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Enclosures

EO Determinations Data Highlights

Main issues:

- Receipts / open inventory
- # days full development cases await assignment / full development cycle time

Receipts:

- Approx. 14,431 reinstatement applications during the first three quarters of FY 12 (21,727 total FY 11 and FY 12)
- Total receipts as of 6/30/12 were 59,736 versus 45,042 as of 6/30/11

EOY Open Inventory:

- Projected to be double what it is has been every year since 2005 (40,304 compared to an average of 15,000-20,000 in the preceding FYs)

Full Development Cases:

Wait Time-

- Average number of days full development cases await assignment is currently approximately 120 days (double what it was last year)
- Wait is longest for grade 11 cases (general control date for grade 11 cases is Nov. 22, 2011 vs. January 2012 for grade 12 and 13 cases)
- Grade 11s have been pulled to work autorevocation cases
- Wait is generally longer for reserved inventory cases

Cycle Time-

- Full development closed case cycle time is approx. 195.5 for this FY (up from a low of 154.2 in FY 2010)
- Closed case cycle time on most categories of reserved inventory is much higher than the average for full development (e.g., 553.5 days for Type III SOs, 543 days for Type I and II SOs, 359 days for LLCs)
- DC has approx. 467 cases the average age of which is 541 days

Determinations Staffing-

Grade 11s – 52 (vs. 1,772 general inventory full development cases)
Grade 12s – 60 (vs. 1,320 general inventory full development cases)
Grade 13s – 35 (vs. 307 general inventory full development cases)

Some Preliminary Recommendations (Not an Exclusive List):

- Immediately have grade 12 and 13 agents work grade 11 cases until general control date for those cases reaches a 2012 date – Cindy has already started this
- At the beginning of next FY, have EO Tech work with Determinations to determine if additional resources or training is needed with regard to the

categories of reserved inventory that have the longest cycle time/most cases

- At the beginning of next FY, implement a variation of Exam's Get Well program – e.g. managerial commitments to conduct set number of inventory reviews of each employee, etc.
- Make template development letters on certain categories of cases available on the website so applicants can be sure to include this information with their applications, thereby reducing back and forth with applicants
- Continue to perfect and expand pilot of automation tool for AP/IP cases - Since 4/1/12, 4,292 cases have been worked utilizing this tool and of that amount 2,106 cases have been approved (2,186 still in process) in an average of 1.6 hours per case, compared to the 2.6 average hours for all AP/IP cases. Use of this tool in combination with increased emphasis on AP/IP work has allowed us to close more than 3,200 AP/IP cases than the same period last year with fewer resources.
- Review criteria for transferring cases to EO Technical to determine whether it is more efficient to work certain cases in DC or work them in Determinations with EO Technical/Counsel assistance
- Complete comprehensive review of Quality process and implement recommended changes/improvements

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The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. The IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they could contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in an alternative manner.

Question 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes efforts to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. As previously mentioned, we advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they can contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as $1, meet the relevancy standard?

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status. An applicant who is concerned with burden or relevancy in the process, can work with the agent assigned to the case and the agent's manager.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-4725.

Sincerely,

Steven T. Miller
Deputy Commissioner Services and Enforcement

August __, 2012

The Honorable Orrin G. Hatch
Ranking Member
Senate Committee on Finance
U.S. Senate
Washington, D.C. 20515

Dear Senator Hatch:

This letter responds to your June 18, 2012, letter to Commissioner Shulman, requesting additional information about the disclosure requirements of applications for tax-exempt status, and the release of donor information. As you are may be aware, the rules relating to disclosure of taxpayer information are provided statutorily in the Internal Revenue Code.

Question 1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?

The applicable regulations are authorized by Section 7805 of the Internal Revenue Code, which provides general authority to prescribe all needed regulations for the enforcement of tax rules. Section 1.501(a)-1(a)(3) of the regulations provides that organizations requesting recognition of tax-exempt status must file the form prescribed by the IRS and include the information required. In addition, section 1.501(a)-1(b)(2) provides that the IRS may require additional information deemed necessary for a proper determination of whether a particular organization is tax-exempt.

Question 2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011 describe.

Not all section 501(c)(4) organizations applying for exemption are requested to provide donor and contributor identifying information. Each development letter sent to an applicant is based on the facts and circumstances of the specific application.

To qualify for exemption as a social welfare organization described in section 501(c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit

of any private shareholder or individual.[1]

As discussed in more detail in my April 26, 2012 letter to you, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 asks applicants to provide detailed information regarding all of its activities-- past, present, and planned, including the purpose of each activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a determination, the applicant will not be asked further questions. If, however, the detail provided is insufficient to make a determination or issues are raised by the application, then the IRS contacts the organization and solicits information to evaluate whether the applicant meets the requirements for tax exemption in the Code and regulations. There may be cases in which donor information would be relevant to determining if the legal requirements for exemption are satisfied.

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not track the specific questions asked in the requests. Consequently, in order to determine the specific questions asked in those development letters, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 3. Is the Exempt Organizations technical office involved in all such information requests of exemption applications?

As noted in my April 26, 2012 letter, generally applications for tax-exemption that need further development are assigned to revenue agents in the Exempt Organizations (EO) Determinations office in Cincinnati, Ohio, rather than staff in the EO Technical office. Based on established precedent and the facts and circumstances of the case, an EO Determinations revenue agent will request the information and documentation he/she believes is needed to complete the administrative record and make a determination in the case. As needed, a revenue agent might seek advice from EO Technical staff regarding a particular matter or a case may be referred to EO Technical staff, but the EO Technical office is not involved in all information requests sent to applicants seeking tax- exemption

Question 4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of those letters contains passages which specifically request names of donors.

[1] IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?

By law, the IRS cannot comment with respect to letters sent to specific taxpayers. However, we can discuss our general process. Pursuant to Section 7.20.2.4 of the Internal Revenue Manual (IRM), revenue agents in the EO Determinations office assigned to a case are responsible for contacting the organization to obtain any additional information or amendments necessary to process the application. Pursuant to the IRM, questions asked to organizations seeking tax-exemption under section 501(c)(4), would be drafted by the revenue agent working the case. Note that in situations where there are a number of cases involving similar issues, the IRS may assign cases to designated employees to promote consistency. In such cases, agents may work together in drafting questions for similar cases.

b) Which IRS officials provided authority and approval for the questions requesting donor names?

See response to a), above.

c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?

The IRS takes privacy very seriously, and makes an effort to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. The IRS Office of Privacy was not consulted regarding the specific questions asked of applicant organizations. However, the IRS advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they could contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in an alternative manner.

Question 5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?

The IRS automated systems capture the number of applications approved during a given year that were sent development letters seeking additional information, but they do not specifically track whether a 1313 or 2382 letter was sent or the specific questions asked in the letters. To determine the specific questions asked in each development letter sent, manual review of each file would be required. IRS staff is available to work with your staff to identify the information that we are able to legally provide that would be relevant to your request.

Question 6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

Letters 1313 and 2382 are template letters used in all cases seeking additional information that provide general information on the case development process. Individualized questions and requests for documents based on the facts and circumstances set forth in the particular application are prepared by the revenue agent assigned to the case and are attached to the template letter.

There are instances where donor information may be needed for the IRS to make a proper determination of an organization's exempt status, such as when the application presents possible issues of inurement or private benefit. Accordingly there may be future situations where a revenue agent needs to clarify the sources of financial support to an organization by requesting the names of donors.

Nevertheless, the IRS takes privacy very seriously, and makes efforts to work with organizations to obtain the needed information so that the confidentiality of any potential sensitive or privileged information is taken into account. As previously mentioned, we advised applicant organizations that if they believed that requested information required to demonstrate eligibility for section 501(c)(4) status could be provided through alternative information, they can contact the revenue agent assigned to their application and the IRS would consider whether the legal requirements could be satisfied in the alternative manner.

Question 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?

The IRS does not believe it is necessary to review donor identifying information in all determination cases involving applications for tax-exempt status under section 501(c)(4). I am not aware of any recommendation from IRS personnel that the Form 1024 be revised to require such information be furnished in all cases.

Question 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as $1, meet the relevancy standard?

The level of development necessary to process an application to ensure the legal requirements of tax-exemption are satisfied varies depending on the facts and circumstances of each application. Revenue agents use sound reasoning based on tax law training and their experience to review applications and identify the additional information needed to make a proper determination of an organization's exempt status. As noted above in question 6, under certain facts and circumstances, such as when the application presents possible issues of inurement or private benefit, donor information may be needed for the IRS to make a proper determination of an organization's exempt status. An applicant who is concerned with burden or relevancy in the process, can work with the agent assigned to the case and the agent's manager.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-4725.

Sincerely,

Steven T. Miller
Deputy Commissioner Services and Enforcement

EXCLUSIVELY STANDARD UNDER § 501(c)(4)

Questions Considered:

1. How have courts interpreted the exclusively standard under § 501(c)(4)?
2. How has the IRS interpreted the exclusively standard under § 501(c)(4)?
3. How is the amount of activity not furthering exempt purposes measured?

