilbert, the director of Public Citizen's Congress Watch division, said the I.R.S. should not be targeting any particular political ideology. But, she said, questioning applicants for tax exemption to determine whether they were primarily political was entirely proper and should be more widely pursued.

"We don't think it's inappropriate to ask questions," she said. "Tax -exempt groups are abusing their tax status to pursue political agendas."

Under current law, tax-exempt 501(c)(4) organizations are supposed to be "primarily" engaged in social welfare work. In practice, groups like the conservative Crossroads GPS and the liberal Priorities USA appear to spend virtually all their efforts trying to sway elections.

Last year, Senate Democrats began pressing the I.R.S. to more aggressively target such groups. As the Tea Party questionnaires surfaced, the agency released a statement saying, "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 any unrelated business activities or intervention in political campaigns on behalf of or in opposition to any candidate for public office."

But pressure will now come from the other direction. Representative Dave Camp of Michigan, the House Ways and Means Committee chairman, announced Friday that he would hold hearings on the matter. Representative Eric Cantor of Virginia, the House majority leader, promised an investigation.

Senator Orrin G. Hatch of Utah, the ranking Republican on the Senate Finance Committee, rejected the apology as insufficient, demanding "ironclad guarantees from the I.R.S. that it will adopt significant protocols to ensure this kind of harassment of groups that have a constitutional right to express their own views never happens again."

From: Lerner Lois G
Sent: Friday, May 27, 2011 4:44 PM
To: Seto Michael C; Paz Holly O
Cc: Letourneau Diane L; Grant Joseph H
Subject: RE: C 4

We need to talk on Tuesday because I am still confused. We have a 10:00 Tuesday on Pre-AICPA--let's do this either at the beginning or end. Thanks

Lois G. Lerner

Director, Exempt Organizations

From: Seto Michael C
Sent: Friday, May 27, 2011 5:31 PM
To: Paz Holly O; Lerner Lois G
Cc: Letourneau Diane L; Grant Joseph H
Subject: RE: C 4

(b)(3)/6103

Sorry for the confusion. If you need more information on these two items, please let me know.

Mike

From: Paz Holly O
Sent: Friday, May 27, 2011 1:07 PM
To: Lerner Lois G
Cc: Letourneau Diane L; Seto Michael C; Grant Joseph H
Subject: RE: C 4

Yes, there is. We have taken a few of the cases here to serve as templates for resolution of the ones in Cincinnati. Currently, we have one c3 and one c4 here. Chip and others met with Judy last month to discuss these cases and she recommended some additional development. We are in the process of doing that right now. We plan to send the cases to Counsel before issuance. Chip is coordinating with Determs on the development of their applications but they know they are not to issue any decisions before our position on the cases here is approved. We were envisioning briefing you on the two cases we have here after Counsel has weighed in. Is that OK with you?

From: Lerner Lois G
Sent: Friday, May 27, 2011 12:09 PM
To: Paz Holly O

Cc: Letourneau Diane L; Seto Michael C; Grant Joseph H

Subject: RE: C 4

OK, but Cindy tells me there is a whole passel of "tea Party related" cases being working in Cincy that Chip is overseeing/coordinating? I need to be briefed on that please

Lois G. Lerner

Director, Exempt Organizations

From: Paz Holly O

Sent: Friday, May 27, 2011 11:47 AM

To: Lerner Lois G

Cc: Letourneau Diane L; Seto Michael C

Subject: RE: C 4

Lois,

(b)(3)/6103

Holly

From: Lerner Lois G

Sent: Thursday, May 26, 2011 5:45 PM

To: Downing Nanette M; Grant Joseph H

Cc: Urban Joseph J; Fish David L; Paz Holly O

Subject: RE: C 4

(b)(3)/6103

Lois G. Lerner

Director, Exempt Organizations

From: Downing Nanette M

Sent: Thursday, May 26, 2011 3:55 PM

To: Lerner Lois G; Grant Joseph H

Cc: Urban Joseph J; Fish David L

Subject: C 4

We have received 2 referrals and tracking sheets for both are attached. One was [REDACTED] and the other

(b)(3)/6103

Nan

From: Lerner Lois G
Sent: Friday, May 27, 2011 5:05 PM
To: Seto Michael C; Paz Holly O
Cc: Thomas Cindy M
Subject: FW: Advocacy org enclosure

Lois G. Lerner
Director, Exempt Organizations

From: Lerner Lois G
Sent: Thursday, May 26, 2011 7:02 PM
To: Williams Grant; Lemons Terry L
Cc: Kindell Judith E
Subject: RE: Advocacy org enclosure

Got it--thanks

Lois G. Lerner
Director, Exempt Organizations

From: Williams Grant
Sent: Wednesday, May 25, 2011 3:31 PM
To: Lerner Lois G; Lemons Terry L
Cc: Kindell Judith E
Subject: RE: Advocacy org enclosure

Sorry, Lois -- the link is still working for me -- I'll try pasting it in here again:

<http://www.bloomberg.com/news/2011-05-19/secret-donors-multiply-in-u-s-with-finances-dwarfing-watergate.html>

If it still doesn't work, I'm thinking you could also find the story via Google if you searched for "secret donors" and "charles babcock" and bloomberg.

Thanks,

Grant

Grant Williams

IRS National Media Relations
(202) 622-4000

From: Lerner Lois G
Sent: Wednesday, May 25, 2011 3:15 PM
To: Williams Grant; Lemons Terry L
Cc: Kindell Judith E
Subject: RE: Advocacy org enclosure

Thanks--I tried to get to the link you sent, but it just said error page??

Lois G. Lerner

Director, Exempt Organizations

From: Williams Grant
Sent: Wednesday, May 25, 2011 3:13 PM
To: Lerner Lois G; Lemons Terry L
Cc: Zarin Roberta B; Grant Joseph H; Flax Nikole C; Miller Steven T; Keith Frank; Lipold John A; Patterson Dean J; Kindell Judith E
Subject: RE: Advocacy org enclosure

Thank you very much, Lois, for all you said in your e-mail message. We're getting the document you sent us off to the Bloomberg folks. The May 19 Bloomberg story does shed some light on what Mr. Babcock and his colleagues have been and continue to be interested in, including how organizations handle the "no" box on applications for exemptions.

Grant

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

From: Lerner Lois G
Sent: Wednesday, May 25, 2011 2:50 PM
To: Williams Grant; Lemons Terry L
Cc: Zarin Roberta B; Grant Joseph H; Flax Nikole C; Miller Steven T; Keith Frank; Lipold John A; Patterson Dean J; Kindell Judith E
Subject: RE: Advocacy org enclosure

Sorry--I wasn't intending to tell him this was an enclosure in the letter --my point was that the language in the doc I sent you has been cleared at a high level in IRS. This wasn't the letter--this was an enclosure we developed for circumstances as this one, where we wanted to have a ready response doc. As to his questions 2 and 3 regarding penalties for not answering the question on the 1024 correctly, (b)(5) DP

(b)(5) DP

Once he's

read the stuff, if he still wants to talk, let us know and we can set it up --I think it's me with Judy

Lois G. Lerner

Director, Exempt Organizations

From: Williams Grant

Sent: Wednesday, May 25, 2011 2:41 PM

To: Lerner Lois G; Lemons Terry L

Cc: Zarin Roberta B; Grant Joseph H; Flax Nikole C; Miller Steven T; Keith Frank; Lipold John A; Patterson Dea n J

Subject: RE: Advocacy org enclosure

Just FYI -- last month, in response to questions from Bloomberg about the status of the Baucus letter, we told Bloomberg that the IRS had no immediate comment and that, for further information, Bloomberg should contact the Senator's office.

Bloomberg (including reporter Charles Babcock) eventually wrote the following story on May 19: "Secret Donors Multiply in U.S. Election Spending": <http://www.bloomberg.com/news/2011-05-19/secret-donors-multiply-in-u-s-with-finances-dwarfing-watergate.html>

The story uses part of our response along with a quote from an unnamed Senate Finance Committee aide that the Baucus staff and the IRS were "still talking."

Grant

From: Lerner Lois G

Sent: Wednesday, May 25, 2011 2:03 PM

To: Lemons Terry L

Cc: Zarin Roberta B; Grant Joseph H; Flax Nikole C; Miller Steven T; Keith Frank; Lipold John A; Williams Grant

Subject: FW: Advocacy org enclosure

OK--Attached is a tutorial, which is pretty much what we put in the Baucus letter earlier this year so it has been scrubbed. It is a good start on educating him on his issues. More to come.

Lois G. Lerner

Director, Exempt Organizations

From: Zarin Roberta B
Sent: Tuesday, July 19, 2011 4:37 PM
To: Lerner Lois G; Urban Joseph J; Grant Joseph H; Medina Moises C; Marks Nancy J; Fish David L; Kindell Judith E; Light Sharon P; Paz Holly O
Cc: Letourneau Diane L; Egeth Hillary B; Adam Debbie A
Subject: FW: I.R.S. Denies 3 Political Advocacy Groups Tax-Exempt Status (NY Times)

fyi--interesting how she refers to Strekface.

