

United States Senate

PERMANENT SUBCOMMITTEE ON INVESTIGATIONS

Committee on Homeland Security and Governmental Affairs

Carl Levin, Chairman

John McCain, Ranking Minority Member

**IRS AND TIGTA MANAGEMENT FAILURES
RELATED TO 501(c)(4) APPLICANTS ENGAGED IN
CAMPAIGN ACTIVITY**

**MAJORITY STAFF REPORT
WITH
MINORITY STAFF DISSENTING VIEWS**

REPORT EXHIBITS

Part 5 OF 10

Report Exhibits - Pages 682-867

(IRSR0000400000 Series - 6-digit #s)

REPORT EXHIBIT LOCATOR LIST

IRS AND TIGTA MANAGEMENT FAILURES RELATED TO 501(C)(4) APPLICANTS ENGAGED IN CAMPAIGN ACTIVITY

8/20/14	Bates Number or Document Description	Page Number
PART 1 of 10		
	IRS0000000271-284	1
	IRS0000000285-316	16
	IRS0000000386-387	32
	IRS0000000492	34
	IRS0000001330-331	35
	IRS0000001341	37
	IRS0000001349-364 (11/9/2010 BOLO)	38
	IRS0000001423-438 (6/16/2012 BOLO)	54
	IRS0000001484-499 (7/11/2012 BOLO)	70
	IRS0000001500-511, together with IRSR0000006705-6710 (2/8/2012 BOLO)	86
	IRS0000002503-515 (8/12/2010 BOLO)	104
	IRS0000002540-552 (7/27/2011 BOLO)	117
	IRSR0000002734-735	130
	IRSR0000002738	132
	IRSR0000003152-155	133
	IRSR0000005273	137
	IRSR0000005338-342	138
	IRSR0000005935	143
	IRSR0000006583-584	144
	IRSR0000006674-699	146
	IRSR0000006700-704	163
	IRSR0000006705-719 (<i>Also see IRS0000001500-1511</i>) (2/8/2012 BOLO)	168
	IRSR0000006723	184
	IRSR0000008593-602 (2/2/2011 BOLO attachment)	185
PART 2 of 10		
	IRSR0000010132	195
	IRSR0000011217-218	196
	IRSR0000011220-221	198
	IRSR0000011492-494	200
	IRSR0000012122-126	203
	IRSR0000012133-134	208
	IRSR0000012226-227	210
	IRSR0000013066-067	212
	IRSR0000013187	214
	IRSR0000013251-256 (6/13/2012 BOLO attachment)	215
	IRSR0000013418-419	227
	IRSR0000013420-421	229
	IRSR0000013430-433	231
	IRSR0000013533-538 (1/25/2012 BOLO attachment)	235
	IRSR0000013545-565	241

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	IRSR0000013739-748 (2/21/2012 attachment - enhanced for reading by the IRS)	262
	IRSR0000013882-885	272
	IRSR0000013909-923	276
	IRSR0000013980-981	291
	IRSR0000014013, 015-016, 018, 021-022, 025 (8/10/2010 BOLO attachment)	293
	IRSR0000014069-070	300
	IRSR0000014171-174	302
	IRSR0000014175-189	306
	IRSR0000014190-191	311
	IRSR0000014253-258 (3/26/2012 BOLO attachment)	313
	IRSR0000014377	324
	IRSR0000014719-769	325
	IRSR0000015566	376
	IRSR0000054399	377
	IRSR0000054590-592	378
	IRSR0000054918-922	381
	IRSR0000054937	386
	IRSR0000054942-944	387
	IRSR0000054945-946	390
	IRSR0000054948	392
	IRSR0000054963	393
	IRSR0000054976-978	394
	IRSR0000056970-983	397
	IRSR0000057111-112	411
	IRSR0000057166	413
	IRSR0000057184-185	414
	IRSR0000063025-037	416
	IRSR0000066973-981 (2/21/2012 BOLO attachment)	429
	IRSR0000069334-346	438
PART 3 of 10		
	IRSR0000122863-864	451
	IRSR0000141809-811	453
	IRSR0000159751-752	456
	IRSR0000161237-248	458
	IRSR0000162544-546	470
	IRSR0000164559-561	473
	IRSR0000165382-383	476
	IRSR0000165439-440	478
	IRSR0000165721-722	480
	IRSR0000167847-851	482
	IRSR0000168020-023	487
	IRSR0000168024-054	491
	IRSR0000168058	522
	IRSR0000168059-061	523

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	IRSR0000168062	526
	IRSR0000168087-091	527
	IRSR0000168115-116	532
	IRSR0000168256-257	534
	IRSR0000177228-230	536
	IRSR0000178714-715	539
	IRSR0000180969-970	541
	IRSR0000181003-007	543
	IRSR0000182659-660	548
	IRSR0000184248-250	550
	IRSR0000188490-493	553
	IRSR0000195549-554	557
	IRSR0000195585-586	563
	IRSR0000195600-617	565
	IRSR0000195635-636	583
	IRSR0000196659-660	585
	IRSR0000196739-758	587
	IRSR0000198415-416	607
	IRSR0000198417-422	609
	IRSR0000198670-671	615
PART 4 of 10		
	IRSR0000202644-646	617
	IRSR0000202703-706	620
	IRSR0000210032-034	624
	IRSR0000210035-036	627
	IRSR0000210445-464	629
	IRSR0000218202-203	649
	IRSR0000218372-375	651
	IRSR0000221479-481	655
	IRSR0000222604	658
	IRSR0000222949-950	659
	IRSR0000222967-971	661
	IRSR0000333194-195	666
	IRSR0000350219	668
	IRSR0000350220-221	669
	IRSR0000350748-749	671
	IRSR0000354397	673
	IRSR0000379714-719	674
	IRSR0000380096	680
PART 5 of 10		
	IRSR0000408471-472	682
	IRSR0000410028-030	684
	IRSR0000410433-434	687
	IRSR0000410695-711	689

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	IRSR0000411078	706
	IRSR0000411359-360	707
	IRSR0000411578-580	709
	IRSR0000411586	712
	IRSR0000411587-588	713
	IRSR0000415066-069	715
	IRSR0000428195-203	719
	IRSR0000428212	728
	IRSR0000428403-404	729
	IRSR0000428420-421	731
	IRSR0000428427-428	733
	IRSR0000428433	735
	IRSR0000428435-436	736
	IRSR0000429362-363	738
	IRSR0000429501-504	740
	IRSR0000435473	744
	IRSR0000440089-090	745
	IRSR0000441700-701	747
	IRSR0000443982-985	749
	IRSR0000444264-267	753
	IRSR0000444375-377	757
	IRSR0000444443-447	760
	IRSR0000444805-808	765
	IRSR0000444817-829	769
	IRSR0000453023	778
	IRSR0000455182-196 (7/27/2010 BOLO - enhanced for reading by the IRS)	779
	IRSR0000457889-899	795
	IRSR0000458064-065	797
	IRSR0000458430-438	799
	IRSR0000458439-447	803
	IRSR0000458456-459	807
	IRSR0000462238-239	811
	IRSR0000462280-284	813
	IRSR0000465030-035	813
	IRSR0000466813-815	824
	IRSR0000468544-547	827
	IRSR0000468583-584	831
	IRSR0000468870-871	833
	IRSR0000468891-894	835
	IRSR0000468907-909	839
	IRSR0000468916-920	842
	IRSR0000468937-938	847
	IRSR0000468978-980	849
	IRSR0000469223-228	852

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	IRSR0000482737	858
	IRSR0000484246	859
	IRSR0000485854-860	860
	IRSR0000487175	867
PART 6 of 10		
	IRSR0000506547-589, 593-623	868
	IRSR0000507010-044	942
	IRSR0000508181-182	977
	IRSR0000617102-103	979
	IRSR0000626700-701	981
	IRSR0000630285-289 (1/25/2012 BOLO - enhanced for reading by the IRS)	983
	IRSR0000636330	995
	IRSR0000640063	996
	IRSR0000640307-308	997
	IRSR0000640490-491	999
	IRSR0000645603	1001
	IRSR0000706928-931	1002
PART 7 of 10		
	PSI-IRS-01-000001-013	1006
	PSI-IRS-02-000001-026 (documents will appear in PSI/IRS correspondence section, below)	1378
	PSI-IRS-03-000001-002 (documents will appear in PSI/IRS correspondence section, below)	1406
	PSI-IRS-04-000001-008 (documents will appear in PSI/IRS correspondence section, below)	1414
	PSI-IRS-05-000001-004 (documents will appear in PSI/IRS correspondence section, below)	1424
	PSI-IRS-06-000001-003 (documents will appear in PSI/IRS correspondence section, below)	1431
	PSI-IRS-07-000001-119 (documents will appear in PSI/IRS correspondence section, below)	1436
	PSI-IRS-08-000001-108 (documents will appear in PSI/IRS correspondence section, below)	1558
	PSI-IRS-09-000026-027	1019
	PSI-IRS-09-000040-044	1021
	PSI-IRS-09-000045-046	1026
	PSI-IRS-09-000047-049	1028
	PSI-IRS-09-000064-076	1031
	PSI-IRS-09-000092-093	1044
	PSI-IRS-37-000001	1046
	PSI-IRS-37-000002-03	1047
	PSI-IRS-37-000004-014	1049
	PSI-IRS-40-000001-002	1060
	PSI-IRS-50-000001-002	1062
PART 8 of 10		
	PSI-TIGTA-01-000044-081	1064
	PSI-TIGTA-01-000145	1102
	PSI-TIGTA-01-000146-199	1103
	PSI-TIGTA-01-000206-208	1157
	PSI-TIGTA-01-000210-218	1160
	PSI-TIGTA-02-000064-068	1169

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	PSI-TIGTA-03-000081, 089	1174
	PSI-TIGTA-03-000134-135	1176
	PSI-TIGTA-03-000156-158	1178
	PSI-TIGTA-03-000165-166	1181
	PSI-TIGTA-03-000661-663	1183
	PSI-TIGTA-03-000666-667	1186
	PSI-TIGTA-03-000668	1188
	PSI-TIGTA-03-000669	1189
	PSI-TIGTA-03-000673-677	1190
	PSI-TIGTA-03-000678-682	1195
	PSI-TIGTA-03-000683	1200
	PSI-TIGTA-03-000685-686	1201
	PSI-TIGTA-03-000687-688	1203
	PSI-TIGTA-03-000690	1205
	PSI-TIGTA-03-000691-692	1206
	PSI-TIGTA-03-000693-694	1208
	PSI-TIGTA-03-000695-696	1210
	PSI-TIGTA-03-000699-700	1212
	PSI-TIGTA-03-000701-702	1214
	PSI-TIGTA-03-000703-704	1216
	PSI-TIGTA-03-000705-707	1218
	PSI-TIGTA-03-000710-711	1221
	PSI-TIGTA-03-001404-405	1223
	PSI-TIGTA-03-001409-410	1225
	PSI-TIGTA-04-000015	1227
	PSI-TIGTA-04-000016-018	1228
	PSI-TIGTA-04-000019-022	1231
	PSI-TIGTA-05-000002-003	1235
	PSI-TIGTA-05-000441-442	1237
	PSI-TIGTA-05-000443-444	1239
	PSI-TIGTA-05-000892-898	1241
	PSI-TIGTA-05-000909-949	1248
	PSI-TIGTA-05-000957-958	1289
	PSI-TIGTA-06-000686, 702	1291
	PSI-TIGTA-16-000006-009	1293
	PSI-TIGTA-18-000002-003	1297
	PSI-TIGTA-21-000001-002	1299
	PSI-TIGTA-22-000001-004 (6/6/14 letter from TIGTA I.G. to the Subcommittee)	1301
PART 9 of 10		
	TIGTA Bates No. 003081-083	1305
	TIGTA Bates No. 003084-085	1308
	TIGTA Bates No. 003991	1310
	TIGTA Bates No. 004297-299	1311
	TIGTA Bates No. 004451	1314

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	TIGTA Bates No. 004603-606	1315
	TIGTA Bates No. 006649-652	1319
	TIGTA Bates No. 006699-700	1323
	TIGTA Bates No. 007221-222	1325
	TIGTA Bates No. 007751-752	1327
	TIGTA Bates No. 007791-792	1329
	TIGTA Bates No. 007794	1331
	TIGTA Bates No. 007840	1332
	TIGTA Bates No. 008136	1333
	TIGTA Bates No. 008185	1334
	TIGTA Bates No. 008271-273	1335
	TIGTA Bates No. 008440	1338
	TIGTA Bates No. 009498	1339
	TIGTA Bates No. 010384-386	1340
	TIGTA Bates No. 010404	1343
	TIGTA Bates No. 010433-434	1344
	TIGTA Bates No. 010609	1346
	TIGTA Bates No. 010610	1347
	TIGTA Bates No. 010611	1348
	TIGTA Bates No. 010710	1349
	TIGTA Bates No. 010755	1350
	TIGTA Bates No. 011102-103	1351
	TIGTA Bates No. 011343-344	1353
	TIGTA Bates No. 012554	1355
	TIGTA Bates No. 015855-858	1356
	TIGTA Bates No. 015966	1360
	TIGTA Bates No. 016007	1361
	TIGTA Bates No. 016072-074	1362
	TIGTA June 2013 emails Bates No. 000241-244	1365
	TIGTA June 2013 emails Bates No. 000307	1369
	TIGTA June 2013 emails Bates No. 000434-437	1370
PART 10 of 10		
CORRESPONDENCE BETWEEN THE PERMANENT SUBCOMMITTEE ON INVESTIGATIONS (PSI) AND THE INTERNAL REVENUE SERVICE (IRS), March 20, 2012 - March 15, 2013.		1374
Subcommittee Letter of March 30, 2012;		1375
IRS Response of June 4, 2012 (PSI-IRS-02-000001-026)		1378
Subcommittee Letter of June 13, 2012;		1404
IRS Response of July 13, 2012 (PSI-IRS-03-000001-002)		1406
Subcommittee Letter of July 27, 2012;		1408
IRS Response of August 24, 2012 (PSI-IRS-04-000001-008)		1414
Subcommittee Letter of August 31, 2012;		1422
IRS Response of September 14, 2012 (PSI-IRS-05-000001-004)		1424

REPORT EXHIBIT LOCATOR LIST

8/20/14	Bates Number or Document Description	Page Number
	Subcommittee Letter of September 27, 2012;	1428
	IRS Response of October 17, 2012 (PSI-IRS-06-000001-003)	1431
	Subcommittee Letter of October 23, 2012;	1424
	IRS Response of November 23, 2012 (PSI-IRS-07-000001-119)	1436
	Subcommittee Letter of January 4, 2013;	1555
	IRS Response of March 15, 2013 (PSI-IRS-08-000001-108)	1558
OTHER DOCUMENTS - NO BATES		
	Joint Committee on Taxation Press Release, dated March 16, 2000, regarding "Report of Investigation Relating to Internal Revenue Service Handling of Tax-Exempt Organization Matter."	1666
	Permanent Subcommittee on Investigations letter to Internal Revenue Service Acting Commission Daniel I. Werfel, dated May 23, 2014, urging IRS to suspend Lois Lerner from her office as Director of the Office of Exempt Organizations.	1675
	Treasury Inspector General letter to The Honorable Sander M. Levin, July 19, 2013, regarding TIGTA audit report.	1677
	<i>IRS list reveals concerns over Tea Party 'propaganda,'</i> <u>USA Today</u> , September 18, 2013, together with IRS list of Political Advocacy Cases.	1680
	<i>Does the IRS really have it in for tea party groups?,</i> <u>The Colorado Independent</u> , March 28, 2012, together with IRS Letter to Waco Tea Party Group and IRS Letter to Progressive Group.	1696

From: Lerner Lois G
Sent: Friday, December 21, 2012 2:22 PM
To: Marks Nancy J
Subject: RE: 501(c)(4) question in Senate Finance Committee Nomination Hearing

Just got back from lunch with my old FEC boss, Larry Noble who now works for Americans for Campaign Reform. Informed me that Congress is pretty mad at the IRS for not doing anything about the c4s--I'm shocked! But what really got me is the expectation that not only should we be revoking them, we should be prosecuting them for tax fraud! Hadn't heard that before. It was disappointing to me that Larry didn't recognize that determining what is political activity is not easy--he thought IRS should have provided "clearer" guidance--you can't win

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Friday, December 21, 2012 1:07 PM
To: Lerner Lois G
Subject: Re: 501(c)(4) question in Senate Finance Committee Nomination Hearing

True

Sent using BlackBerry

From: Lerner Lois G
Sent: Friday, December 21, 2012 11:20 AM
To: Marks Nancy J; Grant Joseph H; Medina Moises C
Subject: RE: 501(c)(4) question in Senate Finance Committee Nomination Hearing

I love Meade's response--I've heard it oh so many times before--(-:

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, December 20, 2012 7:06 PM
To: Grant Joseph H; Medina Moises C; Lerner Lois G
Subject: FW: 501(c)(4) question in Senate Finance Committee Nomination Hearing

In the Senate finance hearing for Christopher Meade's nomination for general counsel at Treasury Senator Wyden expressed his concern that the IRS had failed to list as a priority guidance project the issue of political activity conducted by Code section 501(c)(4)

organizations. He asked whether Mr. Meade thought the issue should be included in the priority guidance list and whether he personally thought it was an important problem and Mr. Meade promised to look into the issue and make us aware of the Senator's concerns. Just an FYI I think we have done our work through on the pros and cons of guidance, we know where Steve wants to be for now, and I'd say nothing to be done at this point.

From: Urban Joseph J
Sent: Friday, April 20, 2012 7:23 AM
To: Lerner Lois G; Marks Nancy J
Subject: RE: Sen. Levin--Draft Response # 4

I can live with their draft, because I am assuming Counsel wants to make the point that that there is no percentage established for any term in the regulations (not for exclusively, not for primarily, not for anything else).

That being said, the issue on the table, as the comments in the press in the last few months demonstrate, is that many practitioners, public interest types, and some members believe that "less than primary" means less than 50%. Levin seems to think that too, as his question is not about "exclusive" but instead about the "primary" standard and he seems to think is the apparent 51-49 percentage test. (Specifically, Levin asks if it is the position of the IRS that a (c)(4) can engage in what he calls nonpartisan political intervention as a secondary activity, "and that political activity can consume up to 49% of the entities expenditures and resources?"

FYI, among the questions I would ask an IRS witness at a hearing is why, after all these years, the IRS has not defined primary, or given any indication as to what facts and circumstances the IRS uses in determining whether a (c)(4)'s activities primarily benefit public or private interests. Mr/Ms Witness, don't you think vagueness might scare honest folks away from doing things they are permitted to do, but be exploited by those who want to take advantage of (c)(4) although they are not legitimate social welfare orgs? Doesn't vagueness leave the IRS open to charges of arbitrary enforcement?

From: Lerner Lois G
Sent: Thursday, April 19, 2012 5:17 PM
To: Spellmann Don R; Marks Nancy J; Urban Joseph J
Cc: Cook Janine; Brown Susan D
Subject: RE: Sen. Levin--Draft Response # 4

Nan and I are good with that

Lois G. Lerner

Director of Exempt Organizations

From: Spellmann Don R [mailto:Don.R.Spellmann@irsounsel.treas.gov]
Sent: Thursday, April 19, 2012 5:13 PM
To: Lerner Lois G; Marks Nancy J; Urban Joseph J
Cc: Cook Janine; Brown Susan D
Subject: RE: Sen. Levin--Draft Response # 4

Please see our suggested revision to yesterday's draft (attached).

Please let us know if you need anything else.

Don

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Thursday, April 19, 2012 2:10 PM
To: Marks Nancy J; Urban Joseph J; Cook Janine; Brown Susan D; Spellmann Don R
Subject: RE: Sen. Levin--Draft Response # 4

OK--Counsel folks--is Counsel comfortable adding the

- (4) Is it the position of the IRS that an entity claiming tax-exempt status under Section 501(c)(4) can engage in nonpartisan political activity as a secondary activity, and that political activity can consume up to 49% of the entity's expenditures and resources?

below?

Section 501(c)(4) describes organizations that operate exclusively for the promotion of social welfare. The Treasury regulations provide that an organization operates exclusively for the promotion of social welfare if it primarily engages in promoting the common good and general welfare of the people of the community. The regulations also provide that the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Treasury and the Service have stated in published guidance that an organization may carry on lawful political activities and continue to be described in section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.

The regulations do not establish an explicit percentage test. Rather, to determine whether an organization operates primarily for the promotion of social welfare, the courts and the Service consider all the facts and circumstances, including but not limited to the organization's stated purposes, expenditures, principal source of revenue, number of employees and volunteers, and time and effort.

Lois G. Lerner

Director of Exempt Organizations

From: Marks Nancy J
Sent: Thursday, April 19, 2012 1:44 PM
To: Urban Joseph J; Cook Janine; Brown Susan D; Spellmann Don R
Cc: Lerner Lois G
Subject: FW: Sen. Levin--Draft Response # 4

I'm concerned that this response will meet with a fair amount of frustration on the hill because the question asks very specifically whether 49% works. I recognize the regulations don't specify a percentage and that we have not taken a position on one but I don't think we can completely ignore the percentage portion of the question but rather have to indicate that the regulations do not establish a specific percentage but rather establish a "principle" activity standard

In other words don't think the answer can pretend the word percentage is not in the question although I do understand why it is hard to engage with.

From: Urban Joseph J
Sent: Thursday, April 19, 2012 1:35 PM
To: Marks Nancy J
Subject: Fw: Sen. Levin--Draft Response # 4

Sent from Blackberry

From: Spellmann Don R [mailto:Don.R.Spellmann@irsounsel.treas.gov]
Sent: Wednesday, April 18, 2012 06:45 PM
To: Urban Joseph J
Cc: Cook Janine; Brown Susan D
Subject: Sen. Levin--Draft Response # 4

Hi Joe,

Attached is our suggested response to question 4 of Senator Levin's letter.

Please let us know if you have questions or need anything else.