Part I provides the statutory and regulatory background. Part II summarizes cases that discuss the exclusively standard under § 501(c)(4). Part III covers IRS administrative materials (Rev. Ruls., the IRM and GCMs and other memoranda). The appendix contains some sample questions that could be used as guidance for agents when measuring the amounts of activity that do and do not further exempt purposes.

I. STATUTE & REGULATIONS

The (c)(3) and (c)(4) statutes use nearly identical language in establishing the operational standard required for an organization to be described within the meaning of either section: the organization must be "operated exclusively for" the exempt purposes approved under §501(c)(3) or §501(c)(4).

§ 501(c)(4)(A)

> "Civic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare"

§ 501(c)(3)

> "Corporations, and any community chest, fund, or foundation, organized and operated exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes"

As shown below, the regulations under each subsection use nearly identical language in relevant parts, stating that an organization is operated exclusively for its respective purposes if it:

§1.501(c)(4)-1(a)(2)(i)	§1.501(c)(3)-1(c)(1)
"…is primarily engaged in promoting in some way the common good…"	"…engages primarily in conducting activities which accomplish its exempt purposes…"

However, the (c)(3) regulations go on to state that an organization will not be so regarded if *more than an insubstantial part* of its activities is not in furtherance of an exempt purpose.

§ 1.501(c)(4)-1(a)(2)

> "(i) 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. An organization embraced within this section is one which is operated primarily for the purpose of bringing about civic betterments and social improvements."

> "(ii) Political or social activities. 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 for the benefit, pleasure, or recreation of its members, or is carrying on a business with the general public in a manner similar to organizations which are operated for profit."

§ 1.501(c)(3)-1(c)(1)

> "An organization will be regarded as 'operated exclusively' for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of such exempt purposes specified in section 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose"

Notes from the Archived Files on T.D. 6391

The regulations under sections 501(c)(3) and (c)(4) above were written as part of the same T.D. A draft of the proposed (c)(3) regulations dated December 5, 1958 contains this language:

> 1.501(c)(3)-1(c) Operational Test -- (1) Primary activities. An organization is operated exclusively for one or more exempt purposes only if it engages primarily in activities which accomplish one or more of the purposes specified in section 501(c)(3). An organization shall not be considered to be engaged primarily in activities which accomplish one or more exempt purposes *if a substantial part of its activities are not* in furtherance of an exempt purpose.

This draft was reviewed by Arch M. Cantrall, who in a signed memorandum to one of the drafters, Mr. Rose, dated January 12, 1959, stated:

To me there is one particularly dangerous possibility of a variation in the meaning being ascribed to a difference in wording. This runs throughout this draft.

. . . the phrase "otherwise than as an insubstantial part of its activities" [in § 1.501(c)(3)-1(b)(1)(i)(b)] is, to me, a well-stated and important test, and I think that this formula should be consistently used throughout.

But, for example, [in § 1.501(c)(3)-1(c)(1)] I see the test of "primary", which implies that something is "secondary" and, if "secondary" is permissible. I doubt that proposition.

And in the same paragraph, (c)(1), the test is "a substantial part" [referring to the draft language cited above].

Now if these are necessary or proper, I will not argue. But I do not think so. And these variations run on in other places, to create even more confusion.

The question is, I believe, how much leeway do we intend to allow. Code 501(c)(3) says that the organization shall be organized and operated "exclusively".

But, for example, in [(c)(1)] we interpret "exclusively" to mean "primary" and say also that it "will not be so regarded if a substantial part of its activities is not in furtherance of an exempt purpose".

I cannot read "exclusively" as "primary" or as allowing a degree of nonexempt activity up to the "substantial" level. I think we concede too much.

. . . Now I agree that "exclusively" in the statute may by regulation be construed to mean "not more than an insubstantial part" under the de minimis rule, and I think it should be. But I feel strongly that when we have once done so, we should stick to it.

I do not think that we have authority by regulation to construe "exclusively" as "primary" or "substantial", etc.

The language in § 1.501(c)(3)-1(c)(1) was changed two days later, in a draft dated December 7, 1958, to read "no more than an insubstantial part of its activities is not in furtherance of an exempt purpose." This phrase matches the language of the existing final regulations.

An even earlier version of § 1.501(c)(3)-1(c)(1), dated August 6, 1958, read:

> For an organization to . . . be operated exclusively for one or more of the purposes specified in section 501(c)(3), its operations must be conducted exclusively for the accomplishment of an exempt purpose that is set forth in the articles of organization, and such operations must be duly authorized in the manner prescribed by its constitution, by-laws or articles of organization, which must be in accordance with state law. In case an organization properly acts under an implied power which is necessary or appropriate to carry out its stated exempt purpose and is not forbidden by the terms of its articles of organization, such acts will ordinarily be regarded as being within the exempt purpose. However, any act of the organization not devoted to the accomplishment of its exempt purpose, or not incidental thereto, exceeds the organization's power and authority and, if substantial, constitutes a proper basis for denying or revoking an exemption.

This August 6, 1958 draft was submitted to Treasury for its views. Hand revisions made on this draft delete this language entirely without explanation.

The "primarily" language contained in current Treas. Reg. § 1.501(c)(4)-1(a)(2) was not present in the August 6, 1958 draft submitted to Treasury. Rather, the regulation provided:

> A civil league or organization is operated exclusively for the promotion of social welfare if it engages in a civic enterprise in which individuals cooperate to promote in some way the common good and general welfare of the people of the community. . . .

This version did contain "primarily" in the next sentence, which appears in the existing, final regulation: "Organizations embraced within this section include those which are operated primarily for the purpose of bringing about civil or social changes." There were no other relevant notes or revisions to the (c)(4) regulations.

II. § 501(c)(4) CASE LAW

Many courts, when discussing the requirements for tax-exemption under § 501(c)(4), follow the Supreme Court's holding in Better Business Bureau v. United States for the proposition that the presence of a substantial non-exempt purpose will prevent exemption. 326 U.S. 279, 283-284 (1945) (interpreting a provision of the Social Security Act that "was drawn almost verbatim from" § 501(c)(3)). Courts have not differentiated between having a "substantial non-exempt purpose" and failing to be "primarily operated for exempt purposes"; sometimes they equate the two concepts. These cases post-date the issuance of the regulations under §§ 501(c)(3) and (4).

1. CIR v. Lake Forest, Inc.,

305 F.2d 814, 818, 820 (4th Cir. 1962)

In 1947, Lake Forest Inc., a nonprofit, nonstock corporation, was incorporated by World War II veterans to acquire a public housing project to provide housing to veterans of WWI and WWII. Membership in the corporation was established by purchasing a dwelling unit in the project, and membership was limited to the number of dwellings available. Each member paid a monthly operating payment to satisfy the monthly debt owed on the purchase price of the project. Upon dissolution, all assets would be distributed to the members in accordance with their respective equities.

The court held that the organization and operation of Lake Forest was not "exclusively for the promotion of social welfare" because it largely was in the nature of an economic and private cooperative undertaking.

Relevant language from CIR v. Lake Forest, Inc.:

- "At all events, taxpayer's operations are not 'exclusively' of the type the statute demands. 'Civic' pretensions and considerations of 'social welfare' aside, plainly other substantial realizations motivated and are envisioned by the corporation."
- "But we do decide that the organization and operation of Lake Forest, Inc. are not 'exclusively for the promotion of social welfare', since they partake largely of the nature of an economic and private cooperative undertaking."
- "The impact on the tax status of purposes other than those required to be 'exclusive' under such an act of Congress is bluntly stated in Better Business Bureau v. United States, 326 U.S. 279, 283, 66 S.Ct. 112, 90 L.Ed. 67 (1945) in not too different circumstances: '* * *In order to fall within the claimed exemption, an organization must be devoted to educational purposes exclusively. This plainly means that the presence of a single noneducational purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly educational purposes.'"

2. People's Educ. Camp Soc'y, Inc. v. CIR,
39 T.C. 756, 767, 769 (1963), aff'd 331 F.2d 923, 930-931, 932 (2d Cir. 1964)

People's Educational Camp Society (the corporation) was incorporated in 1920 and purchased 2,196 acres in the Pocono Mountains that had served as a summer camp and recreation area. The corporation named the property Tamiment. During the year in issue (1956), Tamiment was one of the most modern resorts in Pennsylvania, and it charged guests substantial amounts for access to Tamiment. The corporation also "sponsored and promoted several activities relating in general to social welfare" in New York City. From 1953 through 1957, the corporation's total revenues were more than $4.76M (approximately $4.45M from Tamiment), and its expenditures on social welfare activities were $204,969.

Relevant language from People's Educ. Camp Soc'y, Inc. v. CIR:

- The court concluded "that petitioner's activities in operating the resort at Tamiment . . . [were] not 'exclusively,' or even principally or primarily, 'for the promotion of social welfare' within the meaning of the statute."

- "The word 'exclusively' as used in the statute has not been given a strict interpretation, so as to foreclose every operation for a non-exempt purpose no matter how insubstantial, but rather has been interpreted to mean 'primarily.' Debs Memorial Radio Fund, Inc. v. Commissioner, supra, 148 F.2d at 952; see Sugarman & Pomeroy, Business Income of Exempt Organizations, 46 Va.L.Rev. 424, 425 (1960). Stated another way, 'the presence of a single * * * (non-exempt) purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly * * * (exempt) purposes.' Better Business Bureau v. United States, 326 U.S. 279, 283, 66 S.Ct. 112, 114, 90 L.Ed. 67 (1945)."