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Smith Philip A
Sent: Tuesday, July 19, 2011 5:32 PM
To: White Shirley A; Crom Richard E
Cc: Zarin Roberta B
Subject: I.R.S. Denies 3 Political Advocacy Groups Tax -Exempt Status (NY Times)

I.R.S. Denies 3 Political Advocacy Groups Tax -Exempt Status

By [STEPHANIE STROM](#)

Published: July 19, 2011

Three nonprofit advocacy groups that recruited and trained potential political candidates in the last several years have been denied tax exemption by the [Internal Revenue Service](#).

Copies of the letters informing the groups of the decisions were heavily redacted by the I.R.S. when it released them last week, so it is impossible to know the names of the organizations involved, or which political party with which they might have been affiliated.

“You are not operated primarily to promote social welfare because your activities are primarily for the benefit of a political party and a private group of individuals, rather than the community as a whole,” the I.R.S. wrote in the letters. “Accordingly, you do not qualify for exemption.”

Word of the decisions has been circulating this week, especially among lawyers who advise these types of nonprofits because they have become more prominent in political elections. The organizations had been created as a type of nonprofit — known as a 501(c)4 for the section of the tax code that governs it. “I don’t know that you can read a message into these decisions, but the fact that they’re landing now, just as interest in these types of organizations is heating up again, is causing them to get a lot more attention than they normally would,” said Marcus S. Owens, a lawyer who used to run the division of the I.R.S. that oversees all nonprofit groups.

In recent months, the I.R.S. has undertaken actions that suggested the agency had stepped up its scrutiny of these groups. The agency recently backed off inquiries into whether five major donors to such groups had paid

gift taxes — a rule rarely if ever enforced; the I.R.S. said it needed to develop a broader policy before taking any individual actions.

Billionaires like the Koch brothers and political strategists like Karl Rove are best known on the Republican side for being affiliated with groups weighing in on recent elections, like the 2010 midterm cycle. Democrats have also begun forming similar groups to counter those heavyweights. Al From, founder of the recently folded Democratic Leadership Council, an advocacy group once led by Bill Clinton, said state-affiliated groups of national organizations like the D.L.C. had proved troublesome in the past. “In the early 1990s, a lot of people wanted to organize chapters and we let them do that,” Mr. From said. “But it caused so many problems that we severed all ties to them not long after that.”

In 2002, the I.R.S. moved to revoke the council’s tax exemption for three years — 1997, 1998 and 1999 — but the United States District Court for the District of Columbia ruled that the revocation was improper and the organization continued. It closed in February.

Some experts speculated that the groups that received the recent I.R.S. letters — two founded in 2006 and one in 2007 — might have applied for tax exemption with an eventual court challenge in mind.

“Any lawyer would have told them they weren’t going to get exemption based on the facts we can see in these letters,” said Paul Streckfus, a former I.R.S. official who now publishes an influential newsletter about legal and tax developments in the tax-exempt world. “I think it’s the beginnings of a test case.”

Others said the I.R.S. actions may be more routine. In 2003, for example, it denied exemption to an advocacy group working to train women affiliated with a particular party for political leadership, even though the group said its work was nonpartisan. “I think the I.R.S. may have been just relying on past decisions it has made in similar cases when it issued these denial letters,” said George E. Constantine, a lawyer who works with nonprofits.

Philip A. Smith
Internal Revenue Service
Customer Education & Outreach
Exempt Organizations
philip.a.smith@irs.gov
(O) 202-283-9763

From: Lerner Lois G
Sent: Friday, July 22, 2011 5:52 PM
To: Paz Holly O
Cc: Downing Nanette M
Subject: RE: New York Times -- 501(c)(4)s

(b)(3)/6103

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, July 21, 2011 10:05 AM
To: Lerner Lois G
Cc: Downing Nanette M
Subject: RE: New York Times -- 501(c)(4)s

(b)(3)/6103

From: Lerner Lois G
Sent: Thursday, July 21, 2011 9:59 AM
To: Downing Nanette M
Cc: Paz Holly O
Subject: FW: New York Times -- 501(c)(4)s
Importance: High

(b)(3)/6103

Lois G. Lerner

Director of Exempt Organizations

From: Burke Anthony
Sent: Thursday, July 21, 2011 6:45 AM
To: Eldridge Michelle L
Cc: Lemons Terry L; Keith Frank; Zarin Roberta B; Lerner Lois G; Williams Grant; Dinh Leuyen D
Subject: New York Times -- 501(c)(4)s

Michelle, here is today's New York Times article about the 501(c)(4) organizations denied exempt status. The article suggests that organizations applying for exempt status may receive disparate treatment based on the location of the IRS office reviewing the application.

The New York Times

July 20, 2011

3 Groups Denied Break By I.R.S. Are Name d

By [STEPHANIE STROM](#)

Three nonprofit advocacy groups that were denied tax exemption by the [Internal Revenue Service](#) were all units of [Emerge America](#), an organization devoted to cultivating female political leaders for local, state and federal government.

The I.R.S. denied tax exemption to the groups — Emerge Nevada, Emerge Maine and Emerge Massachusetts — because, the agency wrote in denial letters, they were set up specifically to cultivate Democratic candidates. Their Web sites ask for evidence that participants in their training programs are Democrats.

News of the I.R.S. decision, which surfaced in [heavily redacted denial letters](#) to the groups that were posted to the agency's Web site last Thursday, raised concerns among advocacy groups, known as 501(c)(4) organizations after the section of the tax code that governs them, at large.

Crossroads GPS, a conservative advocacy organization with ties to Karl Rove, the Republican strategist, sent an e -mail to supporters on Tuesday, assuring them that it was not one of the three groups denied exemption.

Karen Middleton, president of Emerge America, acknowledged on Wednesday that the three state organizations had been denied an exemption. She said the groups were in the process of converting into 527 organizations, which are also tax - exempt but disclose their donors, unlike 501(c)(4) groups.

"We're all small organizations," Ms. Middleton said. "We train about 25 Democratic women each year in each state where we work, and we don't engage in any work that involved candidates or campaigns."

The I.R.S. has approved five other state Emerge organization s — in California, Arizona, New Mexico, Wisconsin and Kentucky — as advocacy groups.

"It's just bizarre," said Kimberly Ellis, executive director of Emerge California. "Nevada has been around and waiting for approval for the last five years, and in the interim, Oregon and Kentucky are established and file for their approval — and Kentucky gets it but Nevada, Maine and Massachusetts don't."

Michelle Eldridge, an I.R.S. spokeswoman, said the agency could not comment on individual taxpayers.

Paul Streckfus, a former I.R.S. official, said such inconsistency was not unusual. In part, it is because the office that handles approval of tax-exempt groups, he said, receives hundreds if not thousands of applications a day at its office in Cincinnati. Some of the applications are then sent for processing at field offices around the country, and, in some cases, to headquarters in Washington.

"My guess is that the one that recently got approved went to a different office than the ones that were denied, w hich seem to have been handled in Washington," Mr. Streckfus said.

Ms. Ellis said Kentucky's application was processed in an I.R.S. office in the Western United States. She did not know where the still-pending application of Emerge Oregon ended up.

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 10:22 AM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O
Cc: Eldridge Michelle L; Cressman William M; Daly Richard M; Hall Eric; Cressman William M
Subject: FW: (b)(3)/... organization meeting with Rep. Jordan today
Attachments: Media contact regarding Advocacy case (22.2 KB)

Importance: High

see the email request below and the attached email traffic from late last week. Can someone in EO help please?

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Hall Eric
Sent: Tuesday, February 21, 2012 10:53 AM
To: Zarin Roberta B
Subject: FW: (b)(3)/... organization meeting with Rep. Jordan today
Importance: High

Bobbi - Congressman Jim Jordan will be addressing a group this evening that is wondering what has become of its application for tax exempt status. The group appears to be politically active and vocal. See below. Is there any chance of getting some talking points or comments before close -of-business, so that we can prep Congressman Jordan? We do not have a disclosure authorization, so any talking points would have to be generic, focused on the bigger picture outlined below.

Let me know. Thanks,

*Eric Hall
Internal Revenue Service
Legislative Affairs
(202) 622-4057*

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 10:24 AM
To: Hall Eric; Esrig Bonnie A
Subject: (b)(3)/... organization meeting with Rep. Jordan today

Help! An organization in (b)(3)/61...

(b)(3)/6103; (b)(5) DP

? Is there anything else we can say? Thanks for your help and advice. Jackie N.