Don

<<Levin response # 4.doc>>

From: Shafer John H
Sent: Friday, October 08, 2010 1:19 PM
To: Collins Glenn W; Cullen Jeffery A; Heagney Nancy L; Kiser Joan C; Kitchens Kimberly L; Koester John J; Muthert Gary A; Norton Renee Railey; Sanders Shawntel R; Schaber Dale T; Trimble Del L; Vance Roger W
Subject: FW: BOLO Tab Update

Importance: Low
FYI

John Shafer
Group Manager
SE:T:EO:RA:D:1:7838
Telephone: (513)263-3406
FAX: (513)263-5200

From: Camarillo Sharon L
Sent: Friday, October 08, 2010 1:09 PM
To: Shafer John H
Cc: Thomas Cindy M
Subject: FW: BOLO Tab Update
Importance: Low

John: Please ask your screeners to be on the lookout for these cases.

From: Waddell Jon M
Sent: Thursday, October 07, 2010 8:25 AM
To: Bowling Steven F; Camarillo Sharon L
Subject: BOLO Tab Update
Importance: Low

Steve and Sharon,

We have discovered some new components to the **Acorn-Related Category** listed on the **BOLO Tab as Issue #3**. Specifically, we have identified two additional Acorn-Related coming out of Pennsylvania both sharing the same address. As was the situation the currently assigned two New York cases, one is applying as a c(3) and one as a c(4). The officers of the organizations had prior affiliations with Acorn as members of boards on various chapters. The names of the applicants are as follows:

1. [REDACTED] 6103 = 501(c)(3) Applicant
2. [REDACTED] 6103 = 501(c)(4) Applicant

Overall, I would suggest an alert be sent informing agents/screeners that to be on the lookout for the following name an application factors associated with Acorn related cases. Additionally, during the next

spreadsheet update, add these factors to the Watch Issue Description section for this category. Name and Application Factors are as follows:

- 1. The name(s) Neighborhoods for Social Justice or Communities Organizing for Change**
- 2. Activities that mention Voter Mobilization of the Low-Income/Disenfranchised**
- 3. Advocating for Legislation to Provide for Economic, Heathcare, and Housing Justice for the poor.**
- 4. Educating Public Policy Makers (i.e Politicians) on the above subjects**

thanks

From: Lowe Justin
Sent: Wednesday, March 21, 2012 11:03 AM
To: Fish David L
Subject: c4 history
Attachments: Exclusively Standard 09-02-11.doc

This document is still very much a work in progress (various Counsel and IRS people have worked on it), but it gives some insight into the state of things and what they should be.

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.R.2d 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 statute.

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 language 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, an organization that is exempt under section 501(c)(4) may carry on some political activities so long as the organization's primary activities ~~remain these~~ are activities that ~~constitute the promotion 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 its 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.

DRAFT

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]

From: Lerner Lois G
Sent: Monday, March 26, 2012 9:38 AM
To: Judson Victoria A
Subject: Thanks

for the call--I appreciate it--you and I just have very different styles--I express my frustrations openly and I'm guessing you are a bit more close to the vest. Having said that, I also think we live in 2 different worlds. I live in a more "real" world than yours where my staff can't wait for formal guidance to do their jobs. Cases come in and we need to work them with the information we have. When the c4, 5, and 6 guidance on political intervention came out, folks wanted to know where the 3c guidance was. We said loud and clear, while the guidance is about c4,5, and 6, it gives you information about how the IRS would view the activity that will be helpful to you in thinking about where activity c3s contemplate. That is the kind of practical information we need to provide to agents. These are live cases and if all we can give them is published guidance on the extreme ends of the spectrum, they will get themselves in trouble. That is why said I don't care if we have to caveat--we need to provide direction. In any event, we'll keep plugging away. (-:

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, April 20, 2012 2:35 PM
To: Park Nalee

First,

Organizations seeking IRS recognition under section 501(c)(4) file a Form 1024 application, which instructs the applicant to provide a detailed description of each of its activities, including the purpose of the activity, how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted.

Whether an organization meets the statutory and regulatory requirements of section 501(c)(4) depends on all of the facts and circumstances, and no one factor is determinative. So, if the applicant organization does not provide sufficient detail to make a determination, or the information provided raises additional issues, such as political intervention or other non-exempt activity, the IRS contacts the organization and solicits the additional information needed to determine whether the organization meets the statutory and regulatory requirements for section 501(c)(4) status.

Lois G.

Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Friday, May 10, 2013 3:21 PM
To: Flax Nikole C; Eldridge Michelle L; Lemons Terry L; Marks Nancy J
Subject: RE: Proposed answers: Washington Post Editorial Board

It isn't the balance I am focused on--it's the idea that we know--that sounds like we track it and we don't. Doesn't look good if it looks like we check to see what side of the aisle an org is on.

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Friday, May 10, 2013 4:17 PM
To: Lerner Lois G; Eldridge Michelle L; Lemons Terry L; Marks Nancy J
Subject: RE: Proposed answers: Washington Post Editorial Board

We know the balance may be off, but we had been told earlier there are a few and this is an important point.

From: Lerner Lois G
Sent: Friday, May 10, 2013 4:09 PM
To: Flax Nikole C; Eldridge Michelle L; Lemons Terry L
Subject: RE: Proposed answers: Washington Post Editorial Board

I can't confirm that there was anyone on the other side of the political spectrum--I think that sentence presumes we keep track of which side of the aisle an or falls--we don't. The one with names used were only know because that have been very loud in the press. I think that line is dangerous

Lois G. Lerner

Director of Exempt Organizations

From: Flax Nikole C
Sent: Friday, May 10, 2013 3:44 PM
To: Lerner Lois G; Eldridge Michelle L; Lemons Terry L
Subject: FW: Proposed answers: Washington Post Editorial Board

Know the numbers are not even, but want to add the following – can you live with it?

From: Flax Nikole C
Sent: Friday, May 10, 2013 3:35 PM
To: Eldridge Michelle L; Vozne Jennifer L; Lemons Terry L; Miller Steven T
Cc: Patterson Dean J
Subject: RE: Proposed answers: Washington Post Editorial Board

Can we add the CAP language?

From: Eldridge Michelle L
Sent: Friday, May 10, 2013 3:15 PM
To: Flax Nikole C; Vozne Jennifer L; Lemons Terry L
Cc: Patterson Dean J
Subject: Proposed answers: Washington Post Editorial Board

Here is the proposed answer based on our discussion. Comments or concerns?

Proposed answer:

Here is our full statement. I have also answered your questions below.

IRS Statement

Between 2010 and 2012, the IRS saw the number of applications for section 501(c)(4) status double. As a result, local career employees in Cincinnati sought to centralize work and assign cases to designated employees in an effort to promote consistency and quality. This approach has worked in other areas. However, the IRS recognizes we should have done a better job of handling the influx of advocacy applications. While centralizing cases for consistency made sense, the way we initially centralized them did not. Mistakes were made initially, but they were in no way due to any political or partisan rationale. We fixed the situation last year and have made significant progress in moving the centralized cases through our system. To date, more than half of the cases have been approved or withdrawn. It is important to recognize that all centralized applications WHICH INCLUDE ORGANIZATIONS FROM ALL PARTS OF THE POLITICAL SPECTRUM received the same, even-handed treatment, and the majority of cases centralized were not based on a specific name. In addition, new procedures also were implemented last year to ensure that these mistakes won't be made in the future. The IRS also stresses that our employees - all career civil servants -- will continue to be guided by tax law and not partisan issues.

From: Stromberg, Stephen W [<mailto:stephen.stromberg@wpost.com>]
Sent: Friday, May 10, 2013 1:46 PM
To: Burke Anthony
Subject: From Washington Post Editorial Board

Hi -

I am writing an on-deadline editorial on the Tea Party/IRS issue, filing by 4:30 p.m. at the latest. At the moment, I have three questions:

Why weren't there protections in place to ensure that selecting out groups of a particular political stripe was not possible? What procedures are in place now to prevent this, both in the tax-exempt office and elsewhere in the IRS?

The IRS recognizes we should have done a better job of handling the influx of advocacy applications. While centralizing cases for consistency made sense, the way we initially centralized them did not. Mistakes were made initially, but they were in no way due to any political or partisan rationale. We fixed the situation last year and have made significant progress in moving the centralized cases through our system. To date, more than half of the cases have been approved or withdrawn.

It is important to recognize that all centralized applications received the same, even-handed treatment, and the majority of cases centralized were not based on a specific name.


In addition, new procedures also were implemented last year to ensure that these mistakes won't be made in the future. The IRS also stresses that our employees - all career civil servants -- will continue to be guided by tax law and not partisan issues.


Who has led the investigation into this episode? Is someone else inside or outside of the IRS going to investigate further?

The IRS has internally reviewed this matter. Additionally, this issue is being reviewed by the Treasury Inspector General.

Thanks in advance.

Best,
Steve Stromberg

Steve Stromberg
Editorial Writer
The Washington Post
Office: 202.334.6370


 = Redacted by the Permanent
Subcommittee on Investigations

From: Lerner Lois G
Sent: Friday, May 10, 2013 5:54 PM
To: Downing Nanette M; Paz Holly O; Partner Melaney J; Marx Dawn R
Cc: Marks Nancy J
Subject: Stuff

As you both know, we are getting beaten up in the press for all the wrong reasons. Not sure there is much we can do about it--other than hang in and ride it through. When the report comes out, it will start all over again. We need to keep remembering, we did not do what they are alleging. We need to support each other and help our staff get though it too. I did send an voicemail to Cindy and Donna to distribute to impacted employees, who are feeling pretty bad. Cindy is planning on holding a town hall with EO Determinations. Not sure whether you want to do anything with others--if so, please coordinate with each other and talk to Nan Marks before you actually do it. I apologize for being gone during the aftermath, but I can't change that.

We'll touch base when I get back on the 20th. Hang in there--I couldn't ask for better folks to work with.

Lois G. Lerner
Director of Exempt Organizations

From: Lerner Lois G
Sent: Sunday, May 12, 2013 12:08 PM
To: Light Sharon P
Subject: Re: Congressional Response with SHORT Turnaround

Thanks. I'm afraid I have little confidence that most folks making the stink care about what is true. They've already decided they know without regard to the facts. Thanks for trying to make things clearer--if not better.

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

From: Light Sharon P
Sent: Sunday, May 12, 2013 09:27 AM Eastern Standard Time
To: Lerner Lois G
Subject: Re: Congressional Response with SHORT Turnaround

What a whirlwind, huh? I hope being in Canada will give you some emotional distance from this, too. I'm glad to be helping set the story straight.

From: Lerner Lois G
Sent: Sunday, May 12, 2013 08:29 AM Eastern Standard Time
To: Marks Nancy J; Paz Holly O; Marx Dawn R; Light Sharon P
Subject: Re: Congressional Response with SHORT Turnaround

Everyone-- I just want to thank you for being the very best team a person could wish for and apologize for leaving you with such a huge task.

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

From: Marks Nancy J
Sent: Friday, May 10, 2013 07:06 PM Eastern Standard Time
To: Paz Holly O; Marx Dawn R; Light Sharon P; Sweetenberg LaWan A
Cc: Lerner Lois G
Subject: RE: Congressional Response with SHORT Turnaround

Dawn is working the system every which way trying to get access to the letter but she is having no luck. She is taking her lap top home and will monitor over the weekend and forward if it shows up.

LaWan the fast track Congressional you warned Dawn about (thanks for that) needs to get to her, Holly, Sharon and me as soon as possible. I know you get in early so if you could speed it on it's way it would be greatly appreciated. Thanks

From: Paz Holly O
Sent: Friday, May 10, 2013 6:53 PM
To: Marx Dawn R; Marks Nancy J; Light Sharon P
Cc: Lerner Lois G
Subject: RE: Congressional Response with SHORT Turnaround

Do we think there's a chance we'll get to see the letter today? It would be helpful to know if there are more questions beyond the request for documents and names of individuals involved noted below. If we can get the letter over the weekend, perhaps Nan, Sharon and I can talk briefly to agree on approach before we start drafting and Sharon and I could divvy up the letter and start working.

From: Marx Dawn R
Sent: Friday, May 10, 2013 5:24 PM
To: Marks Nancy J; Paz Holly O; Light Sharon P
Cc: Lerner Lois G
Subject: Congressional Response with SHORT Turnaround
Importance: High

I am forwarding this email to you as advance notice that EO needs to prepare a response to an incoming Congressional from Boustany by Tuesday, May 14th. I do not have the incoming yet but I will forward as soon as the case is assigned to us. This will need to be signed by the Commissioner, so need to build in time for the Commissioner's office review as well.

From: Sweetenberg LaWan A
Sent: Friday, May 10, 2013 4:24 PM
To: Marx Dawn R
Cc: Lerner Lois G; Medina Moises C
Subject: Heads-up etrak case due Tuesday May 14th....

Hey Dawn, heads-up just assigned an etrak case to EO, that has a very short turnaround time on it, Tues May 14th.

Regarding "LA TRACKING - PLEASE PREPARE THE RESPONSE FOR THE COMMISSIONER'S SIGNATURE. Chairman of Committee on Ways and Means, Charles Boustany, wrote about news reports detailing a public apology from the Director, Exempt Organizations, Lois Lerner, about discriminating practices targeting conservative groups seeking tax-exempt status. He asked us to provide all communications containing the words "tea party", "patriot", or "conservative" and the names and titles of all individuals involved in this discrimination by May 15, 2013."

LaWan A. Sweetenberg
Staff Assistant to the
TE/GE Commissioner
office 202.283.2500
voice X-9972
fax X-9973
LaWan.A.Sweetenberg@irs.gov

Advocacy Feedback from QA

Three cases involved:

- 1. [REDACTED] 6103 [REDACTED] 501(c)(4), Bucket 3
- 2. [REDACTED] 6103 [REDACTED] 501(c)(4), Bucket 2
- 3. [REDACTED] 6103 [REDACTED] 501(c)(4), Bucket 2

All three cases were worked by Determinations specialists and submitted to QA for mandatory review. QA approved the case and provided some additional feedback on the cases.

Overall Comments:

All of the cases were granted exemption. Much of the feedback involves distinctions of professional opinion. An overall theme for the feedback focuses on what type of documentation is needed for political advocacy cases.

Recommendation:

Because these political advocacy cases will receive higher scrutiny both internally from QA and likely by third-party FOIA requests, it may be worthwhile to have specialists document their opinions more thoroughly. It may be worthwhile to discuss HOW to document such a grey area. A group discussion on best practices for documentation could be beneficial.

Case 1: the feedback is as follows:

From Reviewer:

12. If you have any comments regarding the questions asked in the development letter(s) please insert them here.

Relevant prints from their web site should have been printed and sent to the org with directed questions regarding the intent and political activities, how the org is under the 51% limits, how they are not just pushing an agenda and platform rather than promoting general social welfare. While the measure of whether they are over or under accepted political amounts is difficult to gauge we never really challenged them on their purposes and activities.

From QA Manager:

Admin record does not support decision. Memo to file not substantiated. % social welfare not certain.

Comment: Disagree

There is no prohibition to having an opinion for a 501(c)(4) organization. "Just pushing an agenda and platform" can be considered social welfare. There is no absolute 51% primary activity test. Because the law is so grey, the conclusion that the organization qualifies for exemption under section 501(c)(4) is ultimately a professional assertion of the specialist.

Recommendation:

Because these political advocacy cases will receive higher scrutiny both internally from QA and likely by third-party FOIA requests, it may be worthwhile to have specialists document their opinions more thoroughly. It may be worthwhile to discuss HOW to document such a grey area. A group discussion on best practices for documentation could be beneficial.

From Reviewer:

18. If you have any comments regarding whether or not the determinations letter was properly prepared, please insert them here.

Org had new address that was not used.

Comment: Agree

Case 2: the feedback is as follows:

From Reviewer:

8. If you have any comments regarding whether the file was appropriately documented please insert them here.

Org has related board. Per research, president/chair of the board is running for state representative for the Republican Party. Research indicates unrelated individual is now the interim executive director. No documentation on this issue.

From QA Manager:

Determ Ltr already issued prior to QA review. Please ensure significant issues documented.

Comment: Agree

The private political actions of an individual are distinct from the organization. A tax law concern would be if the organization was used for the private benefit of the organization. There is no indication in the case file that the organization is being used for the private benefit of the individual. Indeed, the individual stepped back from involvement in the organization. Although there is no tax law issue with this case, the documentation would be enhanced if the specialist noted private benefit was considered and what conclusion was reached.

Recommendation:

For political advocacy case documentation is may be worthwhile for each case to have a comment on considerations of private benefit and whether any private benefit was found.

Case 3: the feedback is as follows:

From Reviewer:

6. You indicated the case was not placed in the appropriate bucket. Please explain what bucket the case was placed in, which bucket it should be placed in, and why.

Case was reconciled to the focused development bucket – should have been general development due to board issues, activity issues, potential benefit issues.

Comment: Disagree

The distinct between buckets 2 and 3 are moot. There is no affect. "Bucketing" is an administrative tool to help assign casework. "Bucketing" does not affect application of the law. (Select of buckets 1 or 4 does affect the case. Bucket 1 is not subject to mandatory review, and bucket 4 will significantly increase the cycle time on the case.)

Recommendation:

Is it worthwhile to continue to have buckets 2 and 3? Should we stop using bucket 2?

If we do rethink the buckets, is it worthwhile to create a sub-bucket to bucket 4 (bucket 4b perhaps)? Such a bucket could note the situation for which an organization does not qualify for

(c)(3) but might qualify for (c)(4). Taxpayers in this bucket could be contacted about a possible subsection switch.

8. If you have any comments regarding whether the file was appropriately documented please insert them here.

Agent cited taking the risk for allowing a two person related board, when the Bylaws state there would be at least three members, and when the initial and only board member had resigned without any indication what his future role would be. Overall the case does not have sufficient documentation for determining primary social welfare activities. Only vague and general descriptions have been provided. See further attachment.

There is a general lack of details regarding the activities and operations of this organization. Their response to the 1312 deals mainly with their board – no questions were asked of their activities.

They indicate they will educate on topics including private economic development. There is no description as to what private economic development may be, who this could be directed towards, who might benefit. The activities of economic development can qualify under multiple Code sections, and can also be adverse to exemption. We have no specifics on what economic development they are covering. Given their percentages, if they are 100% educational they could meet C3. They did not distinguish the difference between what was public economic development versus private economic development. Along with this, they provided no copies or samples of media, educational materials, results of studies, etc. They did not describe who would be producing this media, who they may be contracting with, if there was any relation with board members to these companies, etc. This also applies to the energy activities they have described – no further details were provided or requested on content, ads, media, etc. In all, the org has not fully substantiated that the activities they have proposed are for social welfare. These could be for private purposes, business purposes, or even exclusive educational purposes. Further development should have been done to request more details on how the organization was going to conduct these activities, where their expenses were going, and what they were producing to further their educational purpose.

Comment: Disagree

Organizations are allowed to apply for exemption in advance of operations. When doing so, details on operations may be limited. However, lack of detail does not prohibit a determination. Regarding the board expansion, the organization stated they would be seeking an additional board member. The specialist's risk assessment on this issue is appropriate and documented.

Regarding the economic development concerns, it should be noted the organization plans to teach about economic development and not to conduct economic development. Since the organization is teaching about economic development, concerns of private benefit associated with conducting private benefit are moot.

Regarding the subsection concern, the organization's response to Form 1024, Part II, Question 15 indicates the organization will be conducting indirect legislative activity (even though they responded "no"). They stated they would be "educating the public on... legislation to enhance" economic development. As such, (c)(4) would be more appropriate than (c)(3). For this item, as noted above, some extra effort to document conclusions may be worthwhile.

12. If you have any comments regarding the questions asked in the development letter(s) please insert them here.

Org did not explain what happened to the founder once he resigned his board position – is he still involved with org? Why wasn't a third board member named? Why did the founder resign his position? Who does the org intend on hiring for consulting/media/ads? What is a govt affairs expense? Has this org created any materials yet they intend on using in their activities? How will a two person related board establish compensation in the future?

Comment: Disagree

Do answers to these questions change (c)(4) exemption? These questions appear to be "want to know" questions versus "need to know." As such, the documentation would appear to be at the discretion of the specialist's professional opinion.

Recommendation:

As noted above, we may want to come to some consensus on what constitutes sufficient documentation for political advocacy cases.

18. If you have any comments regarding whether or not the determinations letter was properly prepared, please insert them here.

A copy of the letter was not prepared for the POA. A copy for the new address of the org was not prepared. The current letter is addressed to the old board member. Also, although correct, the effective date contains a minor typo.

Comment: Agree

Notes from meeting with TIGTA on January 31, 2013

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

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

Notes from meeting with TIGTA on January 31, 2013

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

Notes from meeting with TIGTA on January 31, 2013

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

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

- Judy disagreed with the [REDACTED] 6103 organization. She also disagreed with the medical marijuana case because it was more marijuana than anything.
- Holly agreed to send Judy and Hillary's comments on those cases to TIGTA. She said the real concern was on campaign advocacy but it was hard to make sure it was focused correctly on items such as rallies, etc.
- TIGTA said that one issue we discussed previously was when an organization stated "in the future we might, but it won't be primary" They wanted to understand how we handle developing a case when something is mentioned in that way.
 - Holly said this situation comes up regularly in a variety of area, such as international grant-making, scholarships, etc. During the development process we have to flesh all of their activities that they have brought up to us. If they mentioned that they might do an activity, then it is more of a solid idea than the things they didn't mention to us. It is important that we develop these areas because of the role it could play during the revocation process. It may make the difference between retroactive and prospective revocation. Even if the organization has no additional details, we still have to ask the follow up questions or else we are limited with regards to the revocation process under § 7805(b).
- The IRC § 501(c)(3) cases: Holly mentioned cases # 2 and # 26, and said that there were other similar cases that she did not have the numbers for. In those cases she thought it was important to note that they are § 501(c)(3) organizations, not § 501(c)(4) organizations. As such the rules are harsher/more clear cut. She felt that if there was an indication on the face of the application that there may be some political activity on the part of a (c)(3) applicant, then that should be enough to take it off of the TIGTA list.
 - TIGTA agreed to go back and look at this. They didn't make this distinction when they were looking at the cases.