3. American Women Buyers Club, Inc. v. U.S.,
235 F. Supp. 668, 672-673 (S.D.N.Y. 1963), aff'd 338 F.2d 526, 528-529 (2d Cir. 1964)

American Women Buyers Club (the Club) was incorporated to promote the welfare of ready-to-wear buyers, conduct social engagements for members, maintain a spirit of cooperation among members, and aid members in times of distress. Membership was limited to women with at least three years experience as principal ready-to-wear buyers. The Club helped members get work when they were unemployed, held lectures that helped members in their various positions, and assisted members in locating merchandise. During the years in issue the Club's total contribution to charitable organizations totaled $1,700 and it had an accumulated surplus of $92,587.15.

The court held that the Club was not operated exclusively for the promotion of social welfare because only a limited number of women buyers were admitted to the club; the services were primarily, if not exclusively, rendered to the members; benefits solely were for members and not the public; and payments to charities were incidental to the operation of the Club. The court noted "even a cursory examination of the [Internal Revenue] rulings [the Club relied on] reveals a substantial difference in the scope and breadth of services rendered by those taxpayers compared to the present taxpayer."

Relevant language from American Women Buyers Club, Inc. v. U.S.:

- "[D]o taxpayer's other activities recited above preclude a finding that taxpayer is operated 'exclusively' for this purpose? A recent decision of this court, People's Educ. Camp Soc'y, Inc. v. Commissioner, 331 F.2d 923, 931 (2 Cir. 1964), cert. denied 85 S.Ct. 75 (U.S. Oct. 12, 1964), furnishes us with the legal standard to be applied:

- The word 'exclusively' as used in the statute has not been given a strict interpretation, so as to foreclose every operation for a non-exempt

purpose no matter how insubstantial, but rather has been interpreted to mean 'primarily.' Debs Memorial Radio Fund, Inc. v. Commissioner, supra, 148 F.2d at 952; see Sugarman & Pomeroy, Business Income of Exempt Organizations, 46 Va.L.Rev. 424, 425 (1960). Stated another way, 'the presence of a single * * * (non-exempt) purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly * * * (exempt) purposes.' Better Business Bureau v. United States, 326 U.S. 279, 283, 66 S.Ct. 112, 114, 90 L.Ed. 67 (1945)."

- "The district court's finding that taxpayer pursues substantial non-exempt purposes was supported by substantial proof."

- "Taxpayer contends that these non-exempt activities are merely ancillary to its basic purpose . . . We disagree . . . Taxpayer's statement of purposes . . . confirms our conclusion that these are not merely ancillary activities."

4. Contracting Plumbers Coop. Restoration Corp. v. U.S., 488 F.2d 684 (2d Cir. 1974)

Plumbers formed a private, nonprofit cooperative whose sole purpose was to ensure efficient repairs of "cuts" made in streets by its members in the course of plumbing activities.

The court held that the cooperative provided substantial and different benefits to both the public and its private members. Accordingly it was not "primarily" devoted to the common good "by even the most liberal reading of IRC § 501(c)(4)."

Relevant language from Contracting Plumbers Coop. Restoration Corp. v. U.S.:

- "[W]e adhere to the rule that the presence of a single substantial non-exempt purpose precludes exempt status regardless of the number or importance of the exempt purposes." [Citing in part Better Business Bureau v. United States, 326 U.S. 279, 283 (1945)]

- "In applying this standard, we think at least four factors are relevant. First, we must look to the formative history of the organization (was there a substantial business interest in taxpayer's formation). . . . Second, we have the embodiment of that completely legitimate, but nevertheless private, interest in the taxpayer's bylaws. . . . while . . . it is not conclusive, we nevertheless think it is probative as to the taxpayer's non-exempt purpose . . . Third, we have the taxpayer's actual operation. Here there can be no doubt that the cooperative is of tremendous value to the private economic interests of its members – a clearly non-exempt purpose. . . . Finally, we have the fact that each member of the cooperative enjoys these economic benefits precisely to the extent that he uses, and pays for, it . . ."

5. Mutual Aid Ass'n of the Church of the Brethren v. U.S.,
578 F. Supp. 1451, 1456-1457 (D. Kan. 1983), aff'd 759 F.2d 792, 795-796 (10th Cir. 1985)

Mutual Aid Association of The Church of the Brethren (MAA) was an unincorporated church-sponsored insurance company.[1] MAA provided Church of the Brethren members with insurance protection against fire, storms, vandalism, and other casualties continuously since its inception. MAA also provided the same coverage to Church of the Brethren structures and insured some small businesses provided they were owned only by Church of the Brethren members. MAA's stated purpose, set forth in its bylaws, was to provide Church of the Brethren members with mutual protective fire and extended coverage property insurance. MAA operated primarily to provide economic and non-economic benefits to its members. MAA restricted membership to Church of the Brethren members. MAA generated income primarily through premiums and investment of surplus funds.

The court held that promotion of religion is not necessarily the promotion of social welfare, and that in view of economic benefits conferred on members by redistribution of surpluses or reduced premium rates, MAA did not qualify as a social welfare organization despite its mutual aid purposes. The court of appeals held that MAA was not dedicated exclusively or primarily to the advancement of religion.

Relevant language from Mutual Aid Ass'n of the Church of the Brethren v. U.S.:

- "We are simply not convinced that a religious purpose is, *per se,* a promotion of social welfare." Although MAA's policies and practices "appear to be largely consistent with the religious beliefs of the Church of the Brethren, these practices and policies clearly benefit a select few . . . far more than they benefit the general public or community as a whole."

- "MAA does not give succor to souls; it sells insurance coverage. . . . MAA primarily provides property insurance, an admitted economic activity. MAA treats its surplus and profit as would any mutual insurance company: '[t]he ultimate considerations of [MAA] in creating and using its surplus and profit are to provide a reasonable and adequate security margin, and to provide better protection and service to its members.' The presence of a substantial non-exempt purpose – providing property insurance for its members on the basis of assessed premiums – precludes MAA's exempt status as an organization . . . primarily engaged in the promotion of the social welfare."

6. Vision Serv. Plan v. U.S.,
96 A.F.T.R.2d 2005-7440 (E.D. Cal 2005), aff'd 265 Fed. Appx. 650 (9th Cir. 2008)

[1] This case predates the enactment of §501(m), which prohibits some insurance activities of (c)(3) and (c)(4) organizations.

VSP contracted with subscribers to arrange for the provision of vision care services and vision supplies to the subscribers' employees or members. A non-enrolled individual would not receive care. VSP provided some services to charity programs.

The court held that VSP did not operate primarily for the promotion of social welfare. VSP's primary purpose was to serve VSP's paying members. Although VSP provided vision care services to non-enrollees under VSP's charity programs, the provision of these services (free of charge to the individual) was comparatively small in relation to VSP's revenue and number of enrollees.

Relevant language from Vision Serv. Plan v. U.S.:

- "Although the words 'exclusively' and 'primarily' have different meanings, courts interpret the word 'exclusively' to mean 'primarily.' See American Women Buyers Club, Inc. v. United States, 338 F.2d 526, 528 (2nd Cir.1964) ("The word 'exclusively' as used in the statute has not been given a strict interpretation ... but rather has been interpreted to mean 'primarily.') (citing Debs Memorial Radio Fund, Inc. v. Commissioner, 148 F.2d 948, 952 (2nd Cir.1945))."
- "Moreover, it has also been held that '[t]he presence of a single substantial non-exempt purpose precludes exempt status regardless of the number or importance of the exempt purpose.'" Contracting Plumbers, 588 F.2d at 686."
- "The test for qualification under 501(c)(4) is stringent."

7. In re Vision Serv. Plan Tax Litig.,
105 A.F.T.R2d 2010-2979 (S.D. Ohio 2010)

Same facts as VSP # 6. The court held VSP's charitable and community outreach efforts were minimal in relation to its overall operations and it was not operating "exclusively for the promotion of social welfare." VSP provided charitable and community outreach services to, at most, 0.8% of its total paying enrollment. Although VSP argued that it aspired to spend up to 40% of excess net revenue annually to provide charity care, the court looked at the actual dollar amounts expended and found those amounts to be insignificant.

Relevant language from In re Vision Serv. Plan Tax Litig.:

- "In determining whether an organization is primarily engaged in promoting the general welfare, courts typically compare or weigh an organization's purported charitable activity against its non-exempt activity, which here is plaintiffs' delivery of vision care services to paying subscribers. See, e.g., Better Business Bureau v. United States, 326 U.S. 279, 283 (1945) ('[T]he presence of a single [non-exempt] purpose, if substantial in nature, will destroy the exemption regardless of the number or importance of truly [exempt] purposes.'); Harding Hospital, Inc. v. U.S., 505 F.2d 1068, 1072 (6th Cir.1974) ("The term

'exclusively' ... means that an organization is not exempt if it has any substantial noncharitable purpose.'); Ohio Teamsters Educational and Safety Training Trust Fund v. Comm'r, 692 F.2d 432, 435 (6th Cir.1982) (same).