From: Jenkins Jennifer A

Sent: Tuesday, February 21, 2012 9:32 AM

To: *Media Relations

Cc: Kerns Chris D; Cressman William M; Nielson Jacqueline R

Subject: Clip: [REDACTED] (b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

Image not available for this document, ID: 0.7.452.8548.1

From: Paz Holly O
Sent: Tuesday, February 21, 2012 1:32 PM
To: Zarin Roberta B; Lerner Lois G
Subject: RE: (b)(3)... organization meeting with Rep. Jordan today

Importance: High

[Here is my stab at talking points based on our discussion.](#)

Upon receipt, exemption applications accompanied by the required user fee are initially separated into four categories: (1) those that can be approved immediately based on the information submitted, (2) those that need minor additional information to be resolved, (3) those that are submitted on obsolete forms or do not include the items specified on the Procedural Checklist (at http://www.irs.gov/pub/irs-tege/fl1023_procedural_checklist_0606.pdf), and (4) those that require development.

If an application falls within one of the first three categories, the applicant will receive either its determination letter or a request for additional information, via phone, fax, or letter, within approximately 90 days of the date the application was submitted.

Applications falling within the fourth category must be assigned to an EO agent for further development. Due to staffing constraints, applications falling into this category cannot immediately be assigned; these applications experience some "wait time" before assignment to an agent. The number of applications awaiting assignment to EO agents has increased since spring 2011 due to the influx of applications from organizations seeking to have their exempt status reinstated after being automatically revoked pursuant to the Pension Protection Act of 2006 for failure to file annual information returns/notices for three consecutive years.

Once a case is assigned to an EO agent, the agent must consider the type of organization and the rules applicable to that type of organization. The Internal Revenue Code and accompanying Treasury Regulations contain detailed requirements for qualification for exemption as various types of entities. EO agents often have to ask the applicant organizations questions to determine whether they satisfy these requirements.

For example, under the Code, organizations exempt under section 501(c)(3) (what we commonly refer to as charities) are absolutely forbidden from intervening in political campaigns. In contrast, organizations exempt under sections 501(c)(4), 501(c)(5) and 501(c)(6) can intervene in political campaigns within limits. It is thus important that EO agents look at the materials used and activities conducted by organizations seeking exemption under sections 501(c)(4), 501(c)(5) and 501(c)(6) to make sure campaign intervention is not the organization's primary purpose and will be within the legal limits. This review often involves a back and forth question and answer process between the IRS and the applicant.

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 11:22 AM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O
Cc: Eldridge Michelle L; Cressman William M; Daly Richard M; Hall Eric; Cressman William M
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

[see the email request below and the attached email traffic from late last week. Can someone in EO help please?](#)

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Hall Eric
Sent: Tuesday, February 21, 2012 10:53 AM
To: Zarin Roberta B
Subject: FW: (b)(3...) organization meeting with Rep. Jordan today
Importance: High

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Internal Revenue Service
Legislative Affairs
(202) 622-4057*

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 10:24 AM
To: Hall Eric; Esrig Bonnie A
Subject: (b)(3...) organization meeting with Rep. Jordan today

Help! An organization in [REDACTED]

[REDACTED]
(b)(3)/6103 & (b)(5)/DP
[REDACTED]

[REDACTED] ? Is there anything else we can say? Thanks for your help and advice. Jackie N.

From: Jenkins Jennifer A
Sent: Tuesday, February 21, 2012 9:32 AM
To: *Media Relations
Cc: Kerns Chris D; Cressman William M; Nielson Jacqueline R
Subject: Clip: [REDACTED] (b)(3)/6103

[REDACTED]
(b)(3)/6103

[REDACTED]
b(3)/6103

(b)(3)/6103

(b)(3)/6103

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 4:41 PM
To: Nielson Jacqueline R; Thomas Cindy M; Hall Eric; Cressman William M; Eldridge Michelle L
Cc: Williams Floyd L; Lerner Lois G; Paz Holly O; Grant Joseph H; Medina Moises C
Subject: RE: (b)(3)... organization meeting with Rep. Jordan today

Lois and Nikole Flax will be meeting with the Congressman's office on Friday. They will handle all communications on this issue. If you get any other inquiries, please send them to Lois, Holly Paz and me.

Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

From: Nielson Jacqueline R
Sent: Tuesday, February 21, 2012 3:04 PM
To: Zarin Roberta B; Thomas Cindy M
Cc: Hall Eric
Subject: FW: (b)(3)... organization meeting with Rep. Jordan today
Importance: High

I do have the privacy release from the (b)(3)/6103 EIN (b)(3)/6103 re: their Form (b)(5)/... They have authorized release of information to Congressman Jordan. In the release they say (b)(3)/6103. If we could also give him just a couple of talking points, that might be helpful, e.g. we review each application for completeness, etc. Thanks! Jackie N., Governmental Liaison, 614-280-8739

From: Zarin Roberta B
Sent: Tuesday, February 21, 2012 11:22 AM
To: Lerner Lois G; Light Sharon P; Kindell Judith E; Paz Holly O
Cc: Eldridge Michelle L; Cressman William M; Daly Richard M; Hall Eric; Cressman William M
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Bobby Zarin, Director
Communications and Liaison
Tax Exempt and Government Entities
202-283-8868

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Subject: (b)(3...) organization meeting with Rep. Jordan today

Help! An organization in (b)(3)/6103

(b)(3)/6103

Thanks for your help and advice. Jackie N.

From: Jenkins Jennifer A
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To: *Media Relations
Cc: Kerns Chris D; Cressman William M; Nielson Jacqueline R
Subject: Clip: (b)(3)/6103

(b)(3)/6103

(b)(3)/6103

(b)(3)/6103

From: Kindell Judith E
Sent: Thursday, February 23, 2012 5:17 PM
To: Lerner Lois G
Cc: Paz Holly O; Fish David L; Megosh Andy; Urban Joseph J
Subject: c4 advocacy talking points
Attachments: Development Process for (c)(4) Orgs (2) (2).doc; Examples 501c4.doc

Attached are the talking points for tomorrow's meeting. I also attached the examples of c4 rulings as a separate doc.

- Section 501(c)(4) organizations
 - not organized or operated for profit and
 - operated exclusively for the promotion of social welfare.
- Regs provide “operated exclusively” if “primarily engaged” in promoting the common good and general welfare of the people of the community – an *activities test*.
- The activities of the organization must be those that benefit the broad community, rather than merely benefit the organization’s membership or other select individuals or organizations.
- Intervention in a political campaign is specifically identified as not being for a social welfare purpose.
- Unlike section 501(c)(3) orgs, section 501(c)(4) orgs not required to notify IRS to be treated as tax-exempt
 - If they meet the statutory and regulatory requirements they will be treated as tax-exempt
 - Organizations may “self-declare”
 - Organizations may request an IRS determination in order to have reliance on that determination regarding tax-exempt status.

Background on Determinations Process

Upon receipt, exemption applications accompanied by the required user fee are initially separated into four categories: (1) those that can be approved immediately based on the information submitted, (2) those that need minor additional information to be resolved, (3) those that are submitted on obsolete forms or do not include the items specified on the Procedural Checklist (at http://www.irs.gov/pub/irs-tege/f1023_procedural_checklist_0606.pdf), and (4) those that require development.

If an application falls within one of the first three categories, the applicant will receive either its determination letter or a request for additional information, via phone, fax, or letter, within approximately 90 days of the date the application was submitted.

Applications falling within the fourth category must be assigned to an EO agent for further development. Due to staffing levels, applications falling into this category cannot always immediately be assigned. These applications can experience some “wait time” before assignment to an agent. The number of applications awaiting assignment to EO agents has increased due, in part, to the influx of applications from large organizations seeking to have their exempt status retroactively reinstated after being automatically revoked pursuant to the Pension Protection Act of 2006 for failure to file annual information returns/notices for three consecutive years.

Development Process for (c)(4) Organizations

Exemption from federal income tax is a considerable benefit, with commensurate cost to the federal fisc. Organizations applying for recognition of exemption have the burden of demonstrating that they meet all of the applicable requirements. Courts often phrase this requirement as tax-exemption is not a right, but rather a matter of legislative grace that must be strictly construed. See, e.g. *Mutual Aid Ass'n of Church of the Brethren v. U.S.*, 759 F.2d 792 (Kan. 1985).

If an organization does not provide sufficient detail in its application, the IRS will correspond with the organization to secure enough facts to make a determination. Ordinarily, applicants who receive a request for additional information are given two weeks to respond. However, if they need additional time, extensions of the deadline are readily granted.

In order to qualify under section 501(c)(4), an organization must be primarily engaged in *activities* that further its exempt purpose. Thus, an organization cannot merely state its goals, it must also describe its activities in sufficient detail to demonstrate that it is primarily engaged in activities that further exempt purposes and are not furthering non-exempt purposes.

Organizations that intend to further "social welfare" in general, or conduct educational activities outside the context of a traditional school, may often receive requests for additional information because these are broad concepts and it is easy for the organization to speak in generalities that do not provide the specific facts needed to make a determination. This is particularly true for organizations engaging in advocacy activities. While these activities may be educational or constitute the promotion of social welfare, in order to do so they must include a full and fair exposition of the facts surrounding the issue and not include inflammatory or derogatory language. In addition, organizations would need to demonstrate that their primary activities are not furthering private interests and do not constitute support or opposition of candidates for public office.