Notes from meeting with TIGTA on January 31, 2013

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

Notes from meeting with TIGTA on January 31, 2013

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

Notes from meeting with TIGTA on January 31, 2013

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

Notes from meeting with TIGTA on January 31, 2013

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

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

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

Notes from meeting with TIGTA on January 31, 2013

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

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

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

Notes from meeting with TIGTA on January 31, 2013

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

To Do List:

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

Greg Kutz

Lerner Lois G

From: Paz Holly O
Sent: Monday, March 25, 2013 8:20 AM
To: Lerner Lois G
Cc: Marx Dawn R
Subject: TIGTA

I am planning to leave for the airport around 9:30. That way, I hope to be through security and able to join the 11 by phone until I have to board. You asked me to shoot you an email reminding you of the two major points you wanted to make with TIGTA:

1. The report lacks any reference to or information regarding the broader context (such as how difficult it is to determine what constitutes political activity and whether political activity is a c4's primary activity). Without this broader context, the report could appear slanted in one direction.
2. The report contains several instances of speculation lacking any support (i.e. speculation that the wait for a determination adversely impacted org's fundraising, speculation that orgs did not file required 990s while awaiting a determination because they had not engaged in any activity).

Holly

*Not political - advocacy
3 types advocacy*

*You say we intentionally only pulled
orgs w/ specific names.*

*Decisions re: what had indicators
of pol interventions & what
didn't - RA admitted they
had not read completely
the file*

*91 cases they
disagreed w/ & read entire file
disturbing
• ≠ get law right - yet and
guessing our legal decisions
c4 can do c4 stuff without
an application, or pending*

3/25/2013

Cook Janine

From: Cook Janine
Sent: Wednesday, April 04, 2012 8:46 AM
To: Judson Victoria A
Subject: FW: Follow -up

Vicki, sharing this with you so you know what I explained to Lois since she is still pushing back. I didn't think a phone call today with her would be productive (although more information on what they are doing would be helpful overall and would have been helpful to understand earlier than these last few days). I think she needs to see the document first as she may be more satisfied than she thinks (other than the lack of categorizing factors).

I thought about copying you but instead just sprinkled your name throughout to indicate you are fully engaged with this.

From: Cook Janine
Sent: Wednesday, April 04, 2012 8:43 AM
To: Lerner Lois G
Subject: RE: Follow -up

Susan filled me in on all the helpful info from Joe on both past and pending congressionals. What also is coming into clearer focus for us based on emails and conversations these past few days is that there are different "buckets" (for lack of a better term) of work--

- (1) apps that are on hold (all 3/4s to my knowledge)
- (2) prospective exam activity on any kind of org doing political activity, for which there is training on 2/23, and
- (3) Prospective (?) exam activity on 4/5/6s that haven't applied.

I'm not sure about the intended scope of either (2) or (3). And I appreciate that I may still not be describing them correctly. We didn't have an initial understanding of these latter 2, or how you wanted the guidesheet to be useful for (2) as well as (1). It would help me to have a better feel for what projects (and their scope) are on your plan (written or otherwise) so I can better understand your needs, priorities, challenges, etc. If there is a way I should've had that information earlier that I missed--I looked at strategic plan but its light on details (smile)--please let me know so I can do a better job being aware of overall plans and thus be all the more ready to support you.

Having said all that, Vicki and I do have a sense of the challenges you are under here and that frankly you're being caught between a rock and a hard place. We appreciate that the IRS can make decisions to do things without our advice and in disagreement with our advice. We expect that Nikole/Steve will weigh all the pieces here--admin needs and sensitivities--and make an informed decision. Our role here is to advise you and thus them on what we think is the appropriate document to put out for agent use. While much of what you do everyday falls into the highly sensitive category, I venture to say that this has got to be one of the top at this time. Accordingly, our legal advice is to follow as closely to the guidance line as possible in what is disseminated and thus publicly available--formal or not, we all know it will be scrutinized. Again, I appreciate (at least somewhat) the difficult position you are in, but Vicki's and my advice remains the same, pending a different instruction from either our bosses or if Nikole/Steve want to move a different direction. Vicki and I have discussed this very briefly with Bill Wilkins and Erik Corwin at our biweekly and they indicated agreement with our view.

As I indicated, we will be getting you the doc by COB today. The work on hold that understandably has to move forward are the apps in (1) above. (Whether there is any flexibility on timing of (2) is clearly an IRS call.) What we are sending back is a document--following the structure your team put together-- that will clearly help agents gather facts needed to move the applications forward. A "fact-gathering document" as you mention below. There will be a brief mention of application to 5/6s and we can also provide some additional foundational text on 5/6s that could be included.

The key difference is that we are ensuring everything is traceable to legal standards or positions in guidance. The main consequences are cutting back on what is said about 5/6s and not categorizing factors. If you look at it and want to put those things back in, that will be the place where IRS can decide to do more than counsel advises. Since we've not been able to discuss this together with Nikole, we are providing the doc we can support. If Steve/Nikole decide to do more, we'll

scramble to provide any final assistance you need from us.

While I'd very much appreciate more information on these matters, I'm bouncing between a number of meetings today. How about we see where we stand after you get our draft later today?

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Tuesday, April 03, 2012 6:22 PM
To: Cook Janine
Subject: Follow -up

I just talked to Joe Urban who had come back from 1111 after bringing Susan up to speed on where we are on the Congressional. I'm thinking perhaps it would be useful for me and Joe Urban to sit down and explain to you the practical realities of Counsel's position that you don't want to include anything regarding c5s and 6s in the guide sheet and don't like the idea of a check sheet.

Based on what Joe tells me about his conversation with Susan, I think there may be a big disconnect between how Counsel sees our job as tax administrators and your job as advisors to the administrators. I know everyone is trying to provide us with the best advice, and I whole heartedly appreciate that. But, at the end of the day, my job is to deliver the work. I have to do that with or without your comfort and blessing. I can't send applications back or hold on to them because the IRS/Treasury have not put out formal guidance on a particular set of facts and circumstances.

Perhaps if you have a better understanding of what is on my plate and the resources and timeframes in which I have to complete the work, you will be able to get to the place we previously discussed. We are not asking you to "create" new guidance, rather in the context of the guidance we have, to help us give staff a way to think about the issues in their cases. The guide sheet is not an official IRS interpretation of the Internal Revenue Code. It does not reach a conclusion on how the IRS applies the law to a specific set of facts. Instead, it is a fact-gathering tool to assist agents in gathering facts in a consistent fashion.

I know you suggested just including c3 and c4 information in the guide sheet--that just won't work. So, if--as we initially agreed--you can tell me specifically what parts of the draft we sent give you heartburn and why, we will try to lessen the heartburn. Ignoring pieces or not speaking to them because Counsel is not comfortable is NOT an option for me. The work is here, my folks need to do it, and they will regardless of what we give them. Our job is to provide them with the best tool we can.

As we are already way behind on getting this out to staff, I'd appreciate getting your comments on the draft by Friday. Thanks

Lois G. Lerner
Director of Exempt Organizations

From: Spellmann Don R
Sent: Tuesday, July 19, 2011 3:01 PM
To: Cook Janine
Subject: RE: Advocacy orgs

Or that the tie goes to the taxpayer, even if the law is not clear. Yet TP's don't have much leverage with contesting c4 rulings (unlike c3's). It will be an interesting discussion.

From: Cook Janine
Sent: Tuesday, July 19, 2011 3:51 PM
To: Spellmann Don R
Subject: RE: Advocacy orgs

yes. guess they are thinking they'll have suspicions about reality but the paper/regs will pass muster.

From: Spellmann Don R
Sent: Tuesday, July 19, 2011 3:35 PM
To: Cook Janine
Subject: RE: Advocacy orgs

Thank you Janine. This line in particular stood out: "We suspect we will have to approve the majority of the c4 applications." That's an interesting posture.

From: Cook Janine
Sent: Tuesday, July 19, 2011 10:35 AM
To: Spellmann Don R
Subject: FW: Advocacy orgs

for next week's meeting.

From: Paz Holly O [<mailto:Holly.O.Paz@irs.gov>]
Sent: Tuesday, July 19, 2011 10:25 AM
To: Cook Janine
Cc: Marks Nancy J
Subject: RE: Advocacy orgs

Below is some background on what we are seeing:

Background:

- o EOD Screening has identified an increase in the number of (c)(3) and (c)(4) applications where organizations are advocating on issues related to government spending, taxes and similar matters. Often there is possible political intervention or excessive lobbying.
- o Over 100 cases have been identified so far, a mix of (c)(3)s and (c)(4)s. Before this was identified as an emerging issue, two (c)(4) applications were approved.

- Two sample cases were transferred to EOT, a (c)(3) and a (c)(4).
- The (c)(4) stated it will conduct advocacy and political intervention, but political intervention will be 20% or less of activities. A proposed favorable letter has been sent to Counsel for review.

1 The (c)(3) stated it will conduct "insubstantial" political intervention and it has ties to politically active (c)(4)s and 527s. A proposed denial is being revised by TLS to incorporate the org.'s response to the most recent development letter.

Lois would like to discuss our planned approach for dealing with these cases. We suspect we will have to approve the majority of the c4 applications. Given the volume of applications and the fact that this is not a new issue (just an increase in frequency of the issue), we plan to EO Determinations work the cases. However, we plan to have EO Technical compose some informal guidance re: development of these cases (e.g., review websites, check to see whether org is registered with FEC, get representations re: the amount of political activity, etc.). EO Technical will also designate point people for Determs to consult with questions. We will also refer these organizations to the Review of operations for follow-up in a later year.

From: Cook Janine [<mailto:Janine.Cook@irs-counsel.treas.gov>]
Sent: Monday, July 18, 2011 3:08 PM
To: Paz Holly O
Subject: Advocacy orgs

Holly,

Do you have any additional background for meeting next week with Lois and Nan about increase in exemption requests from advocacy orgs? Thanks!

Janine

Cook Janine

From: Judson Victoria A
Sent: Thursday, March 08, 2012 11:51 AM
To: Wilkins William J; Corwin Erik H
Cc: Cook Janine
Subject: RE: Heads up on Draft Guide Sheet for advocacy organizations

In their discussion, Treasury has been focusing on items that are published in the I.R.B., so this is not what they have been talking about. However, my guess is that they would also want to be seeing items like this one. We will fill you in more during our bi-weekly. The problem here is that we did not see it till very late in the game and, I have heard third hand, there were communications problems on the Commissioner side as well.

Victoria A. Judson

Division Counsel/Associate Chief Counsel (TEGE)
Phone: 202-622-6000
Fax: 202-622-3865

From: Wilkins William J
Sent: Thursday, March 08, 2012 9:56 AM
To: Corwin Erik H
Cc: Judson Victoria A
Subject: RE: Heads up on Draft Guide Sheet for advocacy organizations

Isn't this the kind of subreg guidance that Treasury is complaining about not seeing in advance?

From: Cook Janine
Sent: Wednesday, March 07, 2012 8:03 PM
To: Wilkins William J; Corwin Erik H
Cc: Judson Victoria A
Subject: Heads up on Draft Guide Sheet for advocacy organizations

Bill and Erik

Just an awareness item for you on something that Steve Miller is talking about with EO on Friday. As you may be aware, over the past year EO has received an uptick in applications for c3 or c4 status from entities that will advocating for positions/issues and in some cases candidates. General issue advocacy may be fine, but depending on which status is at issue, lobbying may need to be limited and intervention in political campaigns may be forbidden altogether or limited.

EO prepared a guide sheet that it had provided to its Determinations function for use in processing the applications, principally those requesting c4 status but also c5 (labor orgs) and c6 (business leagues) status. Last week, EO Director Lois Lerner was in a meeting on the Hill and is talking again with folks from SFC this Thursday. As I understand it, they are asking questions about how the IRS is processing these applications because the IRS folks involved are asking a lot of detailed questions, taking too long, etc. The Hill wanted to see the guide sheet that is in use and also wants it released publicly.

EO shared it with us last week to see if it was ready then to share with the Hill and our reaction was no (a good start, but it needed corrections, additions, deletions change in structure, etc). Our folks worked quickly in the limited time given to restructure it a bit, taking out a few questions that weren't supported by guidance already, adding legal authorities, etc. EO is looking at the revised version and I believe will share with Nikole and Steve to get their take. We'll be talking with them again in the next few days to further improve the document.

We'll keep you posted on general developments, but in the meantime, we've attached the latest draft in case you wanted to glance through it. But in any event, wanted you to be aware of this sensitive matter and how the IRS is approaching it. Will provide any update at our biweekly on Friday.

Janine

<<File: Guide Sheet Counsel Comments 03-07-12.doc >>

Subject: Advocacy Orgs Meeting

Start: Mon 7/25/2011 7:00 AM
End: Mon 7/25/2011 7:30 AM
Show Time As: Tentative

Recurrence: (none)

Meeting Status: Not yet responded

Organizer: Lowe Justin

Required Attendees: Lowe Justin; Megosh Andy; Kastenberg Elizabeth C; Hull Carter C; Goehausen Hilary; Marshall David L; Franklin Amy B

Optional Attendees: Seto Michael C; Fish David L; Griffin Kenneth M

When: Monday, July 25, 2011 8:00 AM-8:30 AM (GMT-05:00) Eastern Time (US & Canada).

~~*~*~*~*~*~*~*~*

David Marshall and Amy Franklin, who are working on the advocacy organization cases in Chief Counsel, suggested that we meet so that they can gain a better understanding of the big picture surrounding these cases and so that we can discuss some of the broad legal issues together. This sounds like a good idea to me as the issue is a tricky one and the more collaboration we have, the better.

From looking at people's outlook calendars, it appears Tuesday, July 26th, is mostly open on the EO:R&A side, so I picked a time when 355 was available. David M., if this time works for you guys, great! If not, just let me know what would work better.

Thanks,

Justin

From: Spellmann Don R <Don.R.Spellmann@irscounsel.treas.gov>
Sent: Friday, August 05, 2011 8:17 AM
To: Lowe Justin
Subject: RE: Draft (c)(4) Primarily Standard Paper

That sounds fine Justin. We'll catch up (and see you) next week.

Have a great weekend.

Don

From: Lowe Justin [<mailto:Justin.Lowe@irs.gov>]
Sent: Friday, August 05, 2011 8:44 AM
To: Spellmann Don R
Subject: RE: Draft (c)(4) Primarily Standard Paper

Hi Don, good to see you as well!

I should clarify: the 19th date is just when the first level drafters (Amy, Dave Rifkin, and myself) plan to circulate the draft to you, David Marshall, Judy, and Joe Urban, for the conceptual comments, etc. So no need to worry about looking at it before then, we'd like to circulate it to you guys all at the same time.

Yes, Amy and I had planned to touch base on Monday. We definitely don't want to overburden her with this as I know there are a lot of other things moving at this point.

Sound good?

Thanks,

Justin

From: Spellmann Don R [<mailto:Don.R.Spellmann@irscounsel.treas.gov>]
Sent: Thursday, August 04, 2011 10:23 PM
To: Lowe Justin
Subject: RE: Draft (c)(4) Primarily Standard Paper

Hi Justin,

It was good to see you today. We look forward to working with you on this most interesting (and challenging) project.

As you know, Amy has pulled the 1950's reg file and is going through it for clues. I understand she will try to touch base with you on her progress on Monday. With her upcoming vacation the week after next and other pressing projects, I expect that will be the most assistance she will be able to provide to us prior to the 19th. I (and hopefully David Marshall) will be sure to give this paper a close read and get back with you before the 19th with at least some conceptual comments so that we can keep this moving.

Any questions or concerns in the meantime, please let me know.

Thank you.

Don

From: Lowe Justin [<mailto:Justin.Lowe@irs.gov>]
Sent: Friday, July 15, 2011 2:55 PM
To: Franklin Amy
Cc: Urban Joseph J; Rifkin Dave; Spellmann Don R
Subject: Draft (c)(4) Primarily Standard Paper

Hi Amy, attached is a draft of the paper on the (c)(4) primarily standard. The case law section needs some cleanup/tightening, but I wanted to get this over to you for your take. I'll be out next week, but back on the 25th.

Could you please take a look at the reg files for (c)(4) (and perhaps (c)(3)) to search for any clues about why (c)(3) got the insubstantial language and (c)(4) didn't? Attached is an article by Miram Galston that discusses the issue and references an internal memo from Jerome Sebastian, director, Interpretive Division. If we can track that down it could provide some interesting insights.

I've also attached the powerpoint referred to in the draft paper as an "internal training document" that cites 49/51% as the threshold.

From: Seto Michael C
Sent: Thursday, May 12, 2011 3:44 PM
To: Paz Holly O
Subject: RE: Tea Party - Email from TAS

Okay. The current status is: Judy has reviewed our proposed (c)(3) denial and (c)(4) favorable and requested the staff to ask for more information from the taxpayers. We are waiting for the information from the taxpayers. The cases have not gone to Counsel yet.

From: Paz Holly O
Sent: Thursday, May 12, 2011 4:30 PM
To: Seto Michael C
Subject: FW: Tea Party - Email from TAS
Importance: High

Let's discuss this case in the morning. What is the current status of our test c3 tea party case? Did it go to Counsel yet?

From: Thomas Cindy M
Sent: Thursday, May 12, 2011 2:28 PM
To: Paz Holly O
Cc: Seto Michael C
Subject: Tea Party - Email from TAS
Importance: High

Holly,

This is the email I referenced in my voice message. What is the estimated completion date we should provide to TAS? If we have no date, what do you suggest we say?

Org: [REDACTED] 6103
EIN: [REDACTED] 6103
Control Date: 9/20/2010
Subsection: 501(c)(3)

From: Bell Ronald D
Sent: Thursday, May 12, 2011 12:50 PM
To: Thomas Cindy M
Subject: FW: exempt application

Hi Cindy,

I thought I should run this by you before responding. It is in regards to a tea party case. Thanks

Ron

From: Brantley Alesia D
Sent: Thursday, May 12, 2011 12:40 PM

To: Bell Ronald D
Subject: exempt application

Hi Ronald,

Have the National office provided you with a timeframe to let you know when a determination would be made on the case. I need to provide the congressional office with an approximate time, since TP may lose the grant, if a determination is not made on the exempt appl.

Thanks

TP: [REDACTED] 6103 EIN: [REDACTED] 6103

Alesia D. Brantley
Case Advocate
Taxpayer Advocate Service-Houston
Phone Number - 713-209-4785
Fax Number - 713-209-4779

From: Abner Donna J
Sent: Thursday, July 21, 2011 10:16 AM
To: Paz Holly O
Subject: IRM 7.20.5
Attachments: IRM 7.20.5.doc

Hi Holly,
Attached is the section of IRM 7.20.5 that I referenced in my voice mail. Paragraph "d" includes "impact" cases and paragraph "x" includes "sensitive political issues" including activities that appear to support or oppose candidates. In the "Emerge" cases both paragraphs support designating the cases for mandatory review.

Even though the IRM indicates these types of cases are subject to mandatory review - the actual process of getting the case to QA is mostly a manual process. The specialist and manager must first be knowledgeable of the IRM requirements, then must prepare a special handling form designating the case for QA Review, enter in the EDS closing screen an "X" to update the case to QA, and then send the case to the QA group instead of to the Records Unit.

I'm also concerned with the cases approved in screening. The screening checksheet does include "Political Activities - Sensitive Issues" among the types of cases "not" suitable for screening. Despite this, the cases were closed on merit with no contact. It might be helpful to pull the admin file to see if the applicant fully disclosed their operations - or - if the screeners/specialists need a reminder regarding political/sensitive cases.

On the positive - our research did not reveal any other cases. There's was only one in [REDACTED] that might be indirectly connected- [REDACTED]. It appears to have a broader focus - engaging young professionals in the community. The [REDACTED] organization was approved on merit June 2009 as a 501(c)(6).

Please let me know if I can help further.
Thanks,
Donna

(3) Mandatory review is a review of open (or "unclosed") cases that are required to be reviewed by Quality Assurance. The EO Determinations groups use Form 3198-A to forward these cases before they are closed on EDS or the applicable processing system. The following cases are subject to mandatory review:

**Redacted by the
Permanent Subcommittee on Investigations**

**Redacted by the
Permanent Subcommittee on Investigations**

s. Touch-and-Go (TAG) cases identified as abusive.

**Redacted by the
Permanent Subcommittee on Investigations**

Applications that present sensitive political issues, including the following types of activities:
Vote registration
Inaugural and convention host committees

Post-election transition teams (to assist the elected official prior to officially assuming the elected position)
Voter guides
Voter polling
Voter education
Other activities that may appear to support or oppose candidates for public office

Redacted By
Permanent Subcommittee on Investigations

z. Other cases selected for review by the Manager, EO Quality Assurance.

(4) Manager's discretion cases are subject to mandatory review based on a referral by a group manager who believes that a case may have a significant impact. The manager routes the case (still open at the group level) to mandatory review with an explanation as to why the case needs to be reviewed. Quality Assurance should provide an advisory memorandum (Form 5456) on their analysis to the group manager.

From: Paz Holly O
Sent: Monday, August 01, 2011 9:51 AM
To: Lowe Justin
Cc: Kindell Judith E
Subject: RE: Sensitive Political Issues -- CENTRA Session

I'm sorry. Haven't had a chance to mention this to you yet. We did discuss you and Judy doing a centra session for deterns as part of the CPE. The thought was that we would expand on the presentation you and Siri previously gave. This session would be 1 hour. Themes would include the importance of consistency in dealing with these cases as well as a reminder of the heightened sensitivity during election season (which has basically started already). The private benefit analysis of Emerge should also be discussed. We definitely want to allow time for q&a as well.

From: Lowe Justin
Sent: Monday, August 01, 2011 8:27 AM
To: Paz Holly O
Subject: FW: Sensitive Political Issues -- CENTRA Session
Importance: High

Hi Holly, I hadn't heard about this from you guys, so wanted to check in and confirm before I wrote back to Cindy. I'm pretty open in the early part of September so scheduling shouldn't be a problem.