III. IRS RULINGS, IRM & MEMORANDA

The IRS has, in some instances, interpreted the requirement established by the §501(c)(4) regulations – that an organization be "primarily engaged" in promoting the common good and general welfare – to mean that (c)(4) organizations may engage in more non-exempt activity than (c)(3) organizations. The Service has based these interpretations on the reasoning that the §501(c)(4) regulations lack the "insubstantial part" language that is present in the §501(c)(3) regulations. However, several internal memoranda have questioned whether the "primarily" language in the regulations is an accurate interpretation of the statue.

Rev. Rul. 66-179

A garden club was held to be eligible for (c)(4) status if a substantial, but not primary, activity consisted of providing social benefits to its members. The social benefits did not further exempt purposes, but because they were less than primary did not prevent exemption under (c)(4), even though they were substantial and would therefore bar exemption under (c)(3).

IRM 7.25.4.6 – Exemption under IRC § 501(c)(3) and (4)

(1) Treas. Reg. § 1.501 (c)(3)–1(d)(2) includes the promotion of social welfare as a charitable purpose within the meaning of IRC § 501(c)(4). Accordingly, there is considerable overlap between IRC § 501(c)(3) and (4).

(2) IRC § 501(c)(4) exempt organizations generally are allowed greater latitude than IRC § 501(c)(3) exempt organizations. Because the IRC § 501(c)(4) test for exemption is one of primary activities, an IRC § 501(c)(4) exempt organization may engage in substantial non-exempt activities.

GCM 32395 (September 14, 1962)

In this GCM, the Office of Chief Counsel considered a proposal to revoke the §501(c)(4) status of a Post of the American Legion. At issue was whether the Post's operation of a staged theatrical production, from which it derived 90% of its annual income, violated section 501(c)(4)'s requirement that an organization described within that section of the Code be "operated exclusively for the promotion of social welfare." Chief Counsel postulated that a revocation of exemption would not be upheld by a court because, "the only way a court could logically uphold such an administrative action would be by saying in effect that the regulations prescribe a less restrictive test than is required by a proper reading of the statute involved."

In its review of the statute and the regulations, Chief Counsel compared the "operated exclusively" requirement of the statute with its interpretation in the regulations, specifically, that the statute's exclusivity requirement is met if the organization is "primarily engaged" in the promotion social welfare. Chief Counsel then opined that, "the cumulative effect of the cited provisions requires the interpretation that anything less than primary engagement in non-exempt activity by an otherwise qualified organization will not bar its exemption under section 501(c)(4)." In view of this reading Chief Counsel concluded that the statute would support a holding which would deny exemption under section 501(c)(4) to an organization substantially engaged in carrying on an activity for profit, but the regulations would not support such a holding. For this and other reasons, the office declined to concur in the proposed revocation of the Post's exemption.

Chief Counsel also stated that the Service should reach a policy decision as to which languaged controlled — the statute or the regulations — before any significant ruling position was adopted, particularly if the IRS sought to adopt a standard whereby any substantial non-exempt activity would defeat exemption under section 501(c)(4).

GCM 33495 (April 27, 1967)

The GCM considers the interplay between (c)(3) and (c)(4) when an organization engages in "action" activities. The GCM provides a history of the (c)(4) statutory language and states that recent court decisions (American Women Buyers Club) interpret "exclusively" to mean "primarily." The GCM also states "We do not accept the premise that once an organization participates substantially in activities of the action type, it necessarily must follow that it no longer operates "exclusively" for the promotion of social welfare."

GCM 38215 (December 31, 1979)

The GCM does not define "primary," rather it states that so long as social welfare is primary then everything else is permissible. See also GCM 32394 (Sept. 14, 1962) (no quantitative test on non-primary activities if meet primarily test); GCM 32395 (Sept. 14, 1962) (can do anything less than primary and remain exempt).

GCM 38215 notes that "the implementing regulations have remained unchanged since their issuance in 1959" (then 20 years ago). GCM 38215 states that the regulations were questioned in GCM 32395 and that regulation projects were initiated shortly thereafter, in 1963, but no further formal action was taken on them after referral to the Exempt Organizations Council.

Copies of three memoranda attached to GCM 38215 (Mar. 31, 1978, memorandum from Director, Interpretative Division to Deputy Chief Counsel (Technical); Nov. 21, 1979, memorandum from Director, Employee Plans and Exempt Organizations Division to Technical Advisor; Dec. 6, 1979, memorandum from Technical Advisor to Chief

Counsel-to Director, Interpretative Division – each discussed infra) further discuss proposed amendments to the IRC § 501(c)(4) regulations.

GCM 32394, upon which GCM 38215 relied, concluded that if the exempt organization's primary activity is social welfare then there is no quantitative test applied to nonexempt activity. GCM 32395, upon which GCM 38215 relied, concluded that anything less than "primary" will not bar exemption pursuant to IRC § 501(c)(4).

Background Information Note 75-05-04822 (March, 1975)

The Background Information Note (BIN) 75-05-04822 (Mar. 1975) cites GCM 33495 (Apr. 27, 1967) for the same proposition espoused supra: that a IRC § 501(c)(4) organization is permitted to conduct as much non-exempt activity as it wants so long as it is "short of being the organization's primary activity." See GCM 33495. The BIN also cited GCMs dealing with IRC § 501(c)(5) and (c)(6) as analogies, requiring that the exempt activity be the primary activity. See GCM 36286 (May 22, 1975) (non-exempt receipts and expenditures were 1/5 the amount of qualified IRC § 501(c)(5) exempt expenditures; if primary purpose and activities of an organization qualify pursuant to IRC § 501(c)(5) then some non-qualifying participation in activities or expenditures will not disqualify organization); GCM 34233 (Dec. 3, 1969). The BIN provides no definition of what "primary" means or how it is to be measured. However it notes:

> Shortly after our ruling letter to the organization was issued the Philadelphia Inquirer ran a story entitled 'It's Active Politics N.O.W.' indicating that the I.R.S. had officially permitted the organization to engage in up to 49 percent of its activities in politics. This story generated numerous Congressional and public inquiries concerning the Service's position on the political activities of exempt organizations.

In the markup of the ruling attached to the BIN, the proposed ruling states (strikeouts in ~~strikeout~~; additions in *double underline italics*):

> In order to qualify for exemption under 501(c)(4) of the Code, an organization must be primarily engaged in activities that promote social welfare. . . Thus, am organization that is exempt under section 501(c)(4) may carry on some political activities so long as the organization's primary activities ~~remain those~~ *are activities* that ~~constitute the~~ promot*e*~~ion of~~ social welfare.

Interpretative Division Memorandum (March 31, 1978)

The March 31, 1978, memorandum from Director, Interpretative Division to Deputy Chief Counsel (Technical) begins by noting that the proposed revenue ruling "prompted a reexamination of a perennially troublesome question: Should the Regulations implementing 501(c)(4) be changed?" because the regulatory language ("primarily") differs from the statutory language ("exclusively"). The memorandum states "it has long

been recognized that they [the IRC § 501(c)(4) regulations] are an unduly broad interpretation of the statute."

The March 1978 memorandum cites GCM 32394, GCM 32395, and GCM 33495 and interprets, as discussed supra, these GCMs concluding that the rule for an IRC § 501(c)(4) organization is that it can engage in any non-exempt activity so long as it is less than primary. "[I]f an organization is primarily engaged in activities promoting the social welfare, there is no additional quantitative test to be applied to it activities that are not promoting social welfare. . . ."

In light of all of this, EO suggested recommending to Treasury that the "primary activities" test be eliminated from the regulations and inserting an "exclusive" test permitting no more than an insubstantial amount of activities not in promotion of social welfare. The Director, Interpretative Division, however, recommended against amending the regulations at that time. The Director believed that it was highly unlikely that an IRC § 501(c)(4) reg. project would be approved at the time even though there was "substantial agreement that the current Regulations are deficient." The Director noted that:

> The big difference between the "primary" tests of the respective Regulations as finally adopted is . . . [the] 501(c)(3) Regulations . . . [have more stringent language requiring that no] more than an insubstantial part of its activities is in furtherance of an (c)(3) purpose. Thus, at least, no 51% - 49% dichotomy between the quantum of qualifying and nonqualifying activities will be tolerated under the section 501(c)(3) Regulations, as it seems to be under the section 501(c)(4) Regulations.

He went on to state: "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 . . . we are inclined to think it might be a reasonable test under section 501(c)(4)." He further stated that extensive and protracted efforts from 1975 to 1977 were made, without success, to amend the IRC § 501(c)(3) regulations. Additionally, the impact of recent legislation (UBIT and IRC § 527) which have "diluted" the IRC 501(c)(4) exclusively/primarily problem.

Memorandum from Director EP/EO (November 21, 1979)

The November 21, 1979, memorandum from Director, Employee Plans and Exempt Organizations Division to Technical Advisor concurred with the recommendation of Interpretive Division "that any proposal to amend the Regulations under section 501(c)(4) be dropped at this time, and the position reflected in Rev. Rul. 67-368" continue to be followed regarding a "quantitative test" for non-qualifying activities of an IRC § 501(c)(4) organization.[2] The Director also concurred 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,

[2] Rev. Rul. 67-368 states that political intervention does not further social welfare and that an organization whose primary purpose is political intervention therefore does not qualify under § 501(c)(4).

but less than primary, activity of a social welfare organization is business activity." He also agreed with the assessment regarding the impact of IRC § 527.