When making these determinations, the IRS's decision must be based solely on the information in the application file, which consists of documents that have been seen by both the applicant and the IRS in the application process. Thus, if an organization has a website or conducts social media activities, the IRS will often ask for a copy of those materials so that they can be included in the application file. Because these types of activities often change frequently, it is important for the file to have a hard copy so that all parties can reference the same content.

If some time has passed since an organization's application was filed, it is also common for the IRS to request an updated description of activities. In order to help the organization provide the facts and details needed, we will often ask basic who/what/when/where/why questions.

Providing benefits to a select group of people, such as members of the organization, does not further 501(c)(4) purposes. The organization must benefit the community as a whole. Therefore, if an organization has members, the IRS will often ask questions to determine whether membership is essentially open to every one in the community or is restrictive. Knowing who the organization's members are helps to make this determination.

Public seminars, workshops or speeches are significant parts of an organization's activities, therefore it is important for the IRS to understand those activities and whether they are furthering exempt purposes. In order to gather all of the relevant facts, rather than requiring an organization to describe everything that transpired at an event the IRS will often simply ask for copies of the materials used in the event and descriptions of the persons conducting the event.

Finally, if an organization plans to conduct election-related activities or attempt to influence legislation, the IRS will typically ask for more information about those activities. Supporting or opposing candidates for public office does not further 501(c)(4) purposes and an organization applying for recognition of 501(c)(4) status should be conducting only a limited amount of this activity. In addition, attempts to influence legislation, depending upon when they are conducted and how they relate to the organization's overall activities, can sometimes resemble candidate support or opposition. In order for the IRS to determine whether these activities further exempt purposes, such as through nonpartisan education, or constitute candidate support or opposition, it must be able to consider all of the relevant facts and circumstances and with therefore often ask additional questions in this area.


Disclosure

Case Timelines

b(3)/6103

(b)(3)/6103

b(3)/6103



(b)(3)/6103

Several examples of good 501(c)(4) activities;

Financial counseling—A nonprofit organization formed to advise, counsel, and assist individuals in solving their financial difficulties by budgeting their income and expenses and effecting an orderly program for the payment of their obligations is entitled to exemption from Federal income tax as a social welfare organization described in IRC 501(c)(4). See Rev. Rul. 65–299, 1965–2 C.B. 165.

Community water supply—A nonprofit organization formed for the purpose of establishing and maintaining a system for storage and distribution of water in order to increase underground water levels of a community is entitled to exemption from tax under IRC 501(c)(4) as an organization operated exclusively for the promotion of social welfare. See Rev Rul. 66–148, 1966–1 C.B. 143.

Rifle range; safe handling of weapons—A nonprofit organization may qualify for exemption from Federal income tax under IRC 501(c)(4) where it provides a community with supervised facilities for rifle, pistol, and shotgun practice and instructions in the safe handling and proper care of weapons. See Rev. Rul. 66 –273, 1966–2 C.B. 222.

Organized sports—An organization that stimulates the interest of youth in the community in organized sports by furnishing virtually free admission to youths and encouraging their attendance at sporting events may qualify under IRC 501(c)(4). See Rev. Rul. 68–118, 1968–1 C.B. 261. See also Rev. Rul. 69–384, 1969–2 C.B. 122, and Rev. Rul. 70–9, 1970–1 C.B. 126

Festival—A nonprofit organization that conducts an annual festival centered around regional customs and traditions may qualify for exemption under IRC 501(c)(4). The organization provides the community with recreation and provides a means for citizens to express their interest in the community's history, customs, and traditions. See Rev. Rul. 68–224, 1968–1 C.B. 262.

Several examples that are not good 501(c)(4) activities:

Mutual benefit societies—Organizations that provide life, sickness, and accident benefits for their members do not qualify under IRC 501(c)(4) because their activities primarily benefit their members. See Rev. Rul. 75–199, 1975–1 C.B. 160, which modified Rev. Rul. 55–495, 1955–2 C.B. 259. See also, N.Y. State Assn. of Real Est. Bds. Group Ins. Fund v. Commissioner, 54 T.C. 1325 (1970). Police and fire relief associations are discussed at IRM 7.25.4.11.

Trade association—In American Women Buyers Club, Inc. v. Commissioner, 238 F.2d 526 (2nd Cir. 1964), the court affirmed denial of exemption to a membership corporation of female ready-to-wear buyers organized to promote the general good and welfare of members in the trade, encourage friendly relations, and give aid to members in distress.

Membership, even within the trade, was restrictive as approximately 15% of the applicants were turned down. The services provided by the club (such as employment facilities, information about sources of supply, lectures, dinners, installations, publications, and sick and death benefits) were all primarily, if not exclusively, for the club membership.

Street restoration for members—In Contracting Plumbers Cooperative Restoration Corp. v. United States, 488 F. 2d 684 (2nd Cir. 1973), cert. denied, 419 U.S. 827, an organization whose purpose was to ensure the efficient repair of "cuts" in city streets which resulted from its members' plumbing activities did not qualify for exemption under IRC 501(c)(4). The Court concluded that there were several factors which evidenced the existence of a substantial nonexempt purpose. The factors included, but were not limited to, the members' substantial business interest in the organization's formation and the fact that each member of the cooperative enjoyed economic benefits precisely to the extent they used and paid for restoration services.

From: Lerner Lois G
Sent: Thursday, February 23, 2012 8:27 PM
To: Paz Holly O
Subject: Re: House Meeting

Thanks

Lois G. Lerner-----

Sent from my BlackBerry Wireless Handheld

From: Paz Holly O
Sent: Thursday, February 23, 2012 08:20 PM
To: Lerner Lois G
Subject: Re: House Meeting

I am getting all the docs together. None of these were screened. All were put in full development. I will give you other numbers you requested in the morning.

Sent from my BlackBerry Wireless Device

From: Lerner Lois G
Sent: Thursday, February 23, 2012 06:45 PM
To: Paz Holly O; Urban Joseph J; Kindell Judith E; Megosh Andy
Subject: House Meeting

Judy has given me talking pints. I know I asked for some court cases and other docs --who is doing those? Joe--bring your code and regs--although we should print out pertinent parts--c4 stuff and disclosure stuff to give to them. holly can I get the % of cases that got through screening/accelerated process? I have a dr appt first thing, but hope to be in by 10.

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, February 05, 2013 2:12 PM
To: Kindell Judith E; Goehausen Hilary
Cc: Paz Holly O
Subject: FW: Follow-Up
Attachments: Updated TIGTA Exception Cases - Post Discussion.xlsx

Please take a look and see if you still believe these should have been included --seems like we may very well be in disagreement big time. That means we will need to start drafting our arguments.

Lois G. Lerner

Director of Exempt Organizations

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, February 05, 2013 1:28 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: Follow-Up

Lois,

As requested, here is a listing of 93 applica tion cases. There is one case that we are working on with Holly (case b(3)6103). This one may or may not stay on the list.

Troy
404-338-7476

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Tuesday, February 05, 2013 11:01 AM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: RE: Follow-Up

Thank you

Lois G. Lerner

Director of Exempt Organizations

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, February 05, 2013 10:50 AM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: Follow-Up

Lois,

That is no problem. I'll ask the team to put together a listing and I'll send it to you and Holly this afternoon.

Troy
404-338-7476

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Tuesday, February 05, 2013 10:33 AM
To: Lerner Lois G; Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: RE: Follow-Up

One more thing--can we get the names of the 90 cases please?

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, February 05, 2013 10:27 AM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: RE: Follow-Up

Thanks Troy--It probably makes sense to see what you put together and react to it rather than continuing the discussion in the abstract. We will begin to put together a reply. As I'm sure you would guess, (b)(5) DP
Keep us apprised of progress on the report.

Lois G. Lerner
Director of Exempt Organizations

From: Paterson Troy D TIGTA [<mailto:Troy.Paterson@tigta.treas.gov>]
Sent: Tuesday, February 05, 2013 7:54 AM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: Follow-Up

Lois,

After the discussion last week, the team went over some cases on Friday afternoon and Monday morning. We then met yesterday afternoon to discuss the cases and our thoughts on moving forward.

(b)(5) DP

(b)(5) DP

As far as moving forward, I began working yesterday morning on a very rough version of the report that I had asked the team to prepare while we were awaiting your feedback. There is a lot of information currently in the report and a lot of information that is currently not in the report. On our side, we have a lot of difficult decisions coming up on what is relevant to include and what our interpretation is regarding, not only the allegations that led to us initiating this review, but the actions the EO function has taken since that time. At this point, we have not determined what will or will not be included in the report and how we will present everything.

If you would like to meet to discuss your concerns, I am available. If you would rather wait until I have a clearer view of what are considering for the report, we can do that also. How would you like to proceed?