I'm not sure how this presentation will differ from the one Siri gave a couple of months ago though? Seems like I'd be covering the same things: Types of advocacy and which types of orgs are allowed to do how much of each.

Thanks,

Justin

From: Thomas Cindy M
Sent: Sunday, July 31, 2011 11:25 PM
To: Lowe Justin
Cc: Paz Holly O
Subject: Sensitive Political Issues -- CENTRA Session
Importance: High

Justin,

During a discussion with Holly and Lois a couple of weeks ago, they indicated that you or Judy Kindell would be giving a 1 hour CENTRA session for EO Determinations employees on sensitive political issues and that the session would most likely take place in early September.

We need to send out information regarding our 4th quarter CPE sessions and would like to have the date you plan to conduct the session. Also, if you want to give the presentation only one time, it'll need to take place during the afternoon to allow for the time difference for our California employees. If you're indifferent, we would prefer to schedule two sessions (one in the morning for half of the employees and one in the afternoon for the other half of the employees).

If you could let me know in the next couple of days so we can get the agenda out to employees, that would be great. Thanks.

From: Paz Holly O
Sent: Monday, July 23, 2012 2:06 PM
To: Seidell Thomas F TIGTA; Medina Cheryl J TIGTA
Subject: FW: TIGTA DOCUMENT REQUEST

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 4:44 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST

From: Thomas Cindy M
Sent: Tuesday, June 14, 2011 10:25 AM
To: Bowling Steven F
Cc: Bell Ronald D
Subject: RE: FW: C3 AND C4 APPLICATIONS BRIEFING

Thanks for info. Not sure how nitty gritty this is going to be. Based on a conversation I had with Holly Paz and Mike Seto yesterday, I think it is going to be more about what action has been taken thus far and plan for moving forward to bring these cases to resolution. Discussion probably won't be about specific cases but more of a general discussion about criteria for determining the cases that are in this group, figuring out if there are like kinds that can be grouped into buckets, changing the label we have assigned to these cases, i.e., tea party cases, to something that is more descriptive for the wide net we are using to capture these cases (all cases included in the net are not tea party cases), etc.

From: Bowling Steven F
Sent: Tuesday, June 14, 2011 10:01 AM
To: Thomas Cindy M
Cc: Bell Ronald D
Subject: RE: FW: C3 AND C4 APPLICATIONS BRIEFING

Cindy,

Ron accepted this invitation and then realized that he is scheduled for leave that week. I have asked him to brief me on a few cases.

STEVEN F. BOWLING

Manager, EO Group 7822

Exempt Organizations Determinations

550 Main Street, Room 4-504

Cincinnati, OH 45202

Tel (513) 263-3704

Fax (513) 263-4540

From: Bowling Steven F

Sent: Tuesday, June 14, 2011 6:53 AM

To: Lemer Lois G

Subject: Accepted: FW: C3 AND C4 APPLICATIONS BRIEFING

When: Wednesday, June 29, 2011 2:00 PM-3:00 PM (GMT-05:00) Eastern Time (US & Canada).

Where: Room 351 1-866-606-4717 access code 9482833

From: Lerner Lois G
Sent: Monday, January 14, 2013 12:10 PM
To: Paterson Troy D TIGTA
Cc: Paz Holly O; Marx Dawn R
Subject: Advocacy discussion

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 potentially problematic 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," [REDACTED] should have been included as an advocacy case. On the other hand, after noting that the [REDACTED] "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. Both organizations included a general statement that their activities may involve advocacy. [REDACTED] 6103 [REDACTED] stated that its purpose is "to promote social and economic justice by, among other things, eliminating racial and economic discrimination in the provision of public and private services, advocating for affordable housing, and increasing the participation of [REDACTED] 6103 [REDACTED] in the political and civic life of their communities." [REDACTED] 6103 [REDACTED]

██████████ stated that they “expect to carry out a program of local ‘forums’ that will help sensitize the public to the need for greater involvement in public activities.”

Another set of cases that puzzles us are ██████████, 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?) and ██████████, 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.

Leis J. Lerner

Director of Exempt Organizations

From: Thomas Cindy M
Sent: Thursday, July 19, 2012 2:55 PM
To: Paz Holly O
Subject: TIGTA DOCUMENT REQUEST
Attachments: Tea Party 4-5-2010.xls

From: Shafer John H
Sent: Tuesday, April 06, 2010 10:00 AM
To: Thomas Cindy M; Camarillo Sharon L
Subject: FW: Tea Party Cases -- ACTION

Cindy & Sharon,

Gary has added a few more cases that he discovered. I have all of the status "75" cases in my office.

John Shafer
 Group Manager
 SE:T:EO:RA:D:1:7838
 Telephone: (513)263-3406
 FAX: (513)263-5200

From: Muthert Gary A
Sent: Monday, April 05, 2010 2:29 PM
Cc: Muthert Gary A; Shafer John H; Shoemaker Ronald J
Subject: RE: Tea Party Cases -- ACTION

TEA PARTY OR POSSIBLE TP CASES AS OF 4/5/2010					
	Name of Organization	EIN	Status		From
1	6103	6103	52 - Assigned to 50982 (DC)	Applying under 501(c)(3)	6103
2	6103	6103	52 - Assigned to 50982 (DC)	Applying under 501(c)(4)	6103
3	6103	6103 6103	Exempt	Applied under 501(c)(4)	6103
4	6103	6103	Exempt	Applied under 501(c)(4)	6103
5	6103	6103	Exempt	Applied under 501(c)(3)	6103
6	6103	6103	75	Applying under 501(c)(4)	6103
7	6103	6103	75	Applying under 501(c)(4)	6103
8	6103	6103	75	Applying under 501(c)(4)	6103
9	6103	6103	75	Applying under 501(c)(4)	6103
10	6103	6103	75	Applying under 501(c)(4)	6103
11	6103	6103	75	Applying under 501(c)(4)	6103
12	6103	6103	75	Applying under 501(c)(4)	6103
13	6103	6103	75	Applying under 501(c)(4)	6103

14	6103	6103	75	Applying under 501(c)(4)	6103
15	6103	6103	75	Applying under 501(c)(4)	6103
Potential Denials under IRC 501(c)(3)					
16	6103	6103	75	Applying under 501(c)(3)	6103
17	6103	6103	75	Applying under 501(c)(3)	6103
18	6103	6103	75	Applying under 501(c)(3)	6103
Cases 1 and 2 are currently assigned to T #50982, who is located in Washington D.C.					
Status 75 cases are all located in Cincinnati, Ohio and awaiting guidance.					
The "Exempt" cases were already granted exemption. The 501(c)(4) organizations are probably not a problem. However, the 501(c)(3) organization 6103 may have to be researched further.					
Case 16 - 6103 - a 501(c)(3) applicant, acknowledges that it is engaged in political activities.					
Case 17- 6103 - a 501(c)(3) applicant, is linked to 6103, a 501(c)(4) entity.					
Case 18 - 6103 applying under 501(c)(3). However, we have not determined if it's a Tea Party entity.					

Gary Muthert

TE/GE, ID #1000203255
 Screening Group, Group 7838
 550 Main Street
 Cincinnati, Ohio 45201
 513-263-3639 Phone
 513-263-5200 FAX

From: Thomas Cindy M
Sent: Monday, April 05, 2010 12:26 PM
To: Muthert Gary A
Cc: Shafer John H; Camarillo Sharon L; Shoemaker Ronald J; Grodnitzky Steven
Subject: Tea Party Cases -- ACTION
Importance: High

Gary,

Since you are acting for John and I believe the tea party cases are being held in your group, would you be able to gather information, as requested in the email below, and provide it to Ron Shoemaker so that EO Technical can prepare a Sensitive Case Report for these cases? Thanks in advance.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 12:14 PM
To: Thomas Cindy M
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

Cindy,

Information would be the number of cases and the code sections in which they filed under. Also, if there is anything that makes one stand out over the other, like a high profile Board member, etc., then that would be helpful. Really thinking about possible media attention on a particular case. Just want to make sure that Lois and Rob are aware that there are other cases out there, etc....

I think once the cases are assigned here in EOT and we have drafted a development letter, we should coordinate with you guys so that you can at least start developing them. However, we would still need to let Rob know before we resolve any of these cases as this is a potential high media area and we are including them on an SCR.

Ron-- once you assign the cases and we have drafted a development letter, please let me know so that we can coordinate with Cindy's folks.

Thanks.

Steve

From: Thomas Cindy M
Sent: Monday, April 05, 2010 11:59 AM
To: Grodnitzky Steven
Cc: Shoemaker Ronald J; Shafer John H
Subject: RE: two cases

What information would you like? We are "holding" the cases pending guidance from EO Technical because Holly Paz didn't want all of the cases sent to D.C.

From: Grodnitzky Steven
Sent: Monday, April 05, 2010 11:56 AM
To: Shoemaker Ronald J; Thomas Cindy M
Subject: RE: two cases

Thanks. Can you assign the cases to one person and start an SCR for this month on the cases? Also, need to coordinate with Cincy as they have a number of Tea Party cases as well.

Cindy -- Could someone provide information on the Tea Party cases in Cincy to Ron so that he can include in the SCR each month? Thanks.

From: Shoemaker Ronald J
Sent: Monday, April 05, 2010 11:30 AM
To: Elliot-Moore Donna; Grodnitzky Steven
Subject: RE: two cases

One is a c4 and one is a c3.

From: Elliot-Moore Donna
Sent: Friday, April 02, 2010 8:38 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

The Tea Party movement is covered in the Post almost daily. I expect to see more applications.

From: Grodnitzky Steven
Sent: Thursday, April 01, 2010 4:04 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

These are high profile cases as they deal with the Tea Party so there may be media attention. May need to do an SCR on them.

From: Elliot-Moore Donna
Sent: Thursday, April 01, 2010 7:43 AM
To: Grodnitzky Steven; Shoemaker Ronald J
Subject: RE: two cases

I looked briefly and it looks more educational but with a republican slant obviously. Since they're applying under (c)(4) they may qualify.

From: Grodnitzky Steven
Sent: Wednesday, March 31, 2010 5:30 PM
To: Elliot-Moore Donna; Shoemaker Ronald J
Subject: RE: two cases

Thanks. Just want to be clear -- what are the specific activities of these organizations? Are they engaging in political activities, education, or what?

Ron -- can you let me know who is getting these cases?

From: Elliot-Moore Donna
Sent: Wednesday, March 31, 2010 10:30 AM
To: Grodnitzky Steven
Subject: two cases

Steve:

Re: Two "tea party" cases

6103 . and 6103

Cases are applying for exemption under section 501(c)(4).

Holly accepted the cases for EO Technical. Copies of email exchanges between Cindy Thomas and Holly in case files.

The concern is potential for media attention.

They will be assigned to Group 2.

FYI

Donna

From: Thomas Cindy M
Sent: Monday, March 25, 2013 9:41 PM
To: Fish David L; Seto Michael C
Cc: Light Sharon P
Subject: FW: Advocacy Case - Congressional Inquiry

Importance: High

Follow Up Flag: Follow up
Due By: Tuesday, March 26, 2013 2:30 PM
Flag Status: Flagged

Could you help to find out where this case is and what is going on with it? We owe Legislative Affairs a response. According to EDS, the case is sitting in the EO Determinations full development unassigned inventory. However, according to the email below from Sharon, QA sent it to D.C. and Liz Ardoin got this case. Does she still have it? If not, where is it; what is being done with it; what are next steps; and, what is the expected completion date?

Gloria Sutton and Eric Hall weren't satisfied with the response provided by Dave Rifkin and reached out to me. Personally, I think it would be best for one of you to respond, especially because of the sensitivity of the case. However, if you prefer that I respond, I have no problem doing that --- just need information. Thanks in advance for your help with this.

EIN - [REDACTED] 6103
[REDACTED] 6103 INC.

From: Light Sharon P
Sent: Thursday, March 21, 2013 4:47 PM
To: Thomas Cindy M; Fish David L
Cc: Paz Holly O
Subject: RE: Advocacy Case - Congressional Inquiry

It got routed here because QA noted that it was like the Acorn successor cases. Liz worked those cases so she got this one. It has been reviewed, I know, so let me check on where it stands now.

From: Thomas Cindy M
Sent: Thursday, March 21, 2013 4:41 PM
To: Light Sharon P; Fish David L
Cc: Paz Holly O
Subject: FW: Advocacy Case - Congressional Inquiry
Importance: High

Sharon - Could you find out what is going on with this case. Legislative Affairs is asking about it and it is my understanding that a copy was sent to D.C. on 9/11/2012. Apparently, Liz Ardoin is preparing a letter.

Supposedly, it is a bucket 3 case which confuses me because I thought D.C. was only working bucket 4 cases.

I replied to Gloria and Eric and let them know that I'm checking into this.

David - I think Dave Rifkin's desk guide needs to be tweaked. I'm starting to get complaints because Legislative Affairs isn't getting enough information regarding their requests.

From: Chumney Tyler N
Sent: Thursday, March 21, 2013 4:21 PM
To: Thomas Cindy M
Cc: Bowling Steven F
Subject: RE: Advocacy Case - Congressional Inquiry

Cindy,

This is a bucket 3 case, the Note on the spreadsheet indicates 'copy sent to DC 9/11/12 wait Liz Ardoin's letter'

Tyler Chumney
TE/GE EOD Group 7823
513-263-4583

From: Thomas Cindy M
Sent: Thursday, March 21, 2013 3:22 PM
To: Chumney Tyler N
Cc: Bowling Steven F
Subject: Advocacy Case - Congressional Inquiry
Importance: High

Tyler,

What bucket is this case in? I know it is in Status 51, but what actions have been taken with it? I need to get back with the Governmental Liaison regarding the case. Thanks.

EIN - [REDACTED] 6103
[REDACTED] 6103 INC.

From: Sutton Gloria I
Sent: Wednesday, March 20, 2013 4:21 PM
To: Thomas Cindy M
Cc: Hall Eric
Subject: Requesting your assistance once more FW: 247 - Inquiry Congressman Grayson- [REDACTED] 6103
[REDACTED] INC
Importance: High

Good afternoon Cindy,

I was my hope to not approach you again for assistance on an EO Congressional inquiry. However, I have another sensitive case where a congressional office, this time Congressman Grayson, continues to do follow-up with me, due to what the taxpayer describes as a long overdue response from IRS.

The organization, [REDACTED] 6103, states they applied for exempt status in October 2011. Other than the CP 5104 received May 15, 2012, they have received no correspondence from IRS. Dave's response below confirms that the case is awaiting assignment. As stated in my original message to Dave, the organization checked our website and they understand that

we are working applications from March of 2012. The organization is expressing frustration due to the fact they applied back in 2011.

In the meantime, I just received a call from the congressman's office. He has taken a personal interest in this application. Apparently, this organization is awaiting funding from significant foundations. That funding will enable this organization to begin hiring individuals in the Congressman's geographic area--economic impact is now a factor.

If necessary and advised, I will provide the organization with information to explain how to make a request for expedite processing. However, if there is any assistance you can provide, I would greatly appreciate it.

Gloria A. Sutton

Governmental Liaison, North Florida

400 W. Bay Street, Stop 4031

Jacksonville, FL 32202-4437

Tel 904-665-0513 /FAX 904-665-1809

gloria.sutton@irs.gov

From: Rifkin Dave
Sent: Sunday, March 10, 2013 9:55 PM
To: Sutton Gloria I
Cc: Megosh Andy
Subject: RE: 247 - Inquiry Congressman Grayson- [REDACTED] 6103 INC

Gloria,

The case was unable to be screened out on merit. It appears additional information is needed. It has been forwarded to inventory awaiting assignment. The taxpayer will be contacted when the case is assigned.

For your info (not external to IRS), the cases is in a category labeled "emerging issues." I do not know what that means, but if things have taken time that could be a reason. This cannot be disclosed to the Org or the Congressional office, but at least you know what I know.

Dave

Dave Rifkin
TE/GE, Exempt Organizations

From: Sutton Gloria I
Sent: Tuesday, March 05, 2013 3:53 PM
To: Rifkin Dave
Cc: Megosh Andy
Subject: Congressman Grayson- [REDACTED] 6103 INC
Importance: High

EIN - 6103
6103 INC.

Rec'd CP 5104 May 15, 2012 stating case required development. T/P has checked website --we are working March 2012.
T/P states they submitted their application October 2011.

What is the the status of their application? How long before they know if they will be granted exemption status?

Thanks,

Gloria A. Sutton

Governmental Liaison, North Florida

400 W. Bay Street, Stop 4031

Jacksonville, FL 32202-4437

Tel 904-665-0513 /FAX 904-665-1809

gloria.sutton@irs.gov

From: Ingram Sarah H
Sent: Sunday, January 24, 2010 10:54 AM
To: Lerner Lois G; Marks Nancy J; Livingston Catherine E
Cc: Pyrek Steve J; Schultz Ronald J; Flax Nikole C; Ingram Sarah H; Grant Joseph H
Subject: RE: Political Activity by Corporations

Categories: NUUU

Guys – I agree with you all – let’s prepare a FAQ that can go on the web and be given to the press office. I think we start with the press office and then work the pros/cons of putting on the web.

Here’s my concern – there are those eager to take the test of the tax-exemption issue to the courts and, if I were them, would be even more eager now. In prior meetings, my proposal that we cooperate with that desire (let’s get an answer whatever it is) has not been greeted with enthusiasm at any level. I remain interested in that as one of a number of options, but we have not had the right internal conversations.

Even assuming some discussion of that option, Lois et al. are right we need a quick, plain vanilla, no-news, kinda blurb.

Lois – I assume these guys will hit us up first thing Monday morning at coffee and in the hallways and not wait for the general session Tuesday. Can you tread water Monday and I’ll be firm Tuesday at the 8:30 general session?

From: Lerner Lois G
Sent: Friday, January 22, 2010 6:12 PM
To: Marks Nancy J; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporations

Thanks Nan--Cathy is a good one to have involved. Unfortunately, Judy Kindell is at the ABA so she and I haven't had any chance to talk. What you described in the first paragraph is exactly what I had in mind, but understand that the sensitivity surrounding this issue may mean we just have that piece available in our back pockets so we wouldn't have to scramble letter, but initially put the softer item on the web or to our media folks. Sarah--your thoughts?

Lois G. Lerner
Director, Exempt Organizations

From: Marks Nancy J [mailto:Nancy.J.Marks@IRSCOUNSEL.TREAS.GOV]
Sent: Friday, January 22, 2010 6:05 PM
To: Lerner Lois G; Livingston Catherine E
Cc: Ingram Sarah H; Pyrek Steve J
Subject: RE: Political Activity by Corporations

I'm pulling Cathy into this (thanks for being mindful of her unavailability Lois but she has a bit of a window right now and was brainstorming this issue herself). Are you thinking of something like--we've had some inquiries about whether the Supreme Court decision in ... applies to the laws governing political activity by charities followed by a fairly short plain english no which briefly summarizes the constraints (to remind people) distinguishes the opinion and maybe cites to the authority for concluding that these constraints do not violate first amendment rights.

I guess, and this is an issue for Steve and Sarah which I know you've served up to them, the question is whether we take it head on with a general statement or whether we come in softer maybe putting a Q&A on the web site and equipping public affairs with the same Q&A. I might be inclined to the softer approach because so far the public debate does not seem to be running too far off the mark. That is more of a PR call which I happily leave in your hands. (your section of the ACT stampeding--not a pretty thought)

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, January 22, 2010 5:53 PM
To: Marks Nancy J; Ingram Sarah H
Cc: Pyrek Steve J
Subject: RE: Political Activity by Corporations

I'm going to need them by Tuesday at the latest! Sarah--perhaps we can head off the stampede from the EO ACT by a general statement in the larger ACT meeting?

Lois G. Lerner
Director, Exempt Organizations

From: Marks Nancy J [mailto:Nancy.J.Marks@IRSCOUNSEL.TREAS.GOV]
Sent: Friday, January 22, 2010 4:01 PM
To: Lerner Lois G; Ingram Sarah H; Miller Steven T
Subject: RE: Political Activity by Corporations

Thanks Lois I was wondering along the same lines--thought a few plain english Q&A's might be helpful. I gave Bill Wilkins a bit of background and also my read that this didn't change our position on the exempts in case he got the question at the EO lunch at the ABA

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Friday, January 22, 2010 3:16 PM
To: Ingram Sarah H; Miller Steven T; Marks Nancy J
Subject: Political Activity by Corporations

I'm sure you've heard about the S Ct.'s decision in Citizen's United that corporations have first amendment rights and the prohibitions on corporate spending in elections are unconstitutional. While I don't think that changes our legal position--that tax-exemption is a privilege and if you want the privilege you have to play by the rules, I do think we need to be prepared to respond to inquiries about c3 and c4 spending in elections. Last November when the opinion was expected, EO practitioners asked if the IRS would put out a press release reminding folks of the c3 prohibition on campaign spending. They weren't arguing about whether the prohibition was legal--instead they were trying to stave off confusion in the event the court struck down the corporate prohibition. I'm sure they will be back asking soon. This also coming on the eve of our hearing on 7611 seems like much fodder for the press. I've asked Steve Pyrek to see if there have been press inquiries, but I am more concerned about folks getting questions on this at speaking opportunities. I know I have a few coming up and it is likely I'll be asked. I know this is a very sensitive issue, so thought it best to raise it with all of you to get high level direction as soon as possible. Thanks

Lois G. Lerner

Director, Exempt Organizations

From: Daly Richard M
Sent: Friday, June 22, 2012 4:10 PM
To: Ingram Sarah H; Lerner Lois G; Marx Dawn R; Urban Joseph J; Marks Nancy J
Subject: FW: 201210022 Engagement Letter
Attachments: 201210022-Engagement_Letter.doc
Importance: High

TIGTA is going to look at how we deal with the applications from (c)(4)s. Among other things they will look at our consistency, and whether we had a reasonable basis for asking for information from the applicants. The engagement letter bears a close reading. To my mind, it has a more skeptical tone than usual.

Among the documents they want to look at are the following:

All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.

TIGTA expects to issue its report in the spring.