The December 6, 1979, Memorandum

The December 6, 1979, memorandum from Technical Advisor to Chief Counsel to Director, Interpretative Division concurred with the recommendation that no project to amend the regulations be taken at that time. The Technical Advisor was of the opinion that "the problems with the § 501(c)(4) 'primary activities' test are clearly lessened by § 527 and the extension of the unrelated business income tax.

Measurement of activities not in furtherance of exempt purposes

The IRS has not published a precise method of measuring exempt activities or purposes in any of its published guidance, though three revenue rulings have stated that all of the organization's activities must be considered and that there is no pure expenditure test. See Rev. Ruls. 68-45, 68-46, 2004-6.

Internal training materials have stated that time, financial resources, and number of employees are factors that must be considered in a determination of whether a certain activity constitutes a primary activity of an organization.

Appendix: List Of Questions Used to Evaluate "Primarily"

_. How was the Organization formed and what is its history? *[Contracting Plumbers Coop. Restoration Corp. v. U.S.]*

_. Is admission to the Organization limited or is it open to all? *[American Women Buyers Club, Inc. v. U.S.]*

  _. On what basis is admission limited?

_. What benefits did the Organization confer on non-exempt persons and/or entities? *[American Campaign Academy v. CIR]*

_. Does the Organization have more than one activity (*e.g.*, 1 EO and 1 for profit)? (if it does:) *[People's Educ. Camp Soc'y, Inc. v. CIR]*

_. What civic betterments and social improvements do you provide to the people of the community (what effect does the Organization's operations have on the public)? *[Rev. Rul. 74-17, 80-205, People's Educ. Camp Soc'y, Inc. v. CIR]*

_. Does the organization provide substantially different benefits to the public than to its members? *[Vision Serv. Plan v. U.S.]*

_. What portion of the community benefits on account of the Organization's activities? *[Rev. Rul. 80-205]*

_. What activities did/does the Organization engage in for the benefit, pleasure, or recreation of its members? *[Rev. Rul. 61-158, 66-179]*

_. Is the Organization involved in political activities? If so, what are those activities? *[Rev. Rul. 67-368]*

_. What non-exempt businesses did/does the Organization engage in? (if carrying on a business with the general public similar to businesses that operates for profit not exempt) *[Rev. Rul. 61-158, 68-46, 78-89]*

  _. What is/are the source(s) of the Organization's income? *[Rev. Rul. 68-45, 68-46]*

_. What did the Organization "primarily" use its income for (break down of these expenses)? *[Rev. Rul. 68-45, Form 990-EZ, People's Educ. Camp Soc'y, Inc. v. CIR]*

_. Does the Organization own real property? (if so) [*Santa Cruz Bldg. Ass'n v. U.S.]*

  _. Does the Organization rent the property to others?
  _. Is rental limited to members of the Organization or the entire community?

_. What does the Organization consider its exempt purpose(s)? *[Form 990-EZ]*

_. In what order does the Organization consider its exempt purpose(s) (starting with most important to least)? *[Form 990-EZ]*

_. How many people benefited from the Organization's exempt purposes? *[Form 990-EZ]*

_. How much time was devoted to each activity? *[Internal PowerPoint]*

_. How much financial resources were devoted to each activity? *[Internal PowerPoint]*

_. What social welfare activities was/is the Organization engaged in (or what services did/does it provide)? *[Rev. Rul. 68-46, Form 990-EZ]*

_. What did the Organization achieve in carrying out its exempt purposes? *[990-EZ]*

_. Where are the Organization's fixed assets located?

_. What is the amount of assets at each location by price and percent of assets?

_. Where are the Organization's personnel located?

_. Where are the personnel located by amount of people and percent of people?

_. How did/does the Organization determine whether the social welfare activity is the primary activity of the Organization?

_. What is the exempt purpose of the Organization's service expenses? *[Form 990]*

_. How many employees does the Organization have? *[Form 990]*

_. Are they full-time, part time, or seasonal?
_. If they are part-time, when did/do they work?
_. If they are seasonal, during what season (months) did/do they work?

_. How many volunteers does the Organization have? *[Form 990]*

_. Are they full-time, part time, or seasonal?
_. If they are part-time, when did/do they work?
_. If they are seasonal, during what season (months) did/do they work?

_. How many employees and volunteers were devoted to each activity of the Organization? *[Internal PowerPoint]*

Time Frame	Events
February 2010	The EO function receives a high-profile request for tax-exemption associated with the Tea Party.
March-April 2010	The EO function begins searching for other requests for tax-exemption involving the "Tea Party", "Patriots", "9/12", and (c)(4) applications involving political sounding names, e.g., "We the People", "Take Back the Country".
April 2010	The EO function unit in charge of reviewing request for tax-exemption requests guidance on how to process cases from Headquarters Office.
May 2010	Email sent out stating that all "Tea Party" applications should be stopped for further scrutiny.
July/August 2010	The EO function unit in charge of reviewing applications for tax-exempt status sends out communications to stop all "Tea Party" applications and send them to one special group for work.
October 2010	An EO function worker within the group assigned to work these cases stops work while awaiting guidance.
Nov 2010-Feb 2011	EO function Determinations manager follows up on outstanding guidance to work cases.
June 2011	EO Director is briefed that criteria being used to send cases to a special group is 1) "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run. The EO Director raises concerns and asks that the criteria be changed.
Sept-Oct 2011	Spreadsheet provided by EO Technical with results of review of TEDS information deemed "not useful" by EO function determinations manager.
November 2011	Draft version of guidance provided to EO function unit in charge of reviewing applications for tax-exempt status. Guidance continued to be revised through March 2012 and was never finalized. However, the EO function worker assigned advocacy cases began working the cases again in November 2011 after initial guidance was received.
December 2011	Team of EO function employees is assigned to work all advocacy cases to ensure consistency because there were too many cases for one person to review.
January 2012	Team of EO function employees begins working cases and starts to send letters requesting more information from those organizations applying for tax exemption. Information requested included donor information from some applicants.
February-March 2012	Concerns begin to be voiced over amount and type of information requested in letters. The EO Director stops additional letters from going out, and provides additional time to organizations for answering questions. The Deputy Commissioner for Services and Enforcement then determines that the IRS will not require donor information requested in the letters at this point.
May 2012	The process is changed to ensure any changes to criteria for working these type of cases is reviewed by management. Groups of different disciplines get together to begin resolving backlog of cases.

From: Lerner Lois G
Sent: Wednesday, October 03, 2012 2:15 PM
To: Flax Nikole C
Cc: Grant Joseph H
Subject: My Work Plan and TIGTA

Importance: High

I believe Joseph already mentioned this, but TIGTA plans to look at the "other side of the c4 issue." I pushed on Troy a bit to get a better sense of what he meant and he said they were looking at the c4 application process now to see if there was any bias or pressure about how we treat c4 applications where there is an indication that the org is involved in political activity--- so the next step would be to look at what we do with them once they come in the door. He focused on the c4,5,6 self-declarer project. I told him that, while there were questions on the questionnaire about political activity, the project wasn't focused solely on organizations involved in political intervention, and it only covers organizations that have NOT come in. And, I told him it was only one piece of our efforts. Didn't say it, but we have dual track where we are testing quires for exam selection and looking at referrals too.

All of this made me less than comfortable because, as you know, the questionnaire is not yet scheduled to go out. If I am to start sending these the beginning of Dec., I need to know pretty soon, so we can adjust our work. So, I'm asking if you can approach Steve about the issue please. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, October 16, 2012 4:34 PM
To: Paterson Troy D TIGTA
Subject: RE: Long Political Advocacy Timeline and Questions for Response

Apologize--just saw these--in future, please cc Dawn Marx--she monitors my email

Lois G. Lerner
Director of Exempt Organizations

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, October 02, 2012 8:07 AM
To: Lerner Lois G
Subject: Long Political Advocacy Timeline and Questions for Response

Lois,

I appreciate you taking the time to discuss the audits we are conducting and have planned for the future. As we discussed yesterday, attached is a longer version of the timeline we developed through reviews of e-mails and discussions. I sanitized the timeline by removing references to particular cases and individuals. This shortened the timeline down to about 12 pages.

In addition, below are the questions that we gave to Joseph for his response. I would appreciate your response to these questions also.

1. To the best of your knowledge, did any individual or organization outside the IRS influence the creation of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?
2. To the best of your knowledge, did IRS or Tax Exempt and Government Entities Division management sanction the use of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?
3. When did you become aware the IRS was targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

As always, if you have any questions or concerns, please let me know.

Troy
404-338-7476

1. To the best of your knowledge, did any individual or organization outside the IRS influence the creation of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

No. To the best of my knowledge, no individual or organization outside the IRS influenced the creation of these criteria.