Troy
404-338-7476

From: Lerner Lois G [<mailto:Lois.G.Lerner@irs.gov>]
Sent: Thursday, January 31, 2013 2:34 PM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: Follow-Up

We were disappointed that you couldn't attend the meeting today. I think it would be useful for you, your group, and mine to have another conversation about approach. We feel your folks are being too narrow in their view and have decided that because of the language on the earlier BOLO list regarding Tea Party, everything that followed was tainted. They seem to believe that if a case was initially sent to the advocacy group, but ultimately determined to be an approval, that our action in putting it into the advocacy group in the first place is incorrect, and illustrates "targeting." I think they remain confused about the purpose of screening vs.. bucketing--and we have tried to explain several times. They also don't seem to be taking a big picture look at what we have done. That is, we've already owned up to the fact that we recognized in mid-process that Cincinnati was struggling with the issues. That is why we sent our experts in this area to Cincinnati for 3 weeks to work hand in hand with the Determ folks to train them and then walk through their post training assessments to ensure they understood and we were getting the right treatment for the cases. When we describe that process, they acknowledge that that approach sounds reasonable, but seem to be saying that reasonableness is overshadowed by the fact that the criteria look bad to folks on the outside, so there is no way we could cure the initial bad impression.

We understand why the criteria might raise questions. In fact we refined it to more accurately reflect what we are doing. I met with the group today and asked your folks what they thought the TIGTA audit was all about. The response was that they were here because there were allegations that the IRS was "targeting." When asked, they didn't seem able to provide me with a clear definition of what they meant by targeting, and they confused me when they said it wasn't necessarily political. I told them my understanding is that the audit was to determine whether the IRS was acting in a politically motivated manner--not whether the earlier articulation of the criteria looked bad. However, that doesn't seem to be the focus. They have said they aren't looking at whether the organizations are conservative or liberal because that is too difficult to figure out. They have also acknowledged that there are both conservative and liberal organizations on the list of advocacy cases.

So, I'm not sure how they are looking at whether we were politically motivated, or what they are looking for with regard to targeting. They didn't seem to understand the difference between IRS acting in a politically motivated manner and front line staff people using less than stellar judgment. I am willing to take the blame for not having provided sufficient direction initially, which may have resulted in front line staff doing things that appeared to be politically motivated, but I am not on board that anything that occurred here shows that the IRS was politically motivated in the actions taken.

So, I suggested to the group that we all get together after they have had a chance to talk to you. I asked both sides to think about the main points they wanted to make or better understand, so the meeting can be most fruitful. This is the toughest one you and I have worked on together. But, I'm hoping the meeting will get us all to an improved understanding so that your report can better reflect what occurred and why.

Leis J. Lerner

Director of Exempt Organizations

Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Political Advocacy Issues
Objective IIIC

waiting for documentation for TIGTA Case (b)(3)/...

Counter		TIGTA Count	Organization Name	TEDS Case Number	EDS Case Number	EIN	If not significant potential political campaign intervention per TIGTA, what factors lead to our conclusion?	HIG Comments (IA = Issue advocacy; PCA = political campaign activities; PG = political campaign intervention)	JEX Comments
(b)(3)/6103 & (b)(5)/DP									

(b)(3)/6103 & (b)(5)/DP

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(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

From: Paz Holly O
Sent: Monday, May 13, 2013 1:12 PM
To: Marx Dawn R
Subject: RE: URGENT: data question

yes.

From: Marx Dawn R
Sent: Monday, May 13, 2013 2:11 PM
To: Paz Holly O
Subject: RE: URGENT: data question

So this is the one you just responded to?

From: Wallbaum Jeffrey S
Sent: Monday, May 13, 2013 1:59 p
To: Paz Holly O
Cc: Flax Nikole C
Subject: URGENT: data question

Holly – Do you know why these application counts differ from the ones in the Tigta report? (Tigta shows FY09=1751, FY10=1735, FY11=2265 and FY12=3357.)

Thanks!

Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

From: Flax Nikole C
Sent: Monday, May 13, 2013 11:13 a
To: Wallbaum Jeffrey S
Subject: FW: data question

From: Paz Holly O
Sent: Thursday, May 09, 2013 4:26 PM
To: Flax Nikole C; Lerner Lois G
Subject: RE: data question

Increase in section 501c4 applications
2008 - 1410
2009 - 1571
2010 - 1591
2011 - 2242
2012 - 3398
2013 - 2,092 (through March 26, 2013)

From: Flax Nikole C
Sent: Thursday, May 09, 2013 4:21 PM
To: Lerner Lois G; Paz Holly O
Subject: Re: data question

Right - this is fine - just need the application numbers.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 04:01 PM Eastern Standard Time
To: Paz Holly O; Flax Nikole C
Subject: RE: data question

Don't think we need that--we're focusing on the 300--so don't kill your self

Lois G. Lerner

Director of Exempt Organizations

From: Paz Holly O
Sent: Thursday, May 09, 2013 3:30 PM
To: Lerner Lois G; Flax Nikole C
Subject: RE: data question

136 c4 approvals as of 5/9/13

23 c4 withdrawn (I think the reference to 30 must have been to all withdrawn apps - c3 and c4 as that number now stands at 37)

Will get back to you as to total number of c4 apps shortly. Have a meeting I have to do.

From: Lerner Lois G
Sent: Thursday, May 09, 2013 2:32 PM
To: Flax Nikole C; Paz Holly O
Subject: RE: data question

Have sent Cindy the question

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, May 09, 2013 2:30 PM
To: Lerner Lois G; Paz Holly O
Subject: RE: data question

Yes

From: Lerner Lois G
Sent: Thursday, May 09, 2013 2:23 PM

To: Flax Nikole C; Paz Holly O

Subject: RE: data question

I assume you want you want to know about whether the 120 or 30 have increased, not whether we've received more applications

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C

Sent: Thursday, May 09, 2013 1:59 PM

To: Paz Holly O; Lerner Lois G

Subject: data question

Is the following the most recent or has there been any movement we should recognize. Thanks

- Of the approximately 300 section 501(c)(4) advocacy cases, more than 120 have been approved and nearly 30 have withdrawn.

From: Paz Holly O
Sent: Monday, May 13, 2013 4:28 PM
To: Wallbaum Jeffrey S
Subject: RE: URGENT: data question

You're right. That explains it. We have emails talking about providing the data on a CY basis, but, looking at the numbers, we must have ended up giving FY numbers of I cases only.

From: Wallbaum Jeffrey S
Sent: Monday, May 13, 2013 5:23 PM
To: Paz Holly O
Subject: RE: URGENT: data question

OK. I can tell from what you already sent that Tigta used the total FY data, so I can pull that from there .

For reference, if you scroll down to the original message to Nikole, you'll see the values match the I column in what you just provided. I think they're FY initial applications, not CY data—it would be too big a coincidence for all four years to match exactly.

Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

From: Paz Holly O
Sent: Monday, May 13, 2013 5:21 p
To: Wallbaum Jeffrey S
Subject: RE: URGENT: data question

I do not have that handy. I can get it by tomorrow morning though. The numbers I gave to Nikole below are from a response to a Congressional and are calendar year numbers. The TIGTA numbers are FY numbers. I agree with you that it is preferable to have one set of numbers and it makes sense for that to be the TIGTA/FY numbers. We gave TIGTA that data. I will forward you the email. It does not have the level of detail that I sent you for 2008 though.

From: Wallbaum Jeffrey S
Sent: Monday, May 13, 2013 5:14 PM
To: Paz Holly O
Subject: RE: URGENT: data question
Importance: High

Awesome, thanks. You wouldn't have this detail for FY12, too? I ask because I notice that Tigta reports 3357, while you have 3398 in the message to Nikole below. In every other year, Tigta's number is *higher* since it's the total, but then I would expect your "I" count to be less than 3357 for FY12.

Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

From: Paz Holly O
Sent: Monday, May 13, 2013 5:02 p
To: Wallbaum Jeffrey S
Subject: RE: URGENT: data question

Jeff,

FY 2008 data on number of c4 applications received is below.

EO Determination **501(c)(4)** Application Receipts by Fiscal Year and Case Type

Year	A	F	I	P	R	S	T	Invalid	Total
2008	19	0	1,410	0	2	99	101	0	1631
2009	21	0	1,571	0	0	97	62	0	1751
2010	22	0	1591	0	0	118	4	0	1735
2011	8	0	2,242	0	1	13	1	0	2265

Initial (New) applications received highlighted in yellow

Case Types:

I: Initial

A: Amendment

T: Termination of Exempt Status

P: Termination of Private Foundation Status

F: Private Foundation Follow-UP

R: Returned, Post Review

S: Re-Opening of FTE (Failure to Establish) Case

From: Wallbaum Jeffrey S

Sent: Monday, May 13, 2013 4:52 PM

To: Paz Holly O

Subject: RE: URGENT: data question

Hey, just checking if we'll be able to get this today. Thanks,

Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

From: Paz Holly O

Sent: Monday, May 13, 2013 2:24 p

To: Wallbaum Jeffrey S

Subject: RE: URGENT: data question

I will have my analyst pull those and will send them to you.