From: Rutstein Joel S
Sent: Friday, June 22, 2012 3:01 PM
To: Daly Richard M
Subject: FW: 201210022 Engagement Letter
Importance: High

Mike, please see below and attached. Given that TIGTA sent this to Joseph Grant and cc'ed Lois and Moises, do you still need me to circulate this under a cover memo and distribute it to all my liaisons including you? Thanks, Joel

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

From: Price Emma W TIGTA [<mailto:Emma.Price@tigta.treas.gov>]
Sent: Friday, June 22, 2012 2:56 PM
To: Grant Joseph H

Cc: Davis Jonathan M (Wash DC); Miller Steven T; Medina Moises C; Lerner Lois G; Rutstein Joel S; Holmgren R David
TIGTA; Denton Murray B TIGTA; Coleman Amy L TIGTA; McKenney Michael E TIGTA; Stephens Dorothy A TIGTA
Subject: 201210022 Engagement Letter
Importance: High

FYI – Engagement Letter – Consistency in Identifying and Reviewing Applications for Tax-Exempt Status Involving Political
Advocacy Issues.

Thanks,

Emma Price



INSPECTOR GENERAL
for TAX
ADMINISTRATION

DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20005

June 22, 2012

MEMORANDUM FOR ACTING COMMISSIONER, TAX EXEMPT AND GOVERNMENT
ENTITIES DIVISION

A handwritten signature in black ink, appearing to read "Michael E. McKenney".

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

SUBJECT: Consistency in Identifying and Reviewing Applications for
Tax-Exempt Status Involving Political Advocacy Issues
(Audit # 201210022)

The Treasury Inspector General for Tax Administration is initiating a review to assess the Internal Revenue Service (IRS) Exempt Organizations function's consistency in the identification and review of applications for tax-exempt status involving political advocacy issues. We will be contacting the liaison for Tax Exempt and Government Entities Division to schedule an entrance conference with the appropriate IRS managers.

During the 2012 election cycle, the campaign activities of Internal Revenue Code (IRC) Section (§) 501(c)(4) social welfare organizations have been highlighted in many news articles. According to various reports, the IRS is requesting extensive amounts of additional information from organizations applying for IRC § 501(c)(4) tax-exempt status, including donor information, prior to approving their applications. Several accusations of inconsistent treatment towards conservative groups have been made.

The tax laws do not prohibit IRC § 501(c)(4) social welfare organizations from engaging in campaign activity. However, Treasury Regulations require IRC § 501(c)(4) organizations to operate exclusively for the promotion of social welfare. An organization is considered to be operating this way if it is primarily engaged in promoting the common good and general welfare of the people of the community and not making political activities their primary purpose.

Overall Objective and Subobjectives

Our overall objective is to assess the consistency of the Exempt Organizations function's identification and review of applications for tax-exempt status involving political advocacy issues. To accomplish our objective, we will:

- Assess the actions taken by the Exempt Organizations function in response to the increase in applications for tax-exempt status from organizations involved in political advocacy activities.
- Determine whether changes to procedures and controls since May 2010 affected the timeliness of reviewing applications involving political advocacy issues.
- Determine whether the actions taken by the Exempt Organizations function to identify applications for tax-exempt status of organizations with political advocacy issues were consistent.
- Determine whether the Exempt Organizations function had a reasonable basis for requesting information from organizations seeking tax-exempt status involved in political advocacy.

Offices Subject to Review

We will perform audit work at the Determinations Office in Cincinnati, Ohio. We may also visit Exempt Organizations function's offices in Washington, D.C.; Baltimore, Maryland; and other offices to obtain case files.

Deliverables and Estimated Completion Dates

We will be issuing an interim report after we complete our initial review of the application process. In addition, we will issue the draft report by March 2013 and the final report by April 2013.

Information Needed From Auditee

To accomplish the audit objectives, we require the following information no later than July 6, 2012:

- All documents and correspondence (including e-mail) concerning the Exempt Organizations function's response to and decision-making process for addressing the increase in applications for tax-exempt status from organizations involving potential political advocacy issues.
- Access to case files (open, closed, paper, and electronic) from the Determinations Office. After we select our sample, we will work with Determinations Office officials to obtain the cases we need.

During the course of fieldwork, additional information may be needed and we will request employees to provide responses and documentation as soon as it is practical, but not to exceed 2 weeks from the date of the request.

Special Considerations

During our on-site visits, we will need work space for three auditors, access to a telephone, a photocopier, and supplies.

Designated Treasury Inspector General for Tax Administration Executive Liaison

Russell Martin, Acting Assistant Inspector General for Audit (Management Services and Exempt Organizations) (202)-622-8500.

Responsible Inspector General Staff

Questions regarding this review may be directed to:

Troy Paterson, Director, Tax Exempt and Government Entities/Human Capital,
(404)-338-7476
Thomas Seidell, Audit Manager, (781)-835-4286
Cheryl Medina, Lead Auditor (781)-835-4278

cc: Commissioner C
Office of the Commissioner – Attention: Chief of Staff C
Deputy Commissioner, Services and Enforcement SE
Acting Deputy Commissioner, Tax Exempt and Government Entities Division SE:T
Director, Exempt Organizations, Tax Exempt and Government Entities Division
SE:T:EO
Director, Office of Legislative Affairs CL:LA
Deputy Inspector General for Inspections and Evaluations IG:IE
Director, Strategic Data Services IG:OI:SDS

To: Waddell Jon M
Subject: FW: Sensitive Case

Jon,

In response to Vicki's email below from 3/26/2013, please have a composed closing letter prepared that explains to the organization that we cannot rule on this matter pursuant to Rev Proc 2013-9, section 4.04, and Rev Proc 2013-4, section 6.06.

NOTE: Please ask to see the composed letter before it is issued to make sure it is accurate and professional. Also, someone will need to review the Rev Proc sections referenced. Holly provided them in her email below and

From: Paz Holly O
Sent: Tuesday, May 07, 2013 2:59 PM
To: Thomas Cindy M
Subject: RE: Sensitive Case

b. Rev Proc 2013-9 section 4.04 and Rev Proc 2013-4 section 6.06

From: Thomas Cindy M
Sent: Tuesday, May 07, 2013 11:16 AM
To: Paz Holly O
Subject: RE: Sensitive Case

To clarify -- are you saying that we are "holding" the case until EO Exam is finished with the audit?

a) if so:

- 1) is Exam notifying us when they are finished, and
- 2) can we place the case in suspense status

b) if not, are you suggesting that we close the case and with a no rule type letter? NOTE: I'm not aware of any procedures that indicate we will not rule on a request from an organization under exam. In your email below, you stated "we will tell the org that we cannot rule pursuant to our rev proc that provides we will generally not work applications or similar requests when an exam is pending." Is this Rev Proc. 2013-4 or another one? -- not sure where to start looking.

Thanks.

From: Paz Holly O
Sent: Tuesday, May 07, 2013 9:51 AM
To: Thomas Cindy M
Subject: FW: Sensitive Case

I talked to Lois about this case. She is comfortable with us telling the TP we cannot rule on the request in light of the fact that our procedures provide that we will not rule on a request from an organization under exam.

From: Downing Nanette M
Sent: Tuesday, April 02, 2013 4:47 PM
To: Paz Holly O
Cc: Todd Nancy M; Ta Kieu T
Subject: RE: Sensitive Case

Yes they are aware

From: Paz Holly O
Sent: Tuesday, April 02, 2013 3:21 PM
To: Downing Nanette M
Cc: Todd Nancy M; Ta Kieu T
Subject: RE: Sensitive Case

Since the Exam has been ongoing for some time, I assume the org knows it is under exam. Is that correct? Don't want to cause Exam problems if we tell the TP that we cannot rule on its request because it is under exam.

From: Downing Nanette M
Sent: Tuesday, April 02, 2013 10:04 AM
To: Paz Holly O
Cc: Todd Nancy M; Ta Kieu T
Subject: RE: Sensitive Case

Yes this organization is under exam. It has been under exam for awhile. We have been working with SBSE on several related entities. It is assigned to the FIU.

From: Paz Holly O
Sent: Thursday, March 28, 2013 2:07 PM
To: Downing Nanette M
Subject: FW: Sensitive Case

Re: [REDACTED] 6103

Nan,

It appears this org is currently under exam. We recently received a request for public charity status determination from this org. We do not want to take any action that would interfere with the exam. Could you please confirm that this org is under exam and has been notified that it is under exam? If both of those facts are true, we will tell the org that we cannot rule pursuant to our rev proc that provides we will generally not work applications or similar requests when an exam is pending.

Thanks,

Holly

From: Paz Holly O
Sent: Thursday, March 28, 2013 2:58 PM
To: Thomas Cindy M; Fish David L
Subject: RE: Sensitive Case

I will reach out to Nan Downing about this case and get back to you. Thanks for bringing it to our attention.

From: Thomas Cindy M
Sent: Tuesday, March 26, 2013 11:54 PM
To: Fish David L; Paz Holly O
Subject: FW: Sensitive Case

Please read Jon's email below and let me know how you'd like for us to handle this. Thanks.

From: Waddell Jon M
Sent: Tuesday, March 26, 2013 4:45 PM
To: Thomas Cindy M
Subject: FW: Sensitive Case

Cindy

I'm elevating a case identified in Vicki's group related to the political advocacy area. While the development issues within Vicki's group are straightforward, any type of ruling on this case could be impactful. Below is the background on the Acorn-related cases:

1. [REDACTED]-related cases were previously reflected on the BOLO and subsequently folded into the political advocacy category over a year ago.
2. Currently, we have two proposed denials under review in D.C. involving [REDACTED]-related cases. One is assigned to Ed Pomerantz and the other to April Garrett
3. These cases contain the same characteristics as other identified political advocacy cases as the applications contain instances of partisan political activity and excessive legislative and mobilization activities precluding approval under c(3).

Note: In reviewing this case with Vicki, the officers and addresses were similar to other [REDACTED] applications I've seen in the past. The officer in this application was one of the original founders of [REDACTED]. Lastly, per Vicki's research, the organization that submitted the Form 8940 also appears to be under audit which adds to the potential sensitivity. I've instructed Vicki to hold off on any further action on the case.

thanks

From: Lahey Victoria
Sent: Tuesday, March 26, 2013 3:44 PM
To: Waddell Jon M
Subject: Sensitive Case

Jon,

We received a Form 8940 requesting a determination of public charity status for the advance ruling period. The case is straight forward, but is highly sensitive. The name of the organization is [REDACTED] [REDACTED] 6103 [REDACTED] BMFOLI has an AIM indicator for MFT 67, tax years 200912 and 200910. I contacted Tyler and he indicated I should refer the case to you for review. Please advise is this case should be worked if there is an open audit in EO Exam?

Let me know if you have any questions.

Vicki Lahey
Manager, Group 7829
SE:T:EO:RA:D:2

513.263.3601 (Office)
513.263.4590 (Fax)
E-mail Victoria.Lahey@irs.gov

From: Westcott Cindy M
Sent: Wednesday, November 19, 2008 8:03 PM
To: Xenos Oksana
Subject: Sensitive Case Reports for November
Attachments: Nov08 TAG-18 Bibb.doc; Nov08 Emerge (Waddell).doc; Nov08 Foreclosure Angner.doc; Nov 08 - Group Exemptions (c)(4) or (c)(6) to (c)(3) Summary (Kowalczyk).doc; Nov 08 - Group Ruling Requests (c)(19) to (c)(3) Summary (Kowalczyk).doc

Importance: High

November sensitive case reports from EO Determinations.

<p>CASE NAME: IRC section 501(c)(4) or 501(c)(6) Group Ruling Reclassification Cases</p> <p>TIN/EIN:</p> <p>POA: 6103 - Scott Hunt 6103 - Jay Benjamin 6103 - Jay Benjamin 6103 - Jay Benjamin 6103 - None 6103 - James F. Gossett</p>	<p>TAX PERIODS: N/A</p> <p>EARLIEST STATUTE DATE: N/A</p>
<p>FUNCTION REPORTING: EO RA</p> <p>POD: Cincinnati, Ohio</p>	<p><input type="checkbox"/> INITIAL REPORT</p> <p><input checked="" type="checkbox"/> FOLLOW-UP REPORT</p> <p><input type="checkbox"/> FINAL REPORT</p>
<p>SENSITIVE CASE CRITERIA:</p> <p><input checked="" type="checkbox"/> Likely to attract media or Congressional attention</p> <p><input type="checkbox"/> Unique or novel issue</p> <p><input checked="" type="checkbox"/> Affects large number of taxpayers</p> <p><input type="checkbox"/> Potentially involves large dollars (\$10M or greater)</p> <p><input checked="" type="checkbox"/> Other (explain in Case Summary)</p>	
<p>FORM TYPE(S): Forms 1023 and 1026</p>	<p>START DATE:</p> <p>6103, 6103, and 6103 - 8/29/2006</p> <p>6103 - 3/23/2006</p> <p>6103 - 01/08/2008</p> <p>6103 - 04/17/2008</p>
<p>POTENTIAL DOLLARS INVOLVED (IF > \$10M): N/A</p>	<p>CRIMINAL REFERRAL? IF YES, WHEN? Freeze Code TC 914 (Yes or No)</p>
<p>CASE OR ISSUE SUMMARY:</p> <p>Several organizations that have historically been tax-exempt as social welfare organizations under Code section 501(c)(4), because they engage primarily in the promotion of social welfare, have submitted requests to be reclassified under section 501(c)(3), because they are claiming that they now are organized and operated exclusively for a charitable purpose as described in section 501(c)(3). One organization that is tax-exempt under section 501(c)(6), because it primarily engages in the promotion of a common business interest, has submitted a request to be reclassified under section 501(c)(3), because it is claiming that it is now organized and operated exclusively for a charitable purpose as described in section 501(c)(3). The requests for exemption under section 501(c)(3) include either the central organization and/or the group exemption for the subordinate organizations.</p>	
<p>CURRENT SIGNIFICANT ACTIONS ON CASE:</p> <p>6103, 6103, and 6103, 6103 are two of the largest organizations that have submitted requests for exemption under section 501(c)(3). These organizations are requesting exemption under section 501(c)(3) because they want to emphasize their charitable and educational aspects and to obtain a charitable contribution deduction for their members' dues as a way to attract and retain members.</p> <p>Our determination will potentially impact 6103 subordinate organizations (e.g. 6103, 6103 has approximately 6103 subordinate organizations that will be impacted).</p> <p>6103, 6103</p> <p>The organization submitted a Form 1023 application to request exemption under section 501(c)(3) for the central organization - it is currently exempt under section 501(c)(4). Additionally, the central organization submitted a request to have its group exemption modified from section 501(c)(4) to section 501(c)(3).</p>	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

On September 22, 2008, EO Determinations issued a proposed denial letter to the central organization denying its request for exemption under section 501(c)(3). The group exemption request for the subordinate organizations is still in process; however, it appears that the group exemption under section 501(c)(3) will also be denied.

Note that there is uncertainty about whether a denial letter for a group exemption request under section 501(c)(3) should include declaratory judgment rights under section 7428 - this question has been raised to TE/GE Counsel and an answer is pending.

6103 6103 / 6103 6103 / 6103 6103
 All of these organizations submitted Form 1023 applications to request exemption under section 501(c)(3) for the central organizations – they are all currently exempt under section 501(c)(4). Additionally, the central organizations submitted requests to have their group exemptions modified from section 501(c)(4) to section 501(c)(3).

Additional information request letters were sent to these organizations. All of the organizations requested several extensions which were granted. We are awaiting responses.

6103 6103
 Per letter dated December 6, 2006, the organization was granted tax-exempt status under section 501(c)(3) effective July 25, 1960; the organization was originally tax-exempt under section 501(c)(4). The organization is also a central organization to a group of organizations exempt under section 501(c)(4). A request has been made by the central organization to change its group exemption from section 501(c)(4) to section 501(c)(3). The central organization is adamant that the subordinate organizations are exclusively charitable, and therefore, qualify for exemption under section 501(c)(3). However, based on information obtained, it does not appear that the subordinate organizations are exclusively charitable and qualify for exemption under section 501(c)(3). It is questionable whether the central organization should have be granted tax-exemption under section 501(c)(3). The central organization's request for the group exemption only includes one "test subordinate". Once exemption under section 501(c)(3) has been granted, the other subordinate organizations will be transferred over. The fact that the subordinate organizations engage in civic activities, social activities, possible gaming activities, and possible professional fundraising activities warrant a declination. This case is still in process.

6103 6103
 6103 6103 (formerly known as 6103 & 6103
 6103) is currently tax-exempt under section 501(c)(3). 6103 & 6103
 merged into the 6103 & 6103 6103 and changed its name to
 6103 6103 . The organization is stating that 6103 &
 6103 was the central organization for 6103 , which is exempt under section
 501(c)(6). 6103 6103 is seeking a group exemption under section
 501(c)(3). If the group exemption under section 501(c)(3) is granted, the subordinate organizations
 under the 501(c)(6) group exemption will be transferred to the 501(c)(3) group exemption. This case is
 still in process.

SIGNIFICANT NEXT STEPS, IF ANY:

6103 - Review protest to proposed denial letter when received.

6103 - Review response when received - due November 23, 2008.

ESTIMATED CLOSURE DATE:

6103 - Unknown

6103 , 6103 , and 6103 - Unknown

6103 - Unknown

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

<p>6103 and 6103 – Review responses when received - due December 8, 2008.</p> <p>6103 - Issue an additional information request letter in November.</p> <p>6103 - Issue an additional information request letter in November.</p>	<p>6103 - Unknown</p>
<p>BARRIERS TO RESOLUTION, IF ANY: Awaiting guidance from Counsel regarding the section 7428 issue.</p>	
<p>SUBMITTED BY: Chad Kowalczyk</p>	<p>MANAGER: SHARON CAMARILLO</p>
<p>DATE: November 18, 2008</p>	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: IRC section 501(c)(19) Group Ruling Reclassification Cases	TAX PERIODS: EARLIEST STATUTE DATE:
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**Redacted by the
Permanent Subcommittee on Investigations**

IRSR0000444821

IRSR0000444822

IRSR0000444823

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: [REDACTED] [REDACTED] 6103 POA: N/A	TAX PERIODS: EARLIEST STATUTE DATE:
FUNCTION REPORTING: EO RA POD: Cincinnati, OH	<input type="checkbox"/> INITIAL REPORT <input checked="" type="checkbox"/> FOLLOW-UP REPORT <input type="checkbox"/> FINAL REPORT
SENSITIVE CASE CRITERIA: <input checked="" type="checkbox"/> Likely to attract media or Congressional attention <input type="checkbox"/> Unique or novel issue <input checked="" type="checkbox"/> Affects large number of taxpayers <input type="checkbox"/> Potentially involves large dollars (\$10M or greater) <input checked="" type="checkbox"/> Other (explain in Case Summary)	
FORM TYPE(S): :1024	START DATE: 7/28/2008
POTENTIAL DOLLARS INVOLVED (IF > \$10M) :	CRIMINAL REFERRAL? No IF YES, WHEN? Freeze Code TC 914 (Yes or No)
CASE OR ISSUE SUMMARY: <p>Two organizations from 2 different states applied for exemption under section 501(c)(4) for the purpose of training women to run for political office. The services are only provided to women affiliated with the Democratic Party and focus on a variety of subjects such as public speaking and press relations, as well as how to conduct fund raising activities. The applications appear to represent potential partisan political activity.</p> <p>Coordination has taken place between EO Determinations, the Quality Office, and EO Technical.</p>	
CURRENT SIGNIFICANT ACTIONS ON CASE: <p>In August 2008, cases were referred to the Quality Office according to IRM procedures. Research completed by the Quality Office unveiled that 4 "Emerge" organizations were already approved with the oldest approval dating back to September 2004.</p> <p>On October 9, 2008, after consultation with EO Technical, the two cases were transferred to them for review. The review of these 2 cases are dependent upon the resolution of the current court case between the IRS and the DLC (Democratic Party Leadership Council).</p> <p>On November 13, 2008, we identified another "Emerge" case that is being transferred to EO Technical.</p>	
SIGNIFICANT NEXT STEPS, IF ANY: Cases have been transferred to EO Technical awaiting details of current DLC Court Case.	ESTIMATED CLOSURE DATE: Unknown
BARRIERS TO RESOLUTION, IF ANY: Barriers include: Outstanding court case between IRS and the DLC and fact that 4 "Emerge" organizations were already approved for exemption.	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

TEGE Division Sensitive Case Report
(revised January 2007)

SUBMITTED BY: Jon Waddell	MANAGER: SHARON CAMARILLO
DATE: 11/14/2008	

Please note: This Word document is protected to enable the drop-down, text and check boxes. The cells will expand to accommodate text.

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: FORECLOSURE cases

TAX PERIODS:

**Redacted By The
Permanent Subcommittee
on Investigations**

TEGE Division Sensitive Case Report
(revised January 2007)

CASE NAME: TAG - 18

TAX PERIODS:

**Redacted By The
Permanent Subcommittee
on Investigations**

From: Hartrick William M
Sent: Wednesday, April 06, 2011 10:56 AM
To: Hofacre Elizabeth L
Subject: FW: politically sensitive cases

Liz,

This is Donna's e-mail on politically sensitive cases.

Bill

From: Abner Donna J
Sent: Tuesday, March 08, 2011 2:30 PM
To: Pepper Dale A; Tierney Michael J; Perry Lori A; Hartrick William M; Manohar Ramachandran; Dragoo Daniel D; Ludwig Michael A; Hofacre Elizabeth L
Subject: politically sensitive cases

Today I received a call from Jon Waddell regarding specifically Acorn related cases and Tea Party cases. In brief, guidance from EO Technical is pending and EO Technical has advised that no determination letters be issued - favorable or unfavorable - until guidance is received.