2. To the best of your knowledge, did IRS or Tax Exempt and Government Entities Division management sanction the use of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

3. When did you become aware the IRS was targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

In early 2010, EO Determinations witnessed an uptick in the number of applications for § 501(c)(3) or 501(c)(4) status that contained indicators of significant amounts of political campaign intervention ("advocacy organizations"). EO Determinations first became of aware of this uptick in February 2010, when an EO Determinations screener identified a § 501(c)(4) applicant that planned to spend a significant amount of its budget on influencing elections, which he believed was like organizations that had been receiving media attention for purportedly seeking classification as § 501(c)(4) social welfare organizations but operating like § 527 political organizations. He alerted his manager of the potential "emerging issue."

To ensure consistent treatment of applications, EO Determinations had long been alerting its specialists to emerging issues by sending emails describing particular issues or factual situations warranting additional review or coordinated processing. Because it was difficult to keep track of all of these separate email alerts, EO Determinations staff requested a consolidated list of all such alerts. EO Determinations was developing the Be On the Lookout (BOLO) list in early 2010. The BOLO, which is an Excel spreadsheet, provides a centralized source of regularly updated information to EO Determinations specialists about potentially abusive organizations or fraud issues, issues and cases requiring coordinated processing, emerging issues and issues for which to watch. The

BOLO currently includes four tabs: (1) Potential Abusive, (2) Emerging Issues, (3) Coordinated Processing, and (4) Watch List.

The first BOLO list contained the following entry on the Emerging Issues tab: "These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4) [sic]." That description was added to the BOLO to help specialists identify cases involving potentially significant political campaign intervention for assignment to a particular Determinations group so that they could be consistently processed in accordance with advice provided by EO Technical. The language used on the BOLO was selected by Determinations specialists with the involvement of a front-line manager in EO Determinations. At this time, the language was not reviewed or approved by executive management.

As the number of advocacy cases grew, the Acting Director, EO Rulings & Agreements wanted to ensure that EO Determinations was not being over-inclusive in identifying such cases (including organizations that were solely engaged in lobbying or policy education with no apparent political campaign intervention). In addition, in light of the diversity of applications selected under this "tea party" label (e.g., some had "tea party" in their name but others did not, some stated that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.), the Acting Director, EO Rulings & Agreements sought clarification as to the criteria being used to identify these cases. In preparation for briefing me, the Acting Director, EO Rulings & Agreements asked the EO Determinations Program Manager what criteria Determinations was using to determine whether a case was a "tea party" case. Because the BOLO only contained a brief reference to "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)" in June 2011, the EO Determinations Program Manager asked the manager of the screening group what criteria were being used to label "tea party" cases ("Do the applications specify/state ' tea party'? If not, how do we know applicant is involved with the tea party movement?"). The manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run."

As TIGTA's interviews with EO Determinations employees revealed, the BOLO description and the above-referenced list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group. Applications that did not contain these terms, but that contained indicators of potentially significant political campaign intervention, were also referred to the group assigned to work such cases.

I first became aware that the BOLO referenced "tea party" organizations and EO Determinations was using the above criteria to determine what organizations met that description when I was briefed on these cases on June 29, 2011. I immediately directed that the BOLO be revised to eliminate the reference to "tea party" organizations and refer instead more generally to advocacy organizations. The BOLO was revised on July 11, 2011; the "issue name" was changed from "Tea Party" to "Advocacy Orgs", and the "Issue Description" was changed to "Organizations involved with political, lobbying, or advocacy for exemption under 501(c)(3) or 501(c)(4)."

Unbeknownst to me, EO Determinations further revised the BOLO issue description on January 25, 2012 to "political action type organizations involved in limiting/expanding government, educating on the Constitution and Bill of Rights, social economic reform/movement." When I learned of this change, I directed that the BOLO description be revised. EO Determinations management explained that the group working the advocacy cases had made the change because they were receiving a substantial number of 501(c)(4) applications that only involved lobbying activity, which is a permissible activity, and no indication of political campaign activity. They were trying to edit the description to avoid capturing these organizations. Per my direction, the BOLO was updated on May 17, 2012. The separate entries for Occupy groups and ACORN successors were deleted and the advocacy organization description was revised to read, "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). Note: advocacy action type issues (e.g., lobbying) that are currently listed on the Case Assignment Guide (CAG) do not meet this criteria."

At the same time that I directed the BOLO be revised, I also directed the Acting Director of EO Rulings & Agreements to implement procedures for updating the BOLO that included executive-level approval. On May 17, 2012, the Acting Director of EO Rulings & Agreements issued a memorandum that set forth such procedures, which require that all additions and changes to the BOLO be approved by the manager of the emerging issues coordinator, the EO Determinations Program Manager, and the Director, Rulings & Agreements.

From: Lerner Lois G
Sent: Monday, October 29, 2012 10:51 AM
To: [redacted]
Subject: Fw: Revised timeline
Attachments: Long Political Advocacy Timeline HOP comments.doc

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

----- Original Message -----
From: Paz Holly O
Sent: Sunday, October 28, 2012 02:31 PM
To: Lerner Lois G; [redacted] Marks Nancy J; Light Sharon P
Subject: Revised timeline

Attached is a revised version of the timeline that incorporates our discussion of last week and the revisions to the answers to the questions. Please note:

1. In the meeting, we ran out of time and did not discuss anything after Jan. 2012 so please review that portion closely.

2. In the Oct. 19, 2010 entry, I added a comment about how many of the orgs did not have TP in their name but I wanted you to be aware that some of those orgs included in my count of non-TP names had "patriot" or "912" in their names.

3. Should we include EOD's rationale (albeit flawed) as to why it asked the donor question? EOD did explain to TIGTA that they were concerned that 527 donors would be a red flag for a c4 that engages in political activity.

1. To the best of your knowledge, did any individual or organization outside the IRS influence the creation of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

No. To the best of my knowledge, no individual or organization outside the IRS influenced the creation of these criteria.

2. To the best of your knowledge, did IRS or Tax Exempt and Government Entities Division management sanction the use of criteria targeting applications for tax exemption that mention: 1) the "Tea Party," "Patriots," or the "9/12 Project", 2) government spending, government debt or taxes, 3) education of the public by advocacy/lobbying to "make America a better place to live", or 4) criticizing how the country is being run?

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To ensure consistent treatment of applications, EO Determinations had long been alerting its specialists to emerging issues by sending emails describing particular issues or factual situations warranting additional review or coordinated processing. Because it was difficult to keep track of all of these separate email alerts, EO Determinations staff requested a consolidated list of all such alerts. EO Determinations was developing the Be On the Lookout (BOLO) list in early 2010. The BOLO, which is an Excel spreadsheet, provides a centralized source of regularly updated information to EO Determinations specialists about potentially abusive organizations or fraud issues, issues and cases requiring coordinated processing, emerging issues and issues for which to watch. The

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As TIGTA's interviews with EO Determinations employees revealed, the BOLO description and the above-referenced list of criteria used by EO Determinations to determine which cases fell under the BOLO description were their shorthand way of referring to the group of advocacy cases rather than targeting any particular group. Applications that did not contain these terms, but that contained indicators of potentially significant political campaign intervention, were also referred to the group assigned to work such cases.

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At the same time that I directed the BOLO be revised, I also directed the Acting Director of EO Rulings & Agreements to implement procedures for updating the BOLO that included executive-level approval. On May 17, 2012, the Acting Director of EO Rulings & Agreements issued a memorandum that set forth such procedures, which require that all additions and changes to the BOLO be approved by the manager of the emerging issues coordinator, the EO Determinations Program Manager, and the Director, Rulings & Agreements.

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From: Paz Holly O
Sent: Friday, November 09, 2012 1:12 PM
To: Lerner Lois G
Subject: RE: Responses - TIGTA

Thanks.

From: Lerner Lois G
Sent: Friday,

November 09, 2012 11:33 AM
To: Paz Holly O
Subject: Re:

Responses - TIGTA

Nice

job. I'm oK with this
Lois G. Lerner----------
Sent from

my BlackBerry Wireless Handheld

From: Paz

Holly O
Sent: Friday, November 09, 2012 10:48 AM
To: Lerner

Lois G
Subject: FW: Responses - TIGTA

Lois,

Troy had three questions in response to our comments. Please see the questions and my draft answers below. These have been reviewed and approved by Nan and Sharon, but I wanted to see if you are comfortable with them. Troy is not pressing me for the answers just yet so I think we'd be in a good place if we could respond by the end of the day today.

Thanks,

Holly

1. In the response to questions 2 and 3, Lois states that the manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run." Does this mean that the manager of the screening group developed this criteria?
If not, who created the criteria?
We're trying to determine if anyone in EO function management sanctioned the use of the criteria.

EO executive

management did not sanction use of 1-4 above as criteria for identifying

advocacy cases. Because the BOLO

only contained a brief reference to “Organizations involved with the Tea Party

movement applying for exemption under 501(c)(3) and 501(c)(4)” in June 2011, I,

as Acting Director of EO Rulings &&Agreements, sought clarification as to

the criteria being used to identify these cases in light of the diversity of

applications selected under this "tea party" label (e.g., some had “tea party”

in their name but others did not, some stated that they were affiliated with the

“tea party” movement while others stated they were affiliated with the

Democratic or Republican party, etc.).

My inquiry prompted the EO Determinations Program Manager to ask the

manager of the screening group what criteria were being used to label “tea

party” cases (“Do the applications specify/state ‘ tea party’? If not, how do we know applicant is

involved with the tea party movement?”).