From: Wallbaum Jeffrey S

Sent: Monday, May 13, 2013 2:20 PM

To: Paz Holly O

Subject: Re: URGENT: data question

Good exp. It would be great to get fiscal numbers for 08 so we have a single set out there.

Jeffrey S Wallbaum
Program Advisor, DCSE
202/927.0242

From: Paz Holly O
Sent: Monday, May 13, 2013 02:07 PM Eastern Standard Time
To: Wallbaum Jeffrey S
Cc: Flax Nikole C
Subject: RE: URGENT: data question

I will go back through email and double check but I believe TIGTA numbers are FY numbers and the numbers I gave Nikole (which were given in response to a Congressional) where calendar year.

From: Wallbaum Jeffrey S
Sent: Monday, May 13, 2013 1:59 PM
To: Paz Holly O
Cc: Flax Nikole C
Subject: URGENT: data question

Holly – Do you know why these application counts differ from the ones in the Tigta report? (Ti gta shows FY09=1751, FY10=1735, FY11=2265 and FY12=3357.)

Thanks!

Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

From: Flax Nikole C
Sent: Monday, May 13, 2013 11:13 a
To: Wallbaum Jeffrey S
Subject: FW: data question

From: Paz Holly O
Sent: Thursday, May 09, 2013 4:26 PM
To: Flax Nikole C; Lerner Lois G
Subject: RE: data question

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Sent: Thursday, May 09, 2013 4:21 PM
To: Lerner Lois G; Paz Holly O
Subject: Re: data question

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Sent: Thursday, May 09, 2013 04:01 PM Eastern Standard Time
To: Paz Holly O; Flax Nikole C
Subject: RE: data question

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Lois G. Lerner

Director of Exempt Organizations

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Sent: Thursday, May 09, 2013 3:30 PM
To: Lerner Lois G; Flax Nikole C
Subject: RE: data question

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Sent: Thursday, May 09, 2013 2:32 PM
To: Flax Nikole C; Paz Holly O
Subject: RE: data question

Have sent Cindy the question

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, May 09, 2013 2:30 PM
To: Lerner Lois G; Paz Holly O
Subject: RE: data question

Yes

From: Lerner Lois G
Sent: Thursday, May 09, 2013 2:23 PM
To: Flax Nikole C; Paz Holly O
Subject: RE: data question

I assume you want you want to know about whether the 120 or 30 have increased, not whether we've received more applications

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Thursday, May 09, 2013 1:59 PM
To: Paz Holly O; Lerner Lois G
Subject: data question

Is the following the most recent or has there been any movement we should recognize. Thanks

- Of the approximately 300 section 501(c)(4) advocacy cases, more than 120 have been approved and nearly 30 have withdrawn.

From: Morgan Marc J
Sent: Tuesday, May 14, 2013 7:36 AM
To: Paz Holly O; Neuhart Paige
Subject: RE: URGENT: data question
Attachments: Form 1023 & 1024 Receipts - IRC 3-4-5-6 FY2008-2009.xls

From: Paz Holly O
Sent: Monday, May 13, 2013 5:23 PM
To: Neuhart Paige; Morgan Marc J
Subject: FW: URGENT: data question

Actually I do need something as soon as you get it - I have been asked to update the chart below to include FY 12. Thanks!

From: Paz Holly O
Sent: Monday, May 13, 2013 5:07 PM
To: Neuhart Paige; Morgan Marc J
Subject: FW: URGENT: data question

Nevermind! You had already done this last year!

From: Paz Holly O
Sent: Monday, May 13, 2013 5:02 PM
To: Wallbaum Jeffrey S
Subject: RE: URGENT: data question

Jeff,

FY 2008 data on number of c4 applications received is below.

EO Determination **501(c)(4)** Application Receipts by Fiscal Year and Case Type

Year	A	F	I	P	R	S	T	Invalid	Total
2008	19	0	1,410	0	2	99	101	0	1631
2009	21	0	1,571	0	0	97	62	0	1751
2010	22	0	1591	0	0	118	4	0	1735
2011	8	0	2,242	0	1	13	1	0	2265

Initial (New) applications received highlighted in yellow

Case Types:

I: Initial

A: Amendment

T: Termination of Exempt Status
P: Termination of Private Foundation
Status
F: Private Foundation Follow-UP
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From: Wallbaum Jeffrey S
Sent: Monday, May 13, 2013 4:52 PM
To: Paz Holly O
Subject: RE: URGENT: data question

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Jeffrey S Wallbaum
Senior Advisor, DCSE
202/927.0242

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From: Flax Nikole C
Sent: Monday, May 13, 2013 11:13 a
To: Wallbaum Jeffrey S
Subject: FW: data question

From: Paz Holly O
Sent: Thursday, May 09, 2013 4:26 PM
To: Flax Nikole C; Lerner Lois G
Subject: RE: data question

Increase in section 501c4 applications
2008 - 1410
2009 - 1571
2010 - 1591
2011 - 2242
2012 - 3398
2013 - 2,092 (through March 26, 2013)

From: Flax Nikole C
Sent: Thursday, May 09, 2013 4:21 PM
To: Lerner Lois G; Paz Holly O
Subject: Re: data question

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From: Lerner Lois G
Sent: Thursday, May 09, 2013 04:01 PM Eastern Standard Time
To: Paz Holly O; Flax Nikole C
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Lois G. Lerner
Director of Exempt Organizations

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136 c4 approvals as of 5/9/13

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Fiscal Year	I.R.C. Subsection			
	501(c)(3)	501(c)(4)	501(c)(5)	501(c)(6)
2008	81,730	1,631	330	1,648
2009	65,179	1,751	543	1,828
2010	59,486	1,735	290	1,637
2011	58,712	2,265	409	1,836
2012	66,543	3,357	1,081	2,338

From: Paz Holly O
Sent: Tuesday, May 14, 2013 9:30 AM
To: Morgan Marc J; Neuhart Paige
Subject: RE: URGENT: data question

Thanks!

From: Morgan Marc J
Sent: Tuesday, May 14, 2013 10:27 AM
To: Paz Holly O; Neuhart Paige
Subject: RE: URGENT: data question

Attached.

From: Paz Holly O
Sent: Tuesday, May 14, 2013 10:16 AM
To: Morgan Marc J; Neuhart Paige
Subject: RE: URGENT: data question

Actually, I need the breakdown for FY 2012 c4 apps received that is in the email below (I cases, A cases, etc.). Need it ASAP. Thanks!

From: Morgan Marc J
Sent: Tuesday, May 14, 2013 8:36 AM
To: Paz Holly O; Neuhart Paige
Subject: RE: URGENT: data question

From: Paz Holly O
Sent: Monday, May 13, 2013 5:23 PM
To: Neuhart Paige; Morgan Marc J
Subject: FW: URGENT: data question

Actually I do need something as soon as you get it - I have been asked to update the chart below to include FY 12. Thanks!

From: Paz Holly O
Sent: Monday, May 13, 2013 5:07 PM
To: Neuhart Paige; Morgan Marc J
Subject: FW: URGENT: data question

Nevermind! You had already done this last year!

From: Paz Holly O
Sent: Monday, May 13, 2013 5:02 PM

To: Wallbaum Jeffrey S
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From: Paz Holly O
Sent: Thursday, May 09, 2013 2:16 PM
To: Thomas Cindy M
Subject: FW: data question

Given timing (they want this info by 5 today), I asked Sharon to contact Ron Bell directly for the latest spreadsheet.

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From: Thomas Cindy M
Sent: Friday, May 10, 2013 12:59 PM
To: Lerner Lois G
Cc: Paz Holly O
Subject: Low-Level Workers thrown under the Bus

As you can imagine, employees and managers in EO Determinations are furious. I've been receiving comments about the use of your words from all parts of TEGE and from IRS employees outside of TEGE (as far away as Seattle, WA).

I wasn't at the conference and obviously don't know what was stated and what wasn't. I realize that sometimes words are taken out of context. However, based on what is in print in the articles, it appears as though all the blame is being placed on Cincinnati. Joseph Grant and others who came to Cincinnati last year specially told the **low-level workers** in Cincinnati that no one would be "thrown under the bus." Based on the articles, Cincinnati wasn't publicly "thrown under the bus" instead was hit by a convoy of mack trucks.

Was it also communicated at that conference in Washington that the **low-level workers** in Cincinnati asked the Washington Office for assistance and the Washington Office took no action to provide guidance to the **low-level workers?**

One of the **low-level workers** in Cincinnati received a voice mail message this morning from the POA for one of his advocacy cases asking if the status would be changing per "Lois Lerner's comments." What would you like for us to tell the POA?