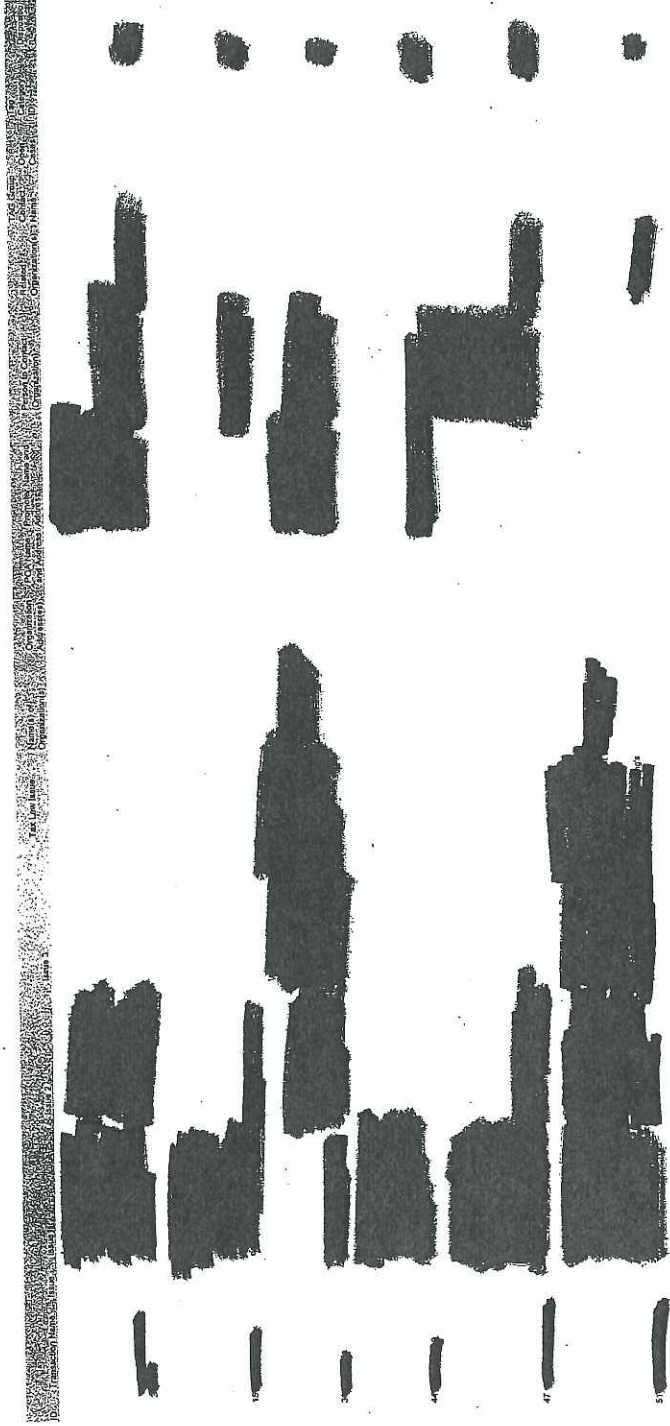
In the interim - cases can and should be developed. Therefore, if you are reviewing one of these cases - or a similar politically sensitive case, please verify the case has been fully developed. If not, please prepare an inquiry memo recommending additional development.

If you have a case that has been developed thoroughly and the determination letter is ready for issuance, please discuss with me. We will consider whether the case should be returned to the group pending guidance from EO Technical - or - whether we should contact EO Technical to solicit their agreement to closing.

Please let me know if you have any questions.

Thanks,
Donna

10	11	12	13	14	15	16	17	18	19	20
<p>The ACl and application will refer to "corporation sole" or "corporate sole". Form 1023 may allow only one person to be the sole owner of the corporation.</p>	<p>The applicant may or may not request foundation status as a church.</p>	<p>And head-start programs. The return address on the original or photocopy of the envelope is usually the same as the address of the applicant. We have also identified a person who is completing the application.</p>	<p>Federal government grants is listed as the primary source of income. 52 organizations. We have also identified a person who is completing the application.</p>	<p>Indications.</p>	<p>Not yet determined.</p>	<p>Potentially abusive scheme.</p>	<p>Red Line Issue.</p>	<p>Other Address.</p>	<p>Other Address.</p>	<p>Other Address.</p>
<p>1 Corporation Sole</p>	<p>2</p>	<p>3</p>	<p>4</p>	<p>5</p>	<p>6</p>	<p>7</p>	<p>8</p>	<p>9</p>	<p>10</p>	<p>11</p>



Enlarged for Legibility; Produced on December 17, 2013, as Bates IRSR0000455182 - IRSR0000455196

[Redacted]

Qualitative financial data

These cases are basically not...
Forms 1023 submitted by various...
All are testamentary trusts. Some...
paid \$150 user fee and may or...
may not have more - depends on...
long ago the trust was...
March.

Testamentary Trusts
(See [Redacted])
83 Trusts)

2

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

[Redacted]

84

101

114

115

120

122

Applicants appear to support a pension trust fund. Four applicants requesting 501(c)(2) and one requesting 501(c)(28)

Applicants above Form 1023. Their "progressive" activities appear to show that (a) they are not appropriate.

Common thread is the word "progressive". Activities appear to be for a political party. Applicants are partisan and appear as anti-Republican. You see references to "our" as being "progressive".

Political activities

TAG Campaign: Same address, 178 cases using same address. Premier was [redacted] by [redacted] Add into list by [redacted] Headquarters and was executive from Area Council. Some organizations disassociated themselves and [redacted]

156 Cases

168

200

170 Progressive

156

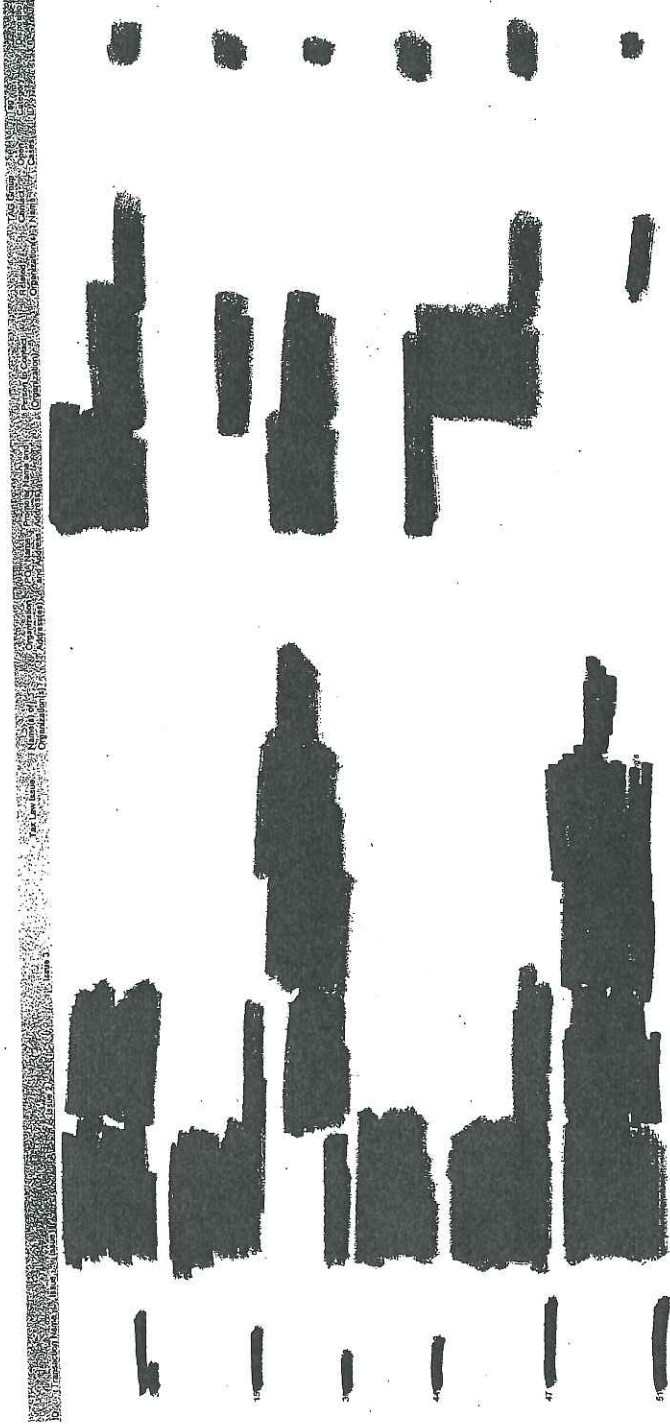
Issue Name	Issue Description	Issue Number	Action Number	Disposition of Emerging Issue	Current Status (Opened or closed)
501(c)(2)	These cases involve a commingled pension trust holding title to a high dollar note receivable secured by real estate. The application appear to be prepared from a template. The fund manager is usually [REDACTED]	x	x	Any future cases may be closed on merit if applicable. EOT determined these applications qualify under 501(c)(2). A referral was completed to address any EP concerns.	Closed
Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	E-1	x	Any cases should be sent to Group 7825. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

Issue Name	Brief Issue Description	Issue Number	Actions Taken	Current Status (Opened or Closed)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Issue Name	Watch Issue Description	Issue Alerts (Calendar Number)	Disposition (Watch Issue)	Current Status (Opened or closed)
Open Source Software	These organizations are requesting either 501(c)(3) or 501(c)(6) exemption in order to collaboratively develop new software. The members of these organizations are usually the for-profit business or for-profit support technicians of the software.	1 x	The is no specific guidance at this point. If you see a case, elevate it to your manager.	Open
RHIO's	Organization's setup to electronically exchange healthcare data, called Regional Health Information Organizations (RHIOs), are requesting exemption under 501(c)(3).	2 x	These cases should be transferred to EOT.	Open
ACORN successors	Following the breakup of ACORN, [REDACTED]	3 x	If you see these cases, they should be sent to the TAG Group.	Open
Healthcare legislation	Per Rob Choi memo dated April 20, 2010, cases impacted by the Patient Protection and Affordable Care Act (Public Law 111-148) (PPACA) and the Health Care and Education Reconciliation Act of 2010 (Public Law 111-152) (HCERA) are being coordinated with EOT.	4 x	New applications are subject to secondary screening in Group 7821. Wayne Bothe is the coordinator.	Open
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Medical Marijuana	Memo dated 7/15/10. Look for cases involving Medical Marijuana	7 x	Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100									
1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22	23	24	25	26	27	28	29	30	31	32	33	34	35	36	37	38	39	40	41	42	43	44	45	46	47	48	49	50	51	52	53	54	55	56	57	58	59	60	61	62	63	64	65	66	67	68	69	70	71	72	73	74	75	76	77	78	79	80	81	82	83	84	85	86	87	88	89	90	91	92	93	94	95	96	97	98	99	100



Enlarged for Legibility; Produced on December 17, 2013, as Bates IRR0000455182 - IRR00000455196

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Conditionable financial data.

These cases are hereby
 [REDACTED]
 PF status is being
 requested. Case grade
 [REDACTED]
 paid out more than
 \$10,000 even though a
 \$150 user fee was paid.

Forms 1099 submitted by various
 banks (Indiana) [REDACTED]
 filed Forms 990-PF as they are
 required to do. Some banks file
 Form 1041 and some do not.
 All are testamentary trusts. Some
 pay \$150 user fee and may or
 may not owe the trust tax on
 their 990-PF (in total trust
 trust).

Testimony (Trust
 Trust)
 83 (Trust)

Applicants appear to support a pension trust fund. Four applicants requesting 501(c)(2) status are requesting 501(c)(3) status.

Comment posted in the word "progressive" appears to lean toward a new political party. Activities are partisan and appear as anti-Republican. You are requesting that our 25 being "progressive".

Applicants submit Form 1023. Their "progressive" activities appear to show that (1) they are not being "progressive".

Political activities

TAG Category. Same address. 178 cases using same address. Premier was (178) later used by agents was coordinated with Headquarters and was received from Alan C. [redacted]. See [redacted] disassociated themselves with [redacted].

18 Cases

Issue Name	Issue Description	Issue Number	Year (and number)	Disposition of Emerging Issue	Current Status (Opened or closed)
501(c)(2)	These cases involve a commingled pension trust holding title to a high dollar note receivable secured by real estate. The application appear to be prepared from a template. The fund manager is usually [REDACTED]	X	X	Any future cases may be closed on merit if applicable. EOT determined these applications qualify under 501(c)(2). A referral was completed to address any EP concerns.	Closed
Tea Party	These case involve various local organizations in the Tea Party movement are applying for exemption under 501(c)(3) or 501(c)(4).	E-1	X	Any cases should be sent to Group 7826. Liz Hofacre is coordinating. These cases are currently being coordinated with EOT.	Open

Issue Name	Brief Issue Description	Issue Number	Actions Taken	Current Status (Opened or Closed)
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Issue Name	Watch Issue Description	Issue Alerts (Calendar Number)	Disposition/Watch Issue	Current Status (Opened or closed)
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[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Medical Marijuana	Memo dated 7/15/10. Look for cases involving Medical Marijuana	7 x	Forward cases to processing who will forward the cases to Denise Tamayo, group 7888	Open
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
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Enlarged for Legibility; Produced on December 17, 2013, as Bates IRSR0000455182 - IRSR0000455196

From: Abner Donna J
Sent: Monday, January 30, 2012 7:40 AM
To: Fish David L; Seto Michael C
Subject: Review requested
Attachments: 6103 Proposed Adverse.doc

Follow Up Flag: Follow up
Flag Status: Completed

Hi David and Mike,

Attached is a proposed denial letter we've drafted for an ACORN successor. Because this is the first such letter we've prepared I'd like to have someone in EO Technical review before it is issued. (I also think that this might receive some attention). In brief, the basis of the denial is the [REDACTED] 6103 [REDACTED].

Please let me know if you'd like a copy of the case or have any questions.
Thanks,
Donna

**THESE PAGES
REDACTED
BY IRS**

From: Abner Donna J
Sent: Tuesday, March 27, 2012 5:55 AM
To: Hartrick William M
Cc: Seto Michael C; Fish David L
Subject: FW: Review requested

Bill,

will you please work with Sandy to get a copy of the admin file to DC?

Thanks,
Donna

From: Seto Michael C
Sent: Monday, March 26, 2012 4:43 PM
To: Abner Donna J
Cc: Fish David L
Subject: RE: Review requested

Hi Donna,

Elizabeth Ardion and Mike Repass reviewed the proposed denial. They concluded that the denial needs additional facts to support the legal conclusion that the organization doesn't qualify as a (c)(3). They need to review the administrative file.

I recommend that you send a copy of the administrative file to me so we can look at the case in-depth.

Let me know if this plan is agreeable.

Thanks, Mike

From: Abner Donna J
Sent: Wednesday, March 07, 2012 8:46 AM
To: Abner Donna J; Fish David L; Seto Michael C
Cc: Paz Holly O
Subject: RE: Review requested

Just following up on this case - thoughts??

From: Abner Donna J
Sent: Tuesday, February 07, 2012 9:16 AM
To: Fish David L; Seto Michael C
Cc: Paz Holly O
Subject: RE: Review requested

The case has a March 2010 control date. No TAS inquiry or other push by EO yet. However, due to its age - it could happen at any time. Could we set a 30 day due date?

From: Fish David L
Sent: Tuesday, February 07, 2012 9:12 AM
To: Abner Donna J; Seto Michael C
Cc: Paz Holly O
Subject: RE: Review requested

When do you need this back? The answer is yes but they don't have it yet and we want to make sure whomever we assign it to can make the timeline.

From: Abner Donna J
Sent: Tuesday, February 07, 2012 9:09 AM
To: Fish David L; Seto Michael C
Cc: Paz Holly O
Subject: RE: Review requested

Just following up - any decision or assignment to a TLS?

From: Abner Donna J
Sent: Monday, January 30, 2012 8:40 AM
To: Fish David L; Seto Michael C
Subject: Review requested

Hi David and Mike,

Attached is a proposed denial letter we've drafted for an ACORN successor. Because this is the first such letter we've prepared I'd like to have someone in EO Technical review before it is issued. (I also think that this might receive some attention). In brief, the basis of the denial is [REDACTED] 6103 [REDACTED].

Please let me know if you'd like a copy of the case or have any questions.

Thanks,
Donna

From: Grodnitzky Steven
Sent: Wednesday, March 24, 2010 8:43 AM
To: Choi Robert S
Subject: FW: Investigation
Attachments: [REDACTED] 6103 .doc

Just a heads up that it appears that ACORN is morphing into new organizations. According to Cincy, there was one organization that came in for exemption, but they believe it was closed FTE. Will keep you updated as to new developments in this area. May cause some press attention.

From: Thomas Cindy M
Sent: Monday, March 22, 2010 7:28 PM
To: Grodnitzky Steven
Subject: FW: Investigation

Steve,

Does EO Technical need this information?

From: Camarillo Sharon L
Sent: Monday, March 01, 2010 1:18 PM
To: Thomas Cindy M; Melahn Brenda
Cc: Shafer John H; Waddell Jon M
Subject: FW: Investigation

Cindy: Please elevate this issue to alert EOT to a potential new twist on the former ACORN organization. It appears that ACORN may have gone out of business, but has re-organized into several different organizations with the same purpose. These new organizations include:

- [REDACTED] 6103 ,
- [REDACTED] 6103 , and
- [REDACTED] 6103) .

I agree with Jon's recommendation that we not open a new TAG issue until we actually receive one of these applications and can make an assessment for their potential for fraud or other abuse.

John: Can you tell if we have received any of these applications in our screening unit? If so, the cases should be forwarded to the TAG group.

Sharon L. Camarillo
EO Determinations Manager, Area 1

9350 E. Flair Drive

El Monte, CA 91731-2885

Telephone: 626-312-3608 ext 5026

Fax: 626-312-2928

From: Waddell Jon M
Sent: Monday, March 01, 2010 6:40 AM
To: Camarillo Sharon L
Subject: FW: Investigation

Sharon,

I'm forwarding on this e-mail I rec'd from Richie in the ROO. It concerns **ACORN** and its apparent new incarnation as [REDACTED] 6103. Richie inquired as to how Acorn Affiliated cases are identified when they come in for exemption as well as suggesting these types of cases be worked in TAG.

I have informed Richie I would elevate his e-mail but here are my specific thoughts:

1. To date, I remember seeing only one Acorn-related application which was previously assigned to Julie Chen and was, at one time, included on the Sensitive Case Report in 7821. I believe that the case was ultimately closed fte.
2. I don't think this issue should be added to TAG until we actually review a case and assess the level of potential fraud, if any.
3. Lastly, it might be a good idea to alert the screener's that if they see an ACORN related case or one referencing [REDACTED] 6103 that they send it the TAG Group for review.

Overall, at this point, I think its premature to state anything is TAG case until we actually see and review a case.

thanks

From: Heidenreich Richie
Sent: Friday, February 26, 2010 3:58 PM
To: Todd Nancy M
Cc: Lawson Colleen C; Waddell Jon M
Subject: Investigation

Nancy,

There is a lot of internet traffic about ACORN reinventing itself. [REDACTED] office is now occupied by [REDACTED] 6103. They have formed a new corporation and will be applying for exemption under 501(c)(4). In [REDACTED] 6103, the remnants of ACORN have become the [REDACTED] 6103. In [REDACTED] 6103, they have become [REDACTED] 6103. I am guessing other offices will be doing the same. These cases probably should be handled by the TAG group if they can be identified.

John,

Do we have a mechanism to recognize these cases if and when they come in for exemption.

Richie

**THESE PAGES
REDACTED
BY IRS**

From: Choi Robert S
Sent: Friday, March 26, 2010 1:11 PM
To: Thomas Cindy M; Camarillo Sharon L; Melahn Brenda; Shafer John H; Waddell Jon M; Berry Daniel W
Cc: Grodnitzky Steven; Miller Thomas J; Choi Robert S
Subject: ACTION by 12noon 3/29/10: Investigation
Attachments: [REDACTED] 6103 [REDACTED].doc

I need a summary from Cincy regarding this issue of ACORN morphing into new entities. I have a meeting Monday afternoon, 3/29, to discuss this issue with HQ folks. I'm trying to get background on what we have seen so far and if there are any concerns identified on the applications that have been submitted.

What have we received to date re applications? Numbers.
 Have we approved, denied, or FTE'd any? Numbers.
 How do we know that these new applications are related to the predecessor organizations? In other words, how are we linking them?
 Have we identified any concerns to date?
 Have any of these new entities assumed the assets and liabilities of the predecessor orgs?
 I see from the email thread below that this originated from Ritchie Heidenreich in ROO, EO Exam. Do you know what his role is regarding ACORN?

Need response by email to Steve, Tom and I by 12noon, Monday, 3/29/10.

Thanks.

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Subject: FW: Investigation

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Richie

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BY IRS**

From: Thomas Cindy M
Sent: Sunday, March 28, 2010 3:50 PM
To: Choi Robert S
Cc: Camarillo Sharon L; Waddell Jon M; Berry Daniel W; Grodnitzky Steven; Miller Thomas J
Subject: FW: ACTION by 12noon 3/29/10: Investigation
Attachments: [REDACTED] 6103 .doc; Mar 2010 [REDACTED] 6103 (6103) Rev.doc

Rob,

In response to your questions, please refer to the email directly below from Jon Waddell. Also, the sensitive case report Jon references in item 1 below is attached.

If you have additional questions, please let us know.

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

From: Waddell Jon M
Sent: Friday, March 26, 2010 3:36 PM
To: Thomas Cindy M; Camarillo Sharon L
Subject: RE: ACTION by 12noon 3/29/10: Investigation
Importance: Low

Cindy and Sharon,

Below are my answers:

1. How many of these applications have we received to date? As far as I know, none to date under the new scenario referred to below. However, I do remember a case received in my old group (7821) called [REDACTED] [REDACTED] 6103. In that case, Acorn was specifically listed as a member of the organization. I believe a current Sensitive Case Report Exists on that case.
2. Have we approved, denied, or approved any? To my knowledge, no.
3. How are we linking the new applications with the predecessor Acorn Organizations? At this point, through elevation to the managers and screeners to be aware that Acorn has changed its name in [REDACTED] [REDACTED] per the details in the e-mail screen below.
4. Have we identified any concerns to date? To my knowledge, we have yet to see any of these applications so the answer would be no.
5. Have any of these new entities assumed the assets of the predecessor

org's? Per the answer to #4 above, we have yet to see any of these applications.