We understand that the screening group manager asked his employees how

they were applying the BOLO's short-hand reference to "tea party" and was told

by his employees that they included organizations meeting any of criteria 1-4

above as falling within the BOLO's reference to "tea party" organizations.

2. On the May 14,

2012 entry on the timeline, the EO function changed the additional details

column to read "Concluded, in light of case law on what is educational, that "propaganda" activities should be [emphasis added] considered part of an organization's social welfare activities in analyzing whether it is primarily engaged in promoting social welfare."

Earlier, you provided an e-mail from Tom Miller that states "I could not find anything, but my analysis is that propaganda activities should not be [emphasis added] included in an organization's activities that promote social welfare in analyzing whether it is primarily engaged in promoting the SW within the meaning of the regulations. Did the EO function inadvertently leave out the word "not" in its feedback or are we misinterpreting Tom Miller's e-mail?

I am afraid that the wording of my question to Tom has contributed to the confusion. You can see I said we were seeing inflammatory talk, which I characterized as propaganda. "Propaganda," however, is a term with legal significance. So, Tom's email went on to discuss what constitutes "propaganda" versus what is "educational," for purposes of characterizing the inflammatory talk. He says that, "Posting of some questionable or snarky articles will not undue otherwise OK material . . . . the bar [for whether material is educational] is quite low." The example in his second paragraph about the Institute for Historical Review shows just how difficult it is to conclude that inflammatory talk is actually "propaganda" rather than "educational." Senior members of the team bucketing the advocacy cases discussed Tom's email in light of the inflammatory talk we were seeing and concluded that it would be considered educational under existing precedents.

3. On the May 2012

entry on the timeline, the EO function deleted our wording that the EO Technical

employee was reviewing all case files and closing letters prior to

issuance. Our interview write-up

states that case files were being reviewed and closing letters were being

reviewed prior to issuance. Is this

the case, or are only the development letters being

reviewed?

EO Technical

employees are reviewing all development letters to organizations in buckets 2

and 3 prior to issuance.

Designated EO Technical employees are also available to answer questions

the Determinations specialists may have after receiving responses to those

development letters. While EO Technical employees are reviewing all development letters, typically on favorables, EO Technical does not review the closing

letter itself because these are essentially form approval letters . All denial letters, however, are being closely coordinated

between EO Technical and EO Determinations.

From: Paterson Troy D TIGTA

[mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, November 06,

2012 3:00 PM
To: Paz Holly O
Cc: Seidell Thomas F TIGTA;

Medina Cheryl J TIGTA
Subject: FW: Responses

Holly,

Thank

you again for taking the time to review and provide feedback on the 3 questions

we submitted and the long timeline. We have a few follow-up

questions.

1.

In

the response to questions 2 and 3, Lois states that the manager of the screening

group responded that, "The following are issues that could indicate a case to be

considered a potential 'tea party' case and sent to Group 7822 for secondary

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this the case, or are only the development letters being

reviewed?

As

always, we appreciate the assistance and we look forward to your

response.

Troy

From: Lerner Lois G

[mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, November 02, 2012 11:34

AM
To: Paterson Troy D TIGTA
Cc: Paz Holly

O
Subject: Responses

Attached is our redlined

version of the long time line you prepared. We have made changes where we thought your folks didn't get it exactly right, and have added some comments for your consideration. Also attached are my response to your three questions. Rather than be repetitive, we have combined the response to questions 2 and 3 into one comprehensive response. I am out of the country next week, but Holly can probably answer any questions you may have in the meantime.

Lois G.

Lerner

Director of

Exempt Organizations

From: Lerner Lois G
Sent: Wednesday, November 14, 2012 12:53 PM
To: Marks Nancy J; Paz Holly O
Cc: Light Sharon P
Subject: RE: Responses

Thanks Nan

Lois G. Lerner
Director of Exempt Organizations

From: Marks Nancy J
Sent: Wednesday, November 14, 2012 1:52 PM
To: Lerner Lois G; Paz Holly O
Cc: Light Sharon P
Subject: Re: Responses

I basically agree with Lois. Holly take another look at your notes to be sure we have our best recollection. Then assuming that doesn't fill in any blanks I would respond (vet this for accuracy I'm relying on my recollection here) that Cindy has indicated that she was unaware, that the area manager has since retired and we did not interview him. We did try to clarify this issue with the screening manager and agents. The screening managers best recollection is XXX (whatever the notes say) but given the passage of time it is difficult to say with certainty whether a first line manager may have been aware of some or all of these criteria at some earlier point.

Sent using BlackBerry

From: Lerner Lois G
Sent: Wednesday, November 14, 2012 10:47 AM
To: Paz Holly O
Cc: Light Sharon P; Marks Nancy J
Subject: RE: Responses

Is there a problem with going back and asking him?her? Just say we have been looking at the notes and it is unclear whether the manager formally approved their use. If the answer is no, then we can give the answer. If it is yes, we can give the answer. it is what it is--we get creamed either way--either we don't know what the heck is going on, or low level management did this without telling their supervisor. Just need to know--neither show political motivation.

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Wednesday, November 14, 2012 10:41 AM
To: Lerner Lois G

Cc: Light Sharon P; Marks Nancy J
Subject: RE: Responses

The screening manager has not retired. The area manager retired. However, we are talking years ago and memories of how knew what when are fuzzy. I can re-read my notes of the screening manager's interview and see if/how he denied a role in OK'ing these criteria. Maybe that will give me more comfort.

From: Lerner Lois G
Sent: Wednesday, November 14, 2012 10:34 AM
To: Paz Holly O
Cc: Light Sharon P; Marks Nancy J
Subject: RE: Responses

I think you are being too cautious. I think we can say that Cindy did not know until she asked and as far as we know no manager approved the use or told staff to use the criteria. We note, however, that the screening manager has since retired so we cannot provide a full response with regard to what she might have done because we don't have the information--Nan--thoughts?

Lois G. Lerner
Director of Exempt Organizations

From: Paz Holly O
Sent: Wednesday, November 14, 2012 10:21 AM
To: Lerner Lois G
Cc: Light Sharon P; Marks Nancy J
Subject: FW: Responses

Lois,

Please see below. Let's discuss how you want to respond. Cindy was not aware before she requested the criteria from the screening manager. The piece about the screening manager is more murky (what the area manager may have known is even more murky since she retired). Since "sanction" is such a vague and loaded term, I am hesitant to say no one in the management chain sanctioned it.

Holly

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Wednesday, November 14, 2012 10:01 AM
To: Paz Holly O
Cc: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA; Lerner Lois G
Subject: RE: Responses

Holly,

Thank you again for the follow-up responses. In response to question #1, you mention that EO function executive management did not sanction the use of the 1-4 criteria we listed in our original questions. You also mention that the EO function Determinations Program Manager asked for the criteria from the screener manager and the screener manager asked his employees for the specific criteria. To be clear, does this mean that the EO function Determinations Program Manager and screener manager were not aware of the specific criteria being used prior to employees providing

the criteria in response to the screener manager's request? In other words, no one in the EO function management chain sanctioned the use of the criteria.

Troy

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From: Paz Holly O [mailto:Holly.O.Paz@irs.gov]
Sent: Friday, November 09, 2012 2:14 PM
To: Paterson Troy D TIGTA
Cc: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA; Lerner Lois G
Subject: RE: Responses

Troy,

Please see answers to your follow-up questions below. Please let me know if you have any further questions or if you think a discussion would be helpful.

Holly

1. In the response to questions 2 and 3, Lois states that the manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run." Does this mean that the manager of the screening group developed this criteria? If not, who created the criteria? We're trying to determine if anyone in EO function management sanctioned the use of the criteria.

EO executive management did not sanction use of 1-4 above as criteria for identifying advocacy cases. Because the BOLO only contained a brief reference to "Organizations involved with the Tea Party movement applying for exemption under 501(c)(3) and 501(c)(4)" in June 2011, I, as Acting Director of EO Rulings & Agreements, sought clarification as to the criteria being used to identify these cases in light of the diversity of applications selected under this "tea party" label (e.g., some had "tea party" in their name but others did not, some stated that they were affiliated with the "tea party" movement while others stated they were affiliated with the Democratic or Republican party, etc.). My inquiry prompted the EO Determinations Program Manager to ask the manager of the screening group what criteria were being used to label "tea party" cases ("Do the applications specify/state ' tea party'? If not, how do we know applicant is involved with the tea party movement?"). We understand that the screening group manager asked his employees how they were applying the BOLO's short-hand reference to "tea party" and was told by his employees that they included organizations meeting any of criteria 1-4 above as falling within the BOLO's reference to "tea party" organizations.

2. On the May 14, 2012 entry on the timeline, the EO function changed the additional details column to read "Concluded, in light of case law on what is educational, that "propaganda" activities should be [emphasis added] considered part of an organization's social welfare activities in analyzing whether it is primarily engaged in promoting social welfare." Earlier, you provided an e-mail from Tom Miller that states "I could not find anything, but my analysis is that propaganda activities should not be [emphasis added] included in an organization's activities that promote social welfare in analyzing whether it is primarily engaged in promoting the SW within the meaning of the regulations. Did the EO function inadvertently leave out the word "not" in its feedback or are we misinterpreting Tom Miller's e-mail?