How am I supposed to keep the **low-level workers** motivated when the public believes they are nothing more than **low-level** and now will have no respect for how they are working cases? The attitude/morale of employees is the lowest it has ever been. We have employees leaving for the day and making comments to managers that "this low -level worker is leaving for the day." Other employees are making sarcastic comments about not being thrown under the bus. And still other employees are upset about how their family and friends are going to react to these comments and how it portrays the quality of their work.

The past year and a half has been miserable enough because of all of the auto revocation issues and the lack of insight from Executives to see a need for strategic planning that included having anyone from EO Determinations involved in the upfront planning of this work. Now, our leader is publicly referring to employees who are the ones producing all of this work with fewer resources than ever as **low-level workers!**

If reference to **low-level workers** wasn't made and/or blame wasn't placed on Cincinnati, please let me know ASAP and indicate what exactly was stated so that I can communicate that message to employees.

http://www.washingtonpost.com/business/irs-apologizes-for-inappropriately-targeting-conservative-political-groups-in-2012-election/2013/05/10/5afef7b8-b980-11e2-b568-6917f6ac6d9d_story.html?wpisrc=al_comboPNE_p

<http://www.usatoday.com/story/news/politics/2013/05/10/irs-apology-conservative-groups-2012-election/2149939/>

<http://www.wlwt.com/news/local-news/cincinnati/irs-cincinnati-workers-singled-out-conservative-groups-for-review/-/13549970/20096270/-/xcujae/-/index.html>

From: Miller Steven T
Sent: Friday, May 10, 2013 1:31 PM
To: Lemons Terry L; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Lerner Lois G
Subject: Re: From Washington Post Editorial Board

Think we can answer these.

Sent using BlackBerry

From: Lemons Terry L
Sent: Friday, May 10, 2013 02:18 PM Eastern Standard Time
To: Miller Steven T; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Lerner Lois G
Subject: FW: From Washington Post Editorial Board

How do we want to handle the Post editorial board? Might be one for Steve to show we're taking seriously – but open to suggestions.

From: Burke Anthony
Sent: Friday, May 10, 2013 1:55 PM
To: Eldridge Michelle L
Subject: FW: From Washington Post Editorial Board

Here are the questions from Washington Post editorial board member Stephen Stromberg.

From: Stromberg, Stephen W [<mailto:stephen.stromberg@wpost.com>]
Sent: Friday, May 10, 2013 1:46 PM
To: Burke Anthony
Subject: From Washington Post Editorial Board

Hi –

I am writing an on-deadline editorial on the Tea Party/IRS issue, filing by 4:30 p.m. at the latest. At the moment, I have three questions:

-Why weren't there protections in place to ensure that selecting out groups of a particular political stripe was not possible?

-What procedures are in place now to prevent this, both in the tax -exempt office and elsewhere in the IRS?

-Who has led the investigation into this episode? Is someone else inside or outside of the IRS going to investigate further?

Thanks in advance.

Best,

Steve Stromberg

Steve Stromberg

Editorial Writer

The Washington Post

Office: 202.334.6370

Cell: 310.770.6646

From: Eldridge Michelle L
Sent: Friday, May 10, 2013 3:25 PM
To: Miller Steven T; Flax Nikole C; Vozne Jennifer L; Lemons Terry L; Lerner Lois G; Grant Joseph H
Subject: W.Post.com: The IRS scandal will test everyone
Attachments: Tax_Cheats_image.JPEG-04b32-1960-300x200.jpg

FYI

The IRS scandal will test everyone

By Jonathan Bernstein, Updated: May 10, 2013

The IRS building in Washington <http://www.washingtonpost.com/blogs/post-partisan/files/2013/05/Tax_Cheats_image.JPEG-04b32-1960.jpg>

(AP Photo/Susan Walsh, File)

So, the IRS, or at least some of the IRS, went after Tea Party groups
<http://www.washingtonpost.com/business/economy/irs-admits-targeting-conservatives-for-tax-scrutiny-in-2012-election/2013/05/10/3b6a0ada-b987-11e2-92f3-f291801936b8_story.html> . Republicans have been in search of a scandal for a while; this appears to be a real one.

It will be interesting indeed to see how everyone reacts:

- * The White House: Barack Obama and his administration haven't really had to react to a scandal before. They've had mixed results in previous pseudo-scandals, sometimes jumping too quickly, sometimes hunkering down too much. We'll see how they handle this one.
- * Other Democrats: Will they reflexively rally around the White House — or will they, as they should, condemn the actions and work hard to uncover all the facts, whatever they turn out to be?
- * Republicans: They're absolutely within their rights to be outraged at the news. Will they do the hard work of digging out the facts — again, whatever they really are — or will they be content with just running to the GOP-aligned media and crowing that this confirms everything they've ever suspected about the Obama Administration?
- * The press: Probably more desperate for a real scandal than even the Republicans (who haven't needed real scandals), will they maintain some bit of proportion, or will it be all -hype, regardless of the facts?

The big caution here: We have no idea whether this will turn out to have the substance of a major scandal, or just a relatively small outrage. After all, it's very possible that the targeted groups were stretching the rule). As bad as the initial report sounds, there's always the chance that there's really nothing at all here — but there's also, of course, no way of knowing if there's far more to come. We're certain to have Congressional hearings, and reporters are already swarming the IRS and anyone else who might know anything. That's good! But we'll know a lot more in a week or in a month — and as with all breaking stories, the odds of significant errors in early reports are high.

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(b)(7)(A)

(b)(7)(A)

(b)(7)(A)

From: Lemons Terry L
Sent: Friday, May 10, 2013 10:41 PM
To: Miller Steven T; Tucker Beth; Flax Nikole C; Vozne Jennifer L; Eldridge Michelle L; Barre Catherine M
Subject: Post editorial

Sent from my BlackBerry Wireless Handheld

From: Terry (b)(6); (b)(7)... Lemons [mailto:(b)(6); (b)(7)(C)]
Sent: Friday, May 10, 2013 11:39 PM Eastern Standard Time
To: Lemons Terry L
Subject: Post editorial

Playing politics with tax records

By Editorial Board <http://www.washingtonpost.com/opinions/the-posts-view/2011/12/07/gIQAoElscO_page.html> ,

May 11, 2013 12:44 AM EDT

A BEDROCK principle of U.S. democracy is that the coercive powers of government are never used for partisan purpose. The law is blind to political viewpoint, and so are its enforcers, most especially the FBI and the Internal Revenue Service. Any violation of this principle threatens the trust and the voluntary cooperation of citizens upon which this democracy depends.

So it was appalling to learn Friday that the IRS had improperly targeted conservative groups for scrutiny <http://www.washingtonpost.com/business/economy/irs-admits-targeting-conservatives-for-tax-scrutiny-in-2012-election/2013/05/10/3b6a0ada-b987-11e2-92f3-f291801936b8_story.html> . It was almost as disturbing that President Obama and Treasury Secretary Jack Lew have not personally apologized to the American people and promised a full investigation.

“Mistakes were made,” the agency said in a statement. IRS official Lois Lerner explained that staffers used a “shortcut” to sort through a large number of applications from groups seeking tax -exempt status, highlighting organizations with “tea party” or “patriot” in their names. The IRS insisted emphatically that partisanship had nothing to do with it. However, it seems that groups with “progressive” in their titles did not receive the same scrutiny.

If it was not partisanship, was it incompetence? Stupidity, on a breathtaking scale? At this point, the IRS has lost any standing to determine and report on what exactly happened. Certainly Congress will investigate, as House Majority Leader Eric Cantor (R-Va.) promised. Mr. Obama also should guarantee an unimpeachably independent inquiry.

One line of questioning should focus on how the IRS's procedures failed to catch this "shortcut" before its employees began using it. Another should center on how this misguided practice came to light, and on what the IRS planned and plans to do about it. Ms. Lerner was responding to a question when the news first came out; it's not clear whether the government intended otherwise to disclose what had happened. Nor have officials been clear whether disciplinary measures have been taken.

Did some officials hope never to reveal this wrongdoing? Did others hope it could quickly get lost in the weekend news cycle? Misguided, if so. We hope to hear Democratic leaders as well as Republican ones loudly saying so.

The agency said that it now has rules in place to make sure this sort of thing never happens again. How could such basic safeguards not have existed in the first place? And what are the new rules? In response to our questions, officials did not say.

Thankfully, it's a safe bet that the decision on whether to answer such questions won't rest solely with the agency for much longer.

From: Flax Nikole C
Sent: Monday, May 13, 2013 8:29 AM
To: Vozne Jennifer L; Best Jennifer L
Subject: FW: TIGTA on (c)(4)s, etc. - 201210022-Draft Report
Attachments: TIGTA 4-30-13.pdf; SecureZIP Attachments.zip

From: Flax Nikole C
Sent: Friday, May 10, 2013 3:00 PM
To: Miller Steven T
Subject: FW: TIGTA on (c)(4)s, etc. - 201210022-Draft Report

Response and report

(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

(b)(5) DP; (b)(3)/6103

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COMMISSIONER
TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

APR 30 2013

MEMORANDUM FOR DEPUTY INSPECTOR GENERAL FOR AUDIT

FROM: Joseph H. Grant, Acting Commissioner, Tax Exempt and
Government Entities *Joseph H. Grant*

SUBJECT: "Inappropriate Criteria Were Used to Identify Tax-Exempt
Applications for Review"

Thank you for the opportunity to review the draft report and for your review of this issue. We appreciate your recommendations for improvements to our processes.