6. Richie Heidenreich's/ROO's role? Richie initially elevated the issue to me as an awareness issue. His source, I believe, was Nancy Todd who referenced internet stories describing this issue. Richie was only wondering if we (EO Determinations) have seen any applications like these.

To my knowledge, the answer would be no but I elevated the issue for awareness to management, screeners, etc.

thanks

From: Choi Robert S
Sent: Friday, March 26, 2010 11:11 AM
To: Thomas Cindy M; Camarillo Sharon L; Melahn Brenda; Shafer John H; Waddell Jon M; Berry Daniel W
Cc: Grodnitzky Steven; Miller Thomas J; Choi Robert S
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- [REDACTED] 6103)
- [REDACTED] 6103 [REDACTED] 6103)

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John,

Do we have a mechanism to recognize these cases if and when they come in for exemption.

Richie

From: Paz Holly O
Sent: Tuesday, June 05, 2012 1:37 PM
To: Thomas Cindy M
Cc: Light Sharon P; Fish David L
Subject: FW: donor info letter.doc
Attachments: donor info letter.doc

Attached is the letter to applicants that sent us donor info in response to our requests. We will need to destroy the information.

Thanks,

Holly

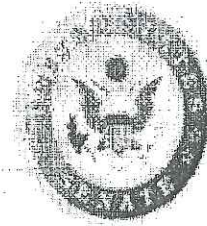
Dear Applicant:

On [date], we requested additional information regarding your application for recognition of tax-exempt status under section 501(c)(x). Included in this request for additional information was a request for information concerning donors to your organization.

The information regarding donors was requested in error and was not used in the consideration of your application for tax-exempt status. Accordingly, we have expunged such information and it will not become part of your application file.

If you have any questions regarding this letter, please contact the person

Senate Committee on Finance
U.S. Senator Orrin Hatch (R-UT), Ranking Member



<http://finance.senate.gov>

FOR IMMEDIATE RELEASE

CONTACT: Julia Lawless, Antonia Ferrier

June 18, 2012

(202) 224-4515

SENATORS TO IRS: CONGRESS HAS MADE PRIVACY THE RULE, NOT THE EXCEPTION
In letter, Lawmakers Call on IRS Commissioner Shulman to Preserve Privacy Protections for Non-Profit Organizations

WASHINGTON – Citing concerns over privacy protections, 11 Senators today pressed the Internal Revenue Service (IRS) for additional answers on the agency's decision to request confidential donor information from organizations applying for tax exempt status. In a letter led by U.S. Senator Orrin Hatch (R-Utah), Ranking Member of the Senate Finance Committee, the lawmakers said such action circumvented current statutory privacy protections and questioned the targeting of groups specifically seeking the approval or renewal of a tax-exempt designation under section 501(c)(4).

"Congress has made privacy the rule, and not the exception," wrote the Senators. "A list of donors who have given money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization."

Joining Hatch on the letter are Senators Mitch McConnell (R-Ky.), Mike Enzi (R-Wyo.), Lamar Alexander (R-Tenn.), John Cornyn (Texas), Kay Bailey Hutchison (R-Texas), Jon Kyl (R-Ariz.), Bob Corker (R-Tenn.), Pat Roberts (R-Kan.), John Thune (R-S.D.), and Rand Paul (R-Ky.)

Earlier this year, a dozen Republican Senators called on the IRS to prevent politics from playing a role in any action taken on non-profit 501(c)(4) organizations after several groups applying for the status received excessive follow-up inquiries from the agency. The IRS responded giving assurances their actions were not for political gain, however the issue of privacy protections was not addressed.

United States Senate
WASHINGTON, DC 20510

June 18, 2012

Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

On March 14, 2012, we wrote to you with a number of questions regarding the procedures the Internal Revenue Service ("IRS") uses when evaluating organizations that apply for tax-exempt status. We appreciate the thoroughness of your response to our inquiries. However, we remain concerned that the IRS is requesting the names of donors and contributors to organizations that apply for tax exempt status. In doing so, the IRS appears to be circumventing the statutory privacy protections that Congress has long provided donors.

Prior Congresses have passed legislation with bipartisan support to ensure the privacy of donors who give to charitable organizations. While the annual tax returns of certain charitable organizations have long been required to be made available for public review, the 91st Congress denied the Secretary of the Treasury the authority to disclose the names and addresses of financial contributors from these returns.¹ In addition, the 100th Congress created a specific statutory exception for disclosure of names and addresses of financial contributors, when they expanded public inspection of certain annual returns, reports, and applications for exemption of certain tax exempt organizations.² In using nearly identical legislative language to create these exceptions from disclosure, both Congresses made strong legislative pronouncements that their goal was to protect the privacy of donor information. In addition, the same commitment to privacy is evident in the requirement that taxpayers be given the opportunity to obtain redaction of identifying information before related IRS private letter rulings, technical advice memoranda, and Chief Counsel Advice memoranda are made public.³ Through these various expressions, Congress has made privacy the rule, and not the exception.

It is important to note the value that is placed on protecting the privacy of individuals and organizations that choose to donate funds to charitable organizations. The privacy interests of donors is widely recognized and valued. Various public policy initiatives have rightly encouraged donations to social welfare organizations, and these efforts are threatened when private information about donors is not adequately protected. A list of donors who have given

¹ See H.R. 13270, The Tax Reform Act of 1969, which became Public Law Number 91-172.

² See H.R. 3545, Omnibus Budget Reconciliation Act of 1987, which became Public Law Number 100-203.

³ 26 USC § 6110.

money to specific charitable organizations is something that carries great value to certain interested parties, as trading of personal information about private citizens has become common practice. Unfortunately, the public release of private donor information exposes citizens to possible harassment and intimidation by those who oppose the goals of the charitable organization.

As we mentioned in our March 14 letter, it is our understanding that the IRS asked several organizations who applied for tax-exempt status to provide the names of individuals who had made donations (regardless of dollar amount) to those organizations, as well as the names of individuals who are expected to make donations in the future. The Form 1024 exemption application asks applicants for sources of financing but does not ask for names and addresses. It is our understanding that specific donor information — names and addresses — are not provided on Form 1024.

Yet, by requesting through correspondence, after the filing of a Form 1024, that organizations applying for tax exempt status provide names of donors, the IRS sets in motion an outcome wherein donor information that would be protected and redacted by one provision of the Internal Revenue Code (“Code”) which provides an exception from disclosure, would be made available for public inspection by a separate provision of the Code relating to inspection of applications for tax exemption. Such an outcome is clearly at odds with the express intent of Congress to maintain the privacy of donors. Even if not prohibited by law, the actions of IRS are an inappropriate circumvention of the policy of donor privacy embedded in the Code.

When the IRS requests specific donor information through a follow up letter as part of the exemption application process, it ensures that this highly sensitive donor information will be included in the administrative record. This presents a serious privacy problem: if the IRS approves the organization’s application for tax-exempt status, then section 6104 of the Code requires the associated administrative record – including the identity of donors if included therein — to be made available for public review at the national office of the Internal Revenue Service.⁴ This is completely at odds with the treatment of the same donor information when it is viewed at the principal office of the tax-exempt organization. The Code specifically states that the names and addresses of donors are not required to be available for public inspection when viewed at this physical location.⁵ Given that donor information is redacted on annual tax returns of tax-exempt organizations, redacted on denied tax-exempt applications, redacted on successful tax-exempt applications (when viewed at the organization’s principal office), and not required to be provided on the Form 1024, it is disconcerting that donor information would be reviewable, or at the very least not be redacted, on successful tax-exempt applications viewed at the national office of the IRS.

⁴ 26 USC § 6104(a)(1)(A)

⁵ 26 USC § 6104(d)(3)(A)

In order to better understand the background on these recent requests for confidential donor information and the authority of the Internal Revenue Service to make these requests, we respectfully request that you provide answers to the following questions:

1. What is the specific statutory authority giving the IRS authority to request actual donor names during reviews of applications for recognition of exemption under Section 501(c)(4)?
2. Is it customary for IRS revenue agents to request donor and contributor identifying information during review of applications for tax-exempt status under Section 501(c)(4)? Please provide the number of requests by the IRS for such information for each year from 2002 to 2011.
3. Is the Exempt Organizations technical office involved in all such information requests of exemption applicants?
4. Section 7.21.5 of the Internal Revenue Manual states that Letter 1313 should be used as a first request for additional information for cases received on Form 1024, and that Letter 2382 should be used for second and subsequent requests for information. We have attached redacted copies of an IRS 1313 Letter and 2382 Letter which were reportedly sent to applicant organizations earlier this year. Each of these letters contains passages which specifically request names of donors.⁶
 - a) Which IRS employees and officials were involved in the drafting of the questions requesting donor names?
 - b) Which IRS officials provided authority and approval for the questions requesting donor names?
 - c) Did any IRS personnel definitively review and determine whether there would be any privacy impact by the requests for names of donors which could ultimately be made part of a publically available administrative record? Was the IRS Office of Privacy consulted, and did it play a role in any such determination?
5. What is the total number of IRS 1313 and 2382 letters sent in 2011 and 2012 (to date) which specifically request names of donors?
6. Does the IRS intend to utilize IRS 1313 and 2382 letters in the future to specifically request names of donors?

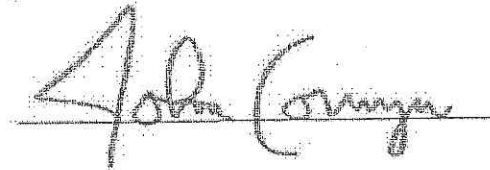
⁶ Letter 1313 asks for donor names in question 3(a) on page 4. Letter 2382 asks for donor names in question 11(a) on page 6.

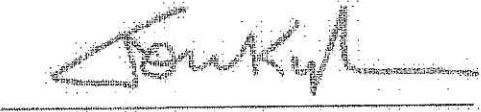
- 7. Does the IRS view donor identifying information as being necessary information when reviewing applications for tax-exempt status under Section 501(c)(4)? If so, how was this finding made and what written standards are utilized by the IRS in evaluating this information? Have any IRS personnel ever recommended that IRS Form 1024 be amended to specifically require that this information be furnished?
- 8. Section 7.20.2.7 of the Internal Revenue Manual (relating to evaluation of organizations applying for tax-exempt status) states that requests for additional information in processing a determination should be thorough and relevant. Would a request (to an organization applying for tax-exempt status under Section 501(c)(4)) for a list of donor names, some who may have given as little as \$1, meet the relevancy standard?

Thank you for your prompt attention to this matter.

Sincerely,









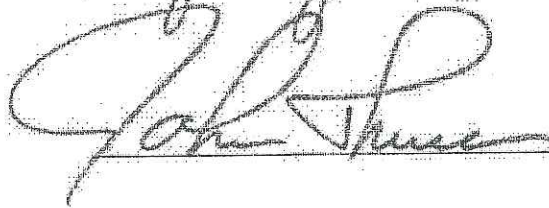














Enclosures

Congress of the United States
Washington, DC 20515

April 23, 2012

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APR 23 2012

CONG. CORR. BR
CL:LA

The Honorable Douglas H. Shulman
Commissioner, Internal Revenue Service
Room 3000 IR
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

It has come to our attention that numerous nonprofit civic organizations across the country have experienced extensive delays and received excessively burdensome information requests in connection with their applications for tax-exempt status under 26 U.S.C. §501(c). These requests have included demands for complete records of every oral statement ever provided by any member of the organization, vague probes into tangential associations with private citizens and excessively long questionnaires all to be returned within unreasonably short time periods. These demands go well beyond good-faith due diligence and appear designed to be logistically and financially impossible to comply with.

Tax-exempt status exists to ensure that taxation does not hinder citizens' engagement in social welfare and civic activities. To wit, 26 U.S.C. §501(c)(4)(A) exempts "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare...the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." Further, the I.R.S. has affirmed that these organizations "may carry on lawful political activities and remain exempt as long as it is primarily engaged in activities that promote social welfare." (Rev. Rule 81-95, 1981-1 C.B. 332)

These recent inquiries appear to constitute disparate treatment for no apparent reason other than the political persuasion of applicants. Such practices chill these groups' Constitutionally-guaranteed rights to civic participation, freedom of association and free speech and are better left to despotic regimes than a revenue-collection agency in a free country.

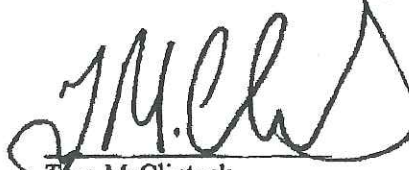
It does not appear that the missions and activities of these organizations require information beyond the scope of Form 1024 and Schedule B, which we understand to have been traditionally required. We request that you provide a response demonstrating how these recent requests by the I.R.S are consistent with precedent and supported by law. We further request that the I.R.S. refrain from any additional unwarranted and excessive information demands and other dilatory tactics.

Thank you for your attention to this matter. We look forward to your timely response.

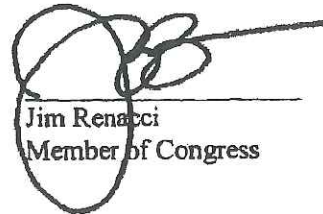
Sincerely,



Bill Flores
Member of Congress

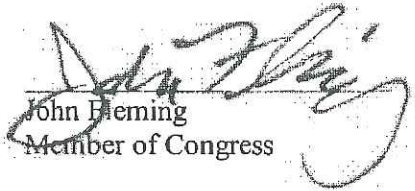


Tom McClintock
Member of Congress



Jim Renacci
Member of Congress

The Honorable Douglas H. Shulman
Page 2



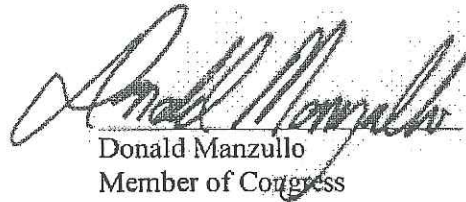
John Fleming
Member of Congress



Tim Huelskamp
Member of Congress



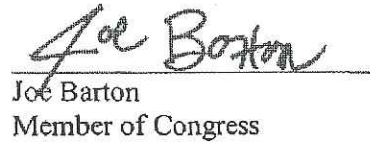
Jeff Duncan
Member of Congress



Donald Manzullo
Member of Congress



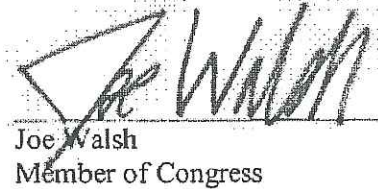
Doug Lamborn
Member of Congress



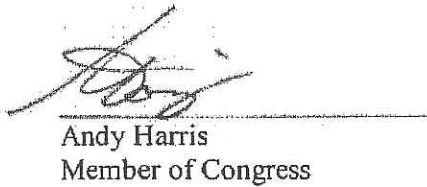
Joe Barton
Member of Congress



Louie Gohmert
Member of Congress



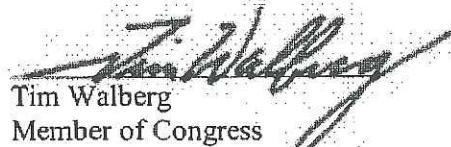
Joe Walsh
Member of Congress



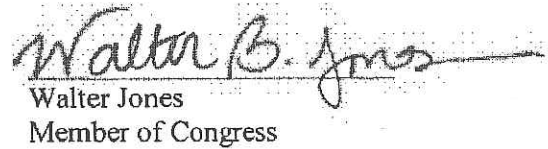
Andy Harris
Member of Congress



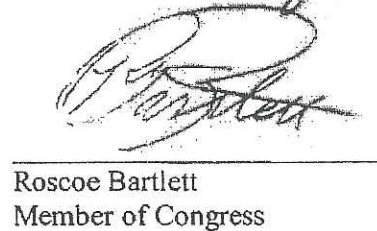
Bill Posey
Member of Congress



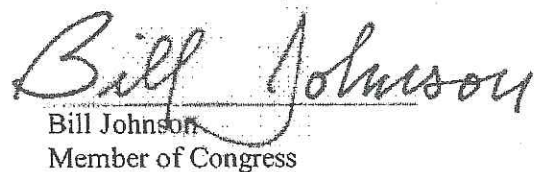
Tim Walberg
Member of Congress



Walter B. Jones
Member of Congress



Roscoe Bartlett
Member of Congress

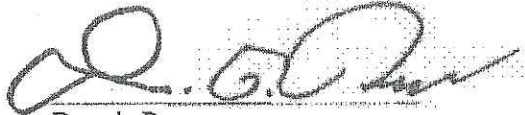


Bill Johnson
Member of Congress

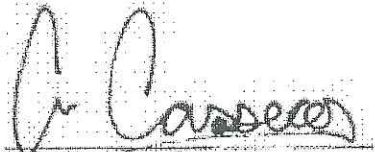
The Honorable Douglas H. Shulman
Page 3

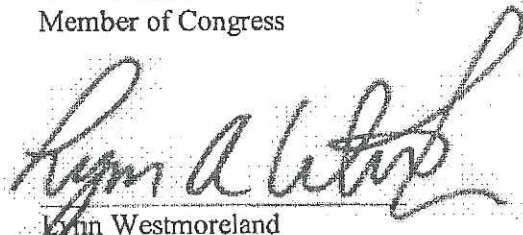

Charles Boustany
Member of Congress



James Lankford
Member of Congress

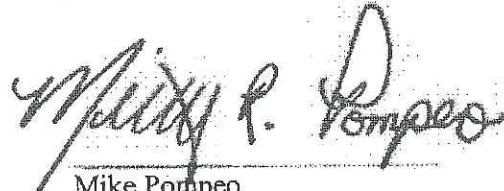

Dennis Ross
Member of Congress

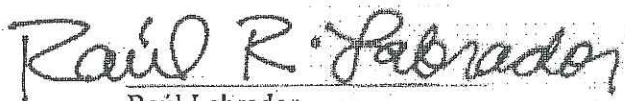

Gus Bilirakis
Member of Congress

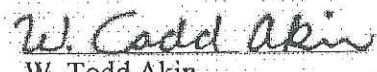

Francisco "Quico" Canseco
Member of Congress



Lynn Westmoreland
Member of Congress

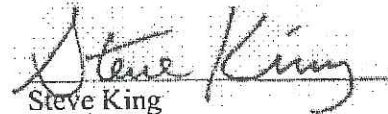

Trent Franks
Member of Congress


Mike Pompeo
Member of Congress



Raúl Labrador
Member of Congress


W. Todd Akin
Member of Congress



Alan Nunnelee
Member of Congress



Steve King
Member of Congress



Joe Wilson
Member of Congress

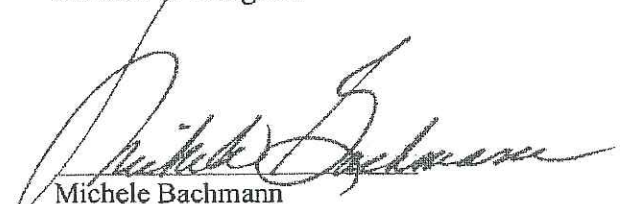

Lynn Jenkins
Member of Congress

The Honorable Douglas H. Shulman
Page 4

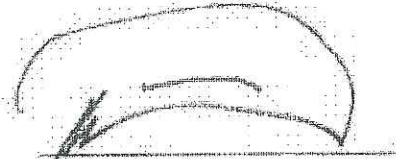

John Kline
Member of Congress



Ted Poe
Member of Congress

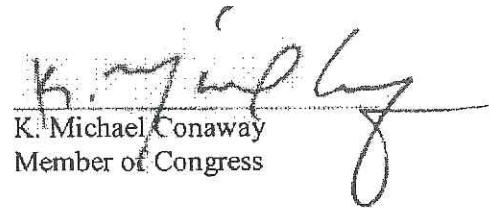

Diane Black
Member of Congress



Michele Bachmann
Member of Congress


Richard Nugent
Member of Congress



Scott DesJarlais
Member of Congress



Bob Goodlatte
Member of Congress

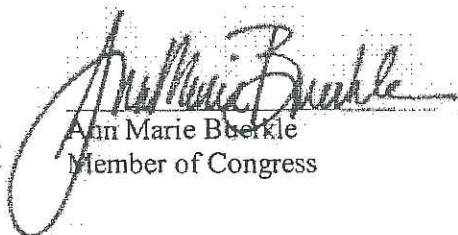

K. Michael Conaway
Member of Congress

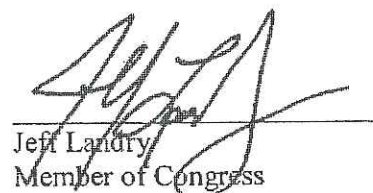

Jack Kingston
Member of Congress


Tom Graves
Member of Congress



Mick Mulvaney
Member of Congress

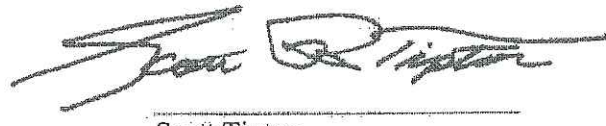

Randy Hultgren
Member of Congress



Ann Marie Buerkle
Member of Congress



Jeff Landry
Member of Congress

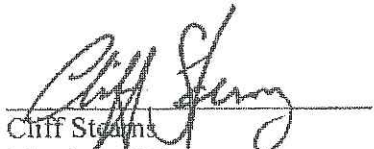
The Honorable Douglas H. Shulman
Page 5

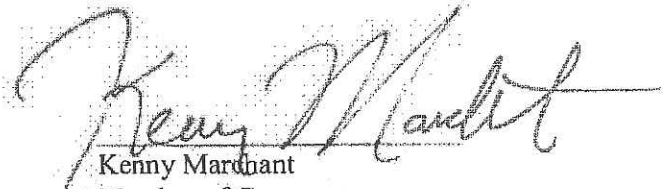

Sam Johnson
Member of Congress



Scott Tipton
Member of Congress

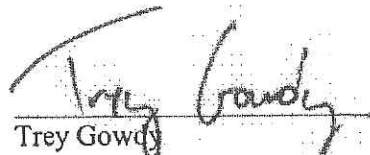

Randy Forbes
Member of Congress



Marsha Blackburn
Member of Congress

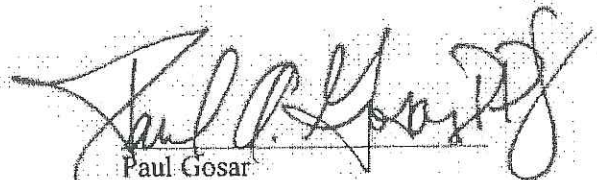

Cliff Stearns
Member of Congress

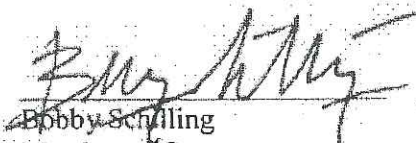

Kenny Marchant
Member of Congress



Robert Latta
Member of Congress

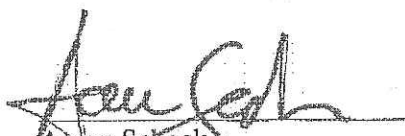

Trey Gowdy
Member of Congress

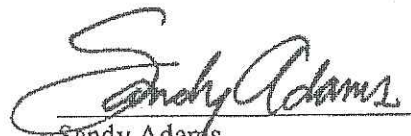

Thaddeus McCotter
Member of Congress


Paul Gosar
Member of Congress

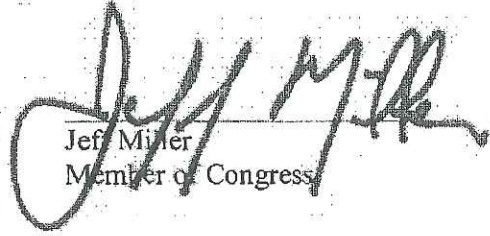

Bobby Schilling
Member of Congress


Rob Woodall
Member of Congress

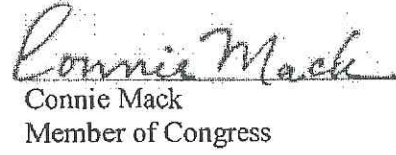

Aaron Schock
Member of Congress


Sandy Adams
Member of Congress

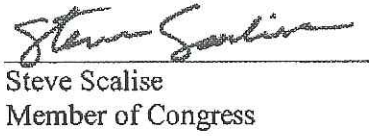
The Honorable Douglas H. Shulman
Page 6



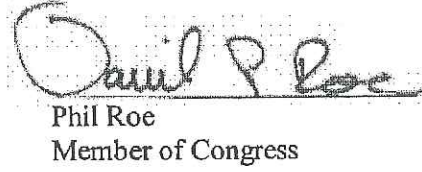
Jeff Miller
Member of Congress



Connie Mack
Member of Congress



Steve Scalise
Member of Congress



Phil Roe
Member of Congress

Flax Nikole C

From: Lerner Lois G
Sent: Tuesday, February 05, 2013 10:32 AM
To: Grant Joseph H; Marks Nancy J
Cc: Flax Nikole C; Paz Holly O
Subject: FW: Follow-Up

We have met with TIGTA on this several times. From our perspective, they are taking a very narrow view of the program and how we ran it. They also seem to be focused on the initial articulation of the BOLO list as a "bad" thing without looking at the entire program. I think we have a basic difference in our view of their audit. We thought it was to determine whether IRS had a biased program, which would include looking at every aspect. they seem to think the question is narrower--did we "target based on the articulation of the BOLO?" We will continue to keep you apprised as we see their written document.

Lois G. Lerner

Director of Exempt Organizations

From: Lerner Lois G
Sent: Tuesday, February 05, 2013 10:27 AM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: RE: Follow-Up

Thanks Troy--It probably makes sense to see what you put together and react to it rather than continuing the discussion in the abstract. We will begin to put together a reply. As I'm sure you would guess, if you don't include the whole picture, we will include a detailed version in our response. Keep us apprised of progress on the report.

Lois G. Lerner

Director of Exempt Organizations

From: Paterson Troy D TIGTA [mailto:Troy.Paterson@tigta.treas.gov]
Sent: Tuesday, February 05, 2013 7:54 AM
To: Lerner Lois G
Cc: Paz Holly O
Subject: RE: Follow-Up

Lois,

After the discussion last week, the team went over some cases on Friday afternoon and Monday morning. We then met yesterday afternoon to discuss the cases and our thoughts on moving forward.

As far as the cases go, the team has reconsidered some cases based on input from Holly, Hillary, and Judy last week. In addition, I think we have one case that is still up in the air awaiting some additional

2/5/2013

documentation. After that, I believe we will have approximately 90 cases that we could not resolve. For these cases, I'm not sure there is much more we can discuss because most involve our literal view of the application package versus the EO function's interpretation of the application package based on experience. For example, in our literal view, we may not pick up on code words or know based on past experience that certain activities or sets of activities could actually be significant political campaign intervention, whereas the EO function may. On our side, we'll have to determine how we present both sides in the report.

As far as moving forward, I began working yesterday morning on a very rough version of the report that I had asked the team to prepare while we were awaiting your feedback. There is a lot of information currently in the report and a lot of information that is currently not in the report. On our side, we have a lot of difficult decisions coming up on what is relevant to include and what our interpretation is regarding, not only the allegations that led to us initiating this review, but the actions the EO function has taken since that time. At this point, we have not determined what will or will not be included in the report and how we will present everything.

If you would like to meet to discuss your concerns, I am available. If you would rather wait until I have a clearer view of what are considering for the report, we can do that also. How would you like to proceed?

Troy
404-338-7476

From: Lerner Lois G [mailto:Lois.G.Lerner@irs.gov]
Sent: Thursday, January 31, 2013 2:34 PM
To: Paterson Troy D TIGTA
Cc: Paz Holly O
Subject: Follow-Up

We were disappointed that you couldn't attend the meeting today. I think it would be useful for you, your group, and mine to have another conversation about approach. We feel your folks are being too narrow in their view and have decided that because of the language on the earlier BOLO list regarding Tea Party, everything that followed was tainted. They seem to believe that if a case was initially sent to the advocacy group, but ultimately determined to be an approval, that our action in putting it into the advocacy group in the first place is incorrect, and illustrates "targeting." I think they remain confused about the purpose of screening vs.. bucketing--and we have tried to explain several time. They also don't seem to be taking a big picture look at what we have done. That is, we've already owned up to the fact that we recognized in mid-process that Cincinnati was struggling with the issues. That is why we sent our experts in this area to Cincinnati for 3 weeks to work hand in hand with the Determ folks to train them and then walk through their post training assessments to ensure they understood and we were getting the right treatment for the cases. When we describe that process, they acknowledge that that approach sounds reasonable, but seem to be saying that reasonableness is overshadowed by the fact that the criteria look bad to folks on the outside, so there is no way we could cure the initial bad impression.

We understand why the criteria might raise questions. In fact we refined it to more accurately reflect what we are doing. I met with the group today and asked your folks what they thought the TIGTA audit was all about. The response was that they were here because there were allegations that the IRS was "targeting." When asked, they didn't seem able to provide me with a clear definition of what they meant by targeting, and they confused me when they said it wasn't necessarily political. I told them my understanding is that the audit was to determine whether the IRS was acting in a

2/5/2013

politically motivated manner--not whether the earlier articulation of the criteria looked bad. However, that doesn't seem to be the focus. They have said they aren't looking at whether the organizations are conservative or liberal because that is too difficult to figure out. They have also acknowledged that there are both conservative and liberal organizations on the list of advocacy cases.

So, I'm not sure how they are looking at whether we were politically motivated, or what they are looking for with regard to targeting. They didn't seem to understand the difference between IRS acting in a politically motivated manner and front line staff people using less than stellar judgment. I am willing to take the blame for not having provided sufficient direction initially, which may have resulted in front line staff doing things that appeared to be politically motivated, but I am not on board that anything that occurred here shows that the IRS was politically motivated in the actions taken.

So, I suggested to the group that we all get together after they have had a chance to talk to you. I asked both sides to think about the main points they wanted to make or better understand, so the meeting can be most fruitful. This is the toughest one you and I have worked on together. But, I'm hoping the meeting will get us all to an improved understanding so that your report can better reflect what occurred and why.

Louis J. Lerner

Director of Exempt Organizations

United States Senate
WASHINGTON, DC 20510

March 14, 2012



Hon. Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20230

Dear Commissioner Shulman:

We have received reports and reviewed information from nonprofit civic organizations in Kentucky, Ohio, Tennessee, and Texas concerning recent IRS inquiries perceived to be excessive. It is critical that the public have confidence that federal tax compliance efforts are pursued in a fair, even-handed, and transparent manner—without regard to politics of any kind. To that end, we write today to seek your assurance that this recent string of inquiries has a sound basis in law and is consistent with the IRS's treatment of tax-exempt organizations across the spectrum.

As you know, the designation as a tax-exempt organization under section 501(c)(4)(A) is reserved for "[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare, ... the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes." An organization "may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare."¹ The 501(c)(4) designation has been conferred on many organizations in America that espouse political or public policy viewpoints—including Priorities USA, the sister organization of "[t]he super PAC supporting President Obama,"² and American Crossroads, the sister organization of a super PAC supporting Republicans.

Civic and social welfare organizations have long performed valuable roles and offered numerous benefits to our society, and tax exemptions for such organizations can be traced all the way back to the Tariff Act of 1913. It is imperative that organizations applying for tax-exempt status are able to rely on a consistent and foreseeable review structure from the IRS. Any significant changes to the IRS review process should be implemented only after appropriate notice and opportunity for comment from the public and affected parties.

A number of our constituents have raised concerns that the recent IRS inquiries sent to civic organizations exceed the scope of the typical disclosures required under IRS Form 1024 and

¹ *Federal Election Commission v. Beaumont*, 539 U.S. 146, 150 n. 1 (2003) (quoting Rev. Rul. 81-95, 1981-1 Cum. Bull. 332, 1981 WL 166125).

² Jeremy Peters, "'Super PACs,' Not Campaigns, Do Bulk of Ad Spending," *N.Y. Times* (Mar. 2, 2012).

accompanying Schedule B—the forms that all 501(c)(4) organizations must submit. Understandably, this has prompted some concerns about selective enforcement and the duty to treat similarly situated taxpayers similarly. To address these concerns, we respectfully request that you provide answers to the following questions:

1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?
2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?
3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?
4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?
5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?
6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include "amounts received from the general public...for the exercise or performance of the organization's exempt function." In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization \$5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this

information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.

- 7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?
- 8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection."³ In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.

Given the potentially serious implications of selective or discriminatory enforcement, we request that you hold further IRS-initiated demands for information from 501(c)(4) applicants beyond the extensive information already required of all applicants (in Form 1024 and Schedule B), until the agency provides a response demonstrating these recent IRS requests are consistent with precedent and supported by law.

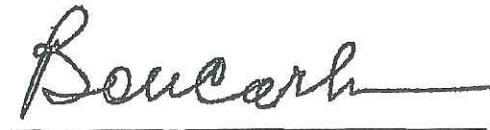
Thank you for your prompt attention to this matter.

Sincerely,









³ See Form 1024, Application for Recognition of Exemption OMB No. 1545-0057 Under Section 501(a).

Kay Bailey Hutchison

John Conyer

Mike McClellan

Paul Paul

Pat Roberts

Chuck Grassley

John Shum

Tommy

United States Senate

WASHINGTON, DC 20510

March 9, 2012

Hon. Douglas H. Shulman
 Commissioner
 Internal Revenue Service
 Room 3000 IR
 1111 Constitution Avenue, N.W.

RECEIVED

MAR 21 2012

CONG. CORR. BR
CL:LA

Received by the
 Commissioner's Correspondence
 Office

MAR 21 2012

Dear Commissioner Shulman:

We write to ask the Internal Revenue Service ("IRS") to immediately change the administrative framework for enforcement of the tax code as it applies to groups designated as "social welfare" organizations. These groups receive tax and other advantages under section 501(c)(4) of the Internal Revenue Code (hereinafter, "IRC" or the "Code"), but some of them also are engaged in a substantial amount of political campaign activity. As you know, we sent a letter last month expressing concerns about the 501(c)(4) issue; an investigation this week by the *New York Times* has uncovered new, specific problems on how 501(c)(4)s conduct business. We wanted to address those new concerns in this letter.

IRS regulations have long maintained that political campaign activity by a 501(c)(4) entity must not be the "primary purpose" of the organization. These regulations are intended to implement the statute, which requires that such organizations be operated exclusively for the public welfare. But we think the existing IRS regulations run afoul of the law since they only require social welfare activities to be the "primary purpose" of a nonprofit when the Code says this must be its "exclusive" purpose. In recent years, this daylight between the law and the IRS regulations has been exploited by groups devoted chiefly to political election activities that operate behind a facade of charity work.

A related concern, raised in a March 7th *New York Times* article, concerns whether certain nonprofits may be soliciting corporate contributions that are then treated by the company as a business expense eligible for a tax deduction. The *Times* wrote: "Under current law, there is little to no way to tell whether contributions are being deducted, especially because many of the most political companies are privately held." This potential abuse distorts the objectives of vital revenue mechanisms and undermines the faith that we ask citizens to place in their electoral system.

We propose that the IRS make three administrative changes to curtail these questionable practices and bring IRS tax regulations back into alignment with the letter and spirit intended by those who crafted the Code:

- First, we urge the IRS to adopt a bright line test in applying its "primary purpose" regulation that is consistent with the Code's 501(c)(4) exclusivity language. The IRS currently only requires that the purpose of these non-profits be "primarily" related to social welfare activities, without defining what "primarily" means. This standard should

be spelled out more fully by the IRS. Some have suggested 51 percent as an appropriate threshold for establishing that a nonprofit is adhering to its mission, but even this number would seem to allow for more political election activity than should be permitted under the law. In the absence of clarity in the administration of section 501(c)(4), organizations are tempted to abuse its vagueness, or worse, to organize under section 501(c)(4) so that they may avail themselves of its advantages even though they are not legitimate social welfare organizations. If the IRS does not adopt a bright line test, or if it adopts one that is inconsistent with the Code's exclusivity language, then we plan to pursue legislation codifying such a test.

- Second, such organizations should be further obligated to document in their 990 IRS form the exact percentage of their undertakings dedicated to "social welfare." Organizations should be required to "show their math" to demonstrate that political election activities and other statutorily limited or prohibited activities do not violate the "primary purpose" regulation.
- Third, 501(c)(4) organizations should be required to state forthrightly to potential donors what percentage of a donation, if any, may be taken as a business expense deduction. As the *New York Times* reported in its March 7th article, some of these organizations do not currently inform donors whether a contribution is tax deductible as a business expense at all.

The IRS should already possess the authority to issue immediate guidance on this matter. We urge the IRS to take these steps immediately to prevent abuse of the tax code by political groups focused on federal election activities. But if the IRS is unable to issue administrative guidance in this area then we plan to introduce legislation to accomplish these important changes.



Sincerely,

Charles E. Schumer
United States Senator



Michael Bennet
United States Senator



Sheldon Whitehouse
United States Senator



Tom Udall
United States Senator



Jeanne Shaheen
United States Senator



Jeff Merkley
United States Senator



Al Franken
United States Senator

From: Miller Steven T
Sent: Thursday, April 18, 2013 7:29 AM
To: Flax Nikole C
Subject: Re: speech

We will talk at noon

Sent using BlackBerry

From: Flax Nikole C
Sent: Thursday, April 18, 2013 08:28 AM Eastern Standard Time
To: Miller Steven T
Subject: Re: speech

Maybe not a terrible idea for her to get out how many approvals we have had to date and discuss the issue a bit.

From: Miller Steven T
Sent: Thursday, April 18, 2013 08:21 AM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

She can apologize for undermanaging.

Sent using BlackBerry

From: Flax Nikole C
Sent: Thursday, April 18, 2013 08:17 AM Eastern Standard Time
To: Miller Steven T
Subject: Re: speech

April 25 - she is begging for material to discuss

From: Miller Steven T
Sent: Thursday, April 18, 2013 08:04 AM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

When is her speech--may want to use it to burst a bubble

Sent using BlackBerry

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 08:37 PM Eastern Standard Time
To: Miller Steven T

Subject: Fw: speech

I assume you don't want lois talking [REDACTED] at GT? I know the answer, but she will want to know that I asked.

From: Lerner Lois G
Sent: Wednesday, April 17, 2013 08:08 PM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

Any possibility we'd ask permission on this?
Lois G. Lerner-----
Sent from my BlackBerry Wireless Handheld

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 07:32 PM Eastern Standard Time
To: Lerner Lois G
Subject: Re: speech

Anything we say re [REDACTED] has to be cleared by omb. A new memo on it came out today.

From: Lerner Lois G
Sent: Wednesday, April 17, 2013 07:13 PM Eastern Standard Time
To: Flax Nikole C
Subject: Re: speech

Am at home so can't send until tomorrow. Got a message from Terry nixing it, which puts me in a pickle since I need to talk about something high level for 40 minutes.

[REDACTED]

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

From: Flax Nikole C
Sent: Wednesday, April 17, 2013 04:12 PM Eastern Standard Time
To: Lerner Lois G
Subject: speech

----- = Redacted by the Permanent Subcommittee on Investigations

Lois - C&L said you sent a copy of your speech - can you send it? Thanks

From: Lemons Terry L
Sent: Sunday, April 21, 2013 11:46 AM
To: Miller Steven T; Flax Nikole C; Vozne Jennifer L
Subject: Fw: Emailing: draft c4 comments 4-18-13.doc
Attachments: draft c4 comments 4-18-13.doc

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

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

Thanks for listening;)

Sent from my BlackBerry Wireless Handheld

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

From: Terry Lemons [REDACTED]
Sent: Sunday, April 21, 2013 12:40 PM Eastern Standard Time
To: Lemons Terry L
Subject: RE: Emailing: draft c4 comments 4-18-13.doc

----- = Redacted by the Permanent Subcommittee on Investigations

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

From: Miller Steven T
Sent: Sunday, April 21, 2013 11:30 AM Eastern Standard Time
To: Flax Nikole C; Vozne Jennifer L; Lemons Terry L
Cc: Miller Steven T
Subject: Emailing: draft c4 comments 4-18-13.doc

Take a look. This is the possible insert into Lois' Thursday speech.

Sent using BlackBerry

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

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

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

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

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

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

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

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

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

Let me walk you through the process.

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

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

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

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

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

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

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

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

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

From: Miller Steven T
Sent: Thursday, May 09, 2013 12:35 PM
To: Miller Steven T (steven.t.miller@irs.gov); Flax Nikole C (Nikole.C.Flax@irs.gov); Lemons Terry L (Terry.L.Lemons@irs.gov); Vozne Jennifer L; Eldridge Michelle L (MICHELLE.L.ELDRIDGE@irs.gov)
Subject: 050613C4 talking pointsSTM version.doc
Attachments: 050613C4 talking pointsSTM version.doc

Couple of edits

**Draft / Section 501(c)(4) Determination Issues
May 6, 2013**

IRS Statement:

Between 2010 and 2012, the IRS saw the number of applications for section 501(c)(4) status double. As a result, local career employees in Cincinnati sought to centralize work and assign cases to designated employees in an effort to promote consistency and quality. This approach has worked in other areas. However, the IRS recognizes we should have done a better job of handling the influx of advocacy applications. While centralizing cases for consistency made sense, the way we centralized did not. Mistakes were made, but they were in no way due to any political or partisan rationale. We have fixed the situation and worked to move the centralized cases through our system. New procedures were implemented last year to ensure that these mistakes won't be made into the future. The IRS also stresses that our employees - all career civil servants -- will continue to be guided by tax law and not partisan issues.

Key Points:

- In 2010, Exempt Organizations (EO) observed a significant increase in the number of section 501(c)(3) and section 501(c)(4) applications from organizations that appeared to be potentially engaged in political campaign activity. Between 2008 and 2012, the number of applications for section 501(c)(4) status more than doubled.
- These are difficult and sensitive cases. These are challenging cases to factually separate out political issues from those involving education or social welfare. It's not always a clear area, and there are no bright-line tests for what constitutes political campaign intervention.
- Similar to our approach in other areas (e.g., credit counseling, down payment assistance organizations, etc.), EO sought to centralize work and assign cases to designated employees in an effort to promote consistent treatment of applications.
- Centralizing advocacy cases for review in the determination letter process made sense, but some of the ways we centralized did not.
- While it is necessary to consider a variety of information in the screening process (including flags for current emerging issues), we recognize that some of the selection criteria were not appropriate for these cases.
- The IRS recognizes that the use of specific names for handling the influx of advocacy cases was an error and, over the last year, has taken a number of steps to improve the process.
- We now have a process in place where each revenue agent assigned these cases works in coordination with a specific technical expert. New procedures also have been implemented to so that decisions with respect to the centralized collection of cases must be made at the executive level.
- We have made significant improvements in this area. We are confident that we have a more appropriate path for the future that will avoid similar problems.
- EO is dedicated to reviewing applications for tax-exempt status in an impartial manner.

- The mistakes made were not due to any political or partisan reason. Exempt Organizations (EO) is comprised of career civil servants who do their work in a fair, non-partisan manner. Mistakes were made due to the absence of a set, rigorous process for working the increase in advocacy cases and insufficient sensitivity to the implications of some the decisions made.
- Of the approximately 300 section 501(c)(4) advocacy cases, more than 120 have been approved and nearly 30 have withdrawn.

Background on Legal Standard:

- Although the tax law allows section 501(c)(4) organizations to hold themselves out as tax-exempt without applying for IRS recognition of their status, once an organization does apply for recognition, EO must ensure the organization meets the applicable legal requirements before granting recognition.
- To be recognized as exempt under section 501(c)(4), an organization must be engaged primarily in the promotion of social welfare. The promotion of social welfare does not include political campaign intervention. The determination whether an organization engaged in political campaign intervention qualifies under section 501(c)(4) is a difficult legal and factual issue.
- There are no bright-line tests for what constitutes political campaign intervention or whether an organization is primarily engaged in social welfare activities. Whether an activity is political campaign intervention, and whether an