I am afraid that the wording of my question to Tom has contributed to the confusion. You can see I said we were seeing inflammatory talk, which I characterized as propaganda. "Propaganda," however, is a term with legal significance. So, Tom's email went on to discuss what constitutes "propaganda" versus what is "educational," for purposes of characterizing the inflammatory talk. He says that, "Posting of some questionable or snarky articles will not undue otherwise OK material . . . . the bar [for whether material is educational] is quite low." The example in his second paragraph about the Institute for Historical Review shows just how difficult it is to conclude that inflammatory talk is

actually "propaganda" rather than "educational." Senior members of the team bucketing the advocacy cases discussed Tom's email in light of the inflammatory talk we were seeing and concluded that it would be considered educational under existing precedents.

3. On the May 2012 entry on the timeline, the EO function deleted our wording that the EO Technical employee was reviewing all case files and closing letters prior to issuance. Our interview write-up states that case files were being reviewed and closing letters were being reviewed prior to issuance. Is this the case, or are only the development letters being reviewed?

EO Technical employees are reviewing all development letters to organizations in buckets 2 and 3 prior to issuance. Designated EO Technical employees are also available to answer questions the Determinations specialists may have after receiving responses to those development letters. While EO Technical employees are reviewing all development letters, typically on favorables, EO Technical does not review the closing letter itself because these are essentially form approval letters . All denial letters, however, are being closely coordinated between EO Technical and EO Determinations.

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, November 06, 2012 3:00 PM
To: Paz Holly O
Cc: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA
Subject: FW: Responses

Holly,

Thank you again for taking the time to review and provide feedback on the 3 questions we submitted and the long timeline. We have a few follow-up questions.

1. In the response to questions 2 and 3, Lois states that the manager of the screening group responded that, "The following are issues that could indicate a case to be considered a potential 'tea party' case and sent to Group 7822 for secondary screening. 1. 'Tea Party', 'Patriots' or '9/12 Project' is referenced in the case file. 2. Issues include government spending, government debt and taxes. 3. Educate the public through advocacy/legislative activities to make America a better place to live. 4. Statements in the case file that are critical of the how the country is being run." Does this mean that the manager of the screening group developed this criteria? If not, who created the criteria? We're trying to determine if anyone in EO function management sanctioned the use of the criteria.
2. On the May 14, 2012 entry on the timeline, the EO function changed the additional details column to read "Concluded, in light of case law on what is educational, that "propaganda" activities **should be** [emphasis added] considered part of an organization's social welfare activities in analyzing whether it is primarily engaged in promoting social welfare." Earlier, you provided an e-mail from Tom Miller that states "I could not find anything, but my analysis is that propaganda activities **should not be** [emphasis added] included in an organization's activities that promote social welfare in analyzing whether it is primarily engaged in promoting the SW within the meaning of the regulations. Did the EO function inadvertently leave out the word "not" in its feedback or are we misinterpreting Tom Miller's e-mail?
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As always, we appreciate the assistance and we look forward to your response.

Troy

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, November 02, 2012 11:34 AM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: Responses

Attached is our redlined version of the long time line you prepared. We have made changes where we thought your folks didn't get it exactly right, and have added some comments for your consideration. Also attached are my response to your three questions. Rather than be repetitive, we have combined the response to questions 2 and 3 into one comprehensive response. I am out of the country next week, but Holly can probably answer any questions you may have in the meantime.

Lois G. Lerner
Director of Exempt Organizations

Hi Troy—
Hope you had an enjoyable holiday. I wanted to touch base with you regarding our preliminary take on your staff's position of the advocacy files they reviewed. I know they have asked for a meeting on the shorter list very soon and have given us a bit more time to look at the longer list. All in all, I believe they are preparing for a meeting with????, where they may be opining on their preliminary take on the review.

Before my staff meets with yours, I thought I'd give you a heads up on what we're seeing in the event you prefer a "smaller" meeting with Holly and me before the staff talk. In any event, I would request you be on the meeting with the staff, as I intend to attend from our end. As you know, the issues here are very sensitive and I know we both recognize that they are not as back and white as some of the issues we deal with, so I think it is important that higher levels on both sides hear the discussion to ensure the best result.

So, to give you a preview, we generally agree with your findings on the shorter list—that the cases should have been included in the group of advocacy cases. We had not yet had time to do this look, which we did have planned, so thank you for providing the information. We still plan to look to see if there are any root causes that might have led to them not being included, so we can better address the issue, and will keep your staff posted on what we find.

As to the larger list, we have not completed our review, but, we are not in agreement with your staff's findings that the cases we have looked at thus far should not have been included as advocacy cases. We think the "disconnect" may become from a misunderstanding about why cases were added to the advocacy group. Your staff's analysis seems to focus on whether the application explicitly stated that the organization participated or intervened in a political campaign. Because the legal analysis of whether specific advocacy is political intervention requires analyzing all the facts and circumstances surrounding that advocacy in light of the formal guidance provided in this area, we included all organizations indicating they were engaged in advocacy, so that they would be worked by specialists who have a better understanding of the facts and circumstances to be considered, and who would be able to analyze the cases in a consistent manner.

Having said that, we are concerned that your staff's analysis to come up with the two lists is not consistent. Let me cite a couple examples for you to think about. The list your staff provided indicates that "given the lack of specifics in the application about the types of activities the organization has/will conduct to establish its goals," XXXXX should have been included as an advocacy case. On the other hand, after noting that the YYYYY "had not begun activities at the time of the application, and there is not enough information about the type of activities planned, staff concluded that the organization

should not have been included as an Advocacy case, but sent for general development instead.[1]

Another set of cases that puzzles us are ZZZZZ, which your list says should have been included as an advocacy case because it did not respond to question 15[2], and AAAAA, which your list says should not have been considered an advocacy case even though the application responded yes to question 15.

While at the end of the day, there may very well continue to be disagreement on some cases, I think it would be constructive for us to discuss the apparent differences before we put further pen to paper in a more formal way. Let me know your thoughts. I am out of the office Wednesday and Thursday, but can set something up Tuesday or Friday if you'd like.

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[1] I think what is missing here is some indication that YYYY was going to do some advocacy? Otherwise they would be correct if we had no reason from the application to think they might do advocacy. Is there something?

[2] I assume 15 asks whether you will do advocacy? Please tell me what the question is. Thanks

Hi Troy—
Hope you had an enjoyable holiday. I wanted to touch base with you regarding our preliminary take on your staff's position on the application files they reviewed. I know they have asked for a meeting on the shorter list (cases that were not treated as advocacy cases but your team believes should have been) very soon and have given us a bit more time to look at the longer list (cases that were treated as advocacy cases but your team believes they should not have been). All in all, I believe they are preparing for a meeting with Congressman. Issa, where they may be opining on their preliminary take on the review.

Before my staff meets with yours, I thought I'd give you a heads up on what we're seeing in the event you prefer a "smaller" meeting with Holly and me before the staff talk. In any event, I would request you be on the meeting with the staff, as I intend to attend from our end. As you know, the issues here are very sensitive and I know we both recognize that they are not as black and white as some of the issues we deal with, so I think it is important that higher levels on both sides hear the discussion to ensure the best result.

So, to give you a preview, we generally agree with your findings on the shorter list—that the cases should have been included in the group of advocacy cases. We had not yet had time to do this look, which we did have planned, so thank you for providing the information. We still plan to look to see if there are any root causes that might have led to them not being included, so we can better address the issue, and will keep your staff posted on what we find.

As to the larger list, we have not completed our review, but, we are not in agreement with your staff's findings that the cases we have looked at thus far should not have been included as advocacy cases. We think the "disconnect" may come from a misunderstanding about why cases were added to the advocacy group. Your staff's analysis seems to focus on whether the application explicitly stated that the organization participated or intervened in a political campaign. Because the legal analysis of whether specific advocacy is political intervention requires analyzing all the facts and circumstances surrounding that advocacy in light of the formal guidance provided in this area, we included all organizations indicating they were engaged in advocacy, so that they would be worked by specialists who have a better understanding of the facts and circumstances to be considered, and who would be able to analyze the cases in a consistent manner.

Having said that, we are concerned that your staff's analysis to come up with the two lists is not consistent. Let me cite a couple examples for you to think about. The list your staff provided indicates that "given the lack of specifics in the application about the types of activities the organization has/will conduct to establish its goals," XXXXX should have been included as an advocacy case. On the other hand, after noting that the YYYYY "had not begun activities at the time of the application, and there is not enough information about the type of activities planned, staff concluded that the organization

should not have been included as an Advocacy case, but sent for general development instead.[1]

Another set of cases that puzzles us are ZZZZZ, which your list says should have been included as an advocacy case because it did not respond to question 15 of Form 1024 (Has the organization spent or does it plan to spend any money attempting to influence the selection, nomination, election, or appointment of any person to any Federal, state, or local public office or to an office in a political organization?)[2], and AAAAA, which your list says should not have been considered an advocacy case even though the application responded yes to question 15.

While at the end of the day, there may very well continue to be disagreement on some cases, I think it would be constructive for us to discuss the apparent differences before we put further pen to paper in a more formal way. Let me know your thoughts. I am out of the office Wednesday and Thursday, but can set something up Tuesday or Friday if you'd like.

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