We recognize that some errors occurred in the handling of the influx of advocacy cases and we appreciate TIGTA's acknowledgment of our steps to improve the process. As further outlined below, significant improvements in this area are in place and we are confident that what transpired here will not recur.

We believe it is important to put this matter into context. Starting in 2010, Exempt Organizations (EO) observed a significant increase in the number of section 501(c)(3) and section 501(c)(4) applications from organizations that appeared to be, or planned to be, engaged in political campaign activity. Between 2008 and 2012, the number of applications for section 501(c)(4) status more than doubled. We also received numerous referrals from the public, media, watchdog groups, and members of Congress alleging that specific section 501(c)(4) organizations were engaged in political campaign activity to an impermissible extent.

Similar to our approach in other areas (e.g., credit counseling, down payment assistance organizations, etc.), EO sought to assign cases to designated employees. Centralization of like cases ensures that specific employees who have been trained on the relevant issues can adequately review the applications. In this way the IRS learns of new trends (as was the case in credit counseling), and can approach cases in a uniform way to promote consistency and quality. While this is the correct approach for handling certain classes of cases, centralization does slow the progress of some applications (at least initially). Therefore, it is important to take this action only in appropriate situations and to designate cases for centralization in an equitable manner.

It is our view that centralization was warranted in this situation. First, it is important to recognize the intensely fact-specific nature of the determination of whether an

organization is described in section 501(c)(4). To be recognized as exempt under section 501(c)(4), an organization must be engaged primarily in the promotion of social welfare. This requires a review of all activities, a classification of activities into those that promote social welfare and those that do not, and a balancing of both classes of activities. Note that the promotion of social welfare does not include political campaign intervention. And in cases where there is the potential of political campaign intervention, the application process becomes even more difficult. EO must first determine whether any activities described in the application constitute political campaign intervention and must also determine whether the applicant is primarily engaged in social welfare activity in light of any political campaign intervention and any other non-exempt activity. There are no bright line tests for what constitutes political campaign intervention (in particular, the line between such activity and education) or whether an organization is primarily engaged in social welfare activities.

The second reason that centralization was warranted in this case is that the applications EO began to receive in 2010 were in many cases vague as to the activities the applicants planned to conduct. Many applications included what appeared to be incomplete or inconsistent information. For example, a number of applications indicated that the organization did not plan to conduct political campaign activity, but elsewhere described activities that appeared in fact to be such activity. It was also clear that many organizations did not understand what activities would constitute political campaign intervention under the tax law. For these reasons, it was necessary in many cases for us to gather additional information. And we believe it was important that we be consistent in how we developed these cases.

While centralization was warranted, the manner in which we initially designated cases for centralization was inappropriate. We should centralize like cases by a review of the facts contained in the application and not just by name. While it is necessary to consider a variety of information in the screening process (including flags for current emerging issues) we recognize that selection based on organization name was not appropriate for these cases. As the report discusses, we have a new approval process by which we designate a class of cases for centralization. Decisions with respect to the centralized collection of cases must be made at a much higher level of the organization. We believe this will prevent a recurrence of what happened in this case.

The report also describes mistakes that were made in the process by which these applications were worked. The IRS recognizes that there were delays and, in some instances, information requests that were overbroad. As the report notes, we took steps to modify the original approach. First, we reviewed all cases to determine the appropriate scope of review for each case. We also established a process by which each assigned revenue agent works in coordination with a specific technical expert. With respect to information requests, in some cases the Internal Revenue Manual prescribed deadlines for applicants to respond were too short, and we requested donor names unnecessarily. In these instances, we informed organizations that they had more time and that we would work with them if they could provide the

information we requested in an alternative manner. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

It is important to understand that centralization of these cases did not dictate how the case ultimately was or will be resolved. As the report illustrates, EO's selection of an organization for further development does not mean that EO will deny the application, but means that EO needs to resolve questions arising from the application before we can grant tax-exemption. Moreover, the majority of cases selected for full development were not selected based on the organizations' names. Finally, all cases, whether selected by name or not, were worked in the same fashion.

The results to date support our approach. Of the nearly 300 section 501(c)(4) advocacy cases, to date we have approved more than 120 (nearly 30 have withdrawn their requests). Note that the report appears to view approvals as evidence that EO should not have looked closely at those applications. That is not the case. Many of these organizations did not supply enough information in their initial applications to merit approval so that further development was necessary. In many cases, this further development and back-and-forth discussion with the taxpayer allowed EO to conclude that the legal requirements were satisfied and allowed the applicant to better understand its responsibilities and the law.

EO is dedicated to reviewing applications for tax-exempt status in an impartial manner. Centralization of like cases furthers quality and consistency. The mistakes outlined in the report resulted from the lack of a set process for working the increase in advocacy cases and insufficient sensitivity to the implications of some of the decisions made. We believe the front line career employees that made the decisions acted out of a desire for efficiency and not out of any political or partisan viewpoint. And as the report discusses, these issues have been resolved.

Our response to your recommendations is found in the attachment. If you have any questions about this response, please contact Lois G. Lerner, Director, Exempt Organizations, at 202-283-8848.

Attachment

Attachment

Recommendation 1: Ensure that the memorandum requiring the Director, Rulings and Agreements, to approve all original entries and changes to criteria included on the BOLO listing prior to implementation be formalized in the appropriate Internal Revenue Manual.

Corrective Action: We will ensure that the procedures set forth in the memorandum requiring the Director, Rulings and Agreements, to approve in advance all original entries and changes to the BOLO are made part of the Internal Revenue Manual.

Implementation Date: September 30, 2013

Responsible Official: Director, Exempt Organizations

Recommendation 2: Develop procedures to better document the reason(s) applications are chosen for review by the team of specialists (e.g., evidence of specific political campaign intervention in the application file or specific reasons the EO function may have for choosing to review the application further based on past experience).

Corrective Action: We will review our screening procedures to determine whether, and to what extent, additional documentation can be implemented without having an adverse impact on the timeliness of our case processing.

Implementation Date: September 30, 2013

Responsible Official: Director, Exempt Organizations

(Note: We consolidate here the text of Recommendations 3, 5, 6 and 9, and we provide a single, consolidated response to these recommendations following the text of Recommendation 9, below.)

Recommendation 3: Develop training or workshops to be held before each election cycle including, but not limited to, the proper ways to identify applications that require review of political campaign intervention activities.

Recommendation 5: Develop guidance for specialists on how to process requests for tax-exempt status involving potentially significant political campaign intervention. This guidance should also be posted to the Internet to provide transparency to organizations on the application process.

Recommendation 6: Develop training or workshops to be held before each election cycle including, but not limited to: a) what constitutes political campaign intervention versus general advocacy (including case examples) and b) the ability to refer for follow-up those organizations that may conduct activities in a future year which may cause them to lose their tax-exempt status.

Recommendation 9: The Director, EO, should develop training or workshops to be held before each election cycle including, but not limited to, how to word questions in additional information request letters and what additional information should be requested.

Corrective Action: We will develop training on the topics described in the recommendations 3, 5, 6, and 9. Because election cycles are continuous, we will develop a schedule that ensures staff have the training as needed to handle potential political intervention matters.

Implementation Date: January 31, 2014

Responsible Official: Director, Exempt Organizations

Recommendation 4: Develop a process for the Determinations Unit to formally request assistance from the Technical Unit and the Guidance Unit. The process should include actions to initiate, track, and monitor requests for assistance to ensure that requests are responded to timely.

Corrective Action: We will develop a formal process for Determinations to request assistance and to monitor such requests.

Implementation Date: June 30, 2013

Responsible Official: Director, Exempt Organizations

Recommendation 7: Provide oversight to ensure that potential political cases, some of which have been in process for three years, are approved or denied expeditiously.

Corrective Action: While this is an ongoing project, we are closely overseeing the remaining open cases to ensure that we reach determinations as expeditiously as possible.

Implementation Date: April 30, 2013

Responsible Official: Director, Exempt Organizations

Recommendation 8: Recommend to IRS Chief Counsel and the Department of the Treasury that guidance on how to measure the “primary activity” of I.R.C. § 501(c)(4) social welfare organizations be included for consideration in the Department of the Treasury Priority Guidance Plan.

Corrective Action: We will share this recommendation with the IRS Chief Counsel and Treasury Office of Tax Policy.

Implementation Date: May 3, 2013

Responsible Official: Acting Commissioner, Tax Exempt and Government Entities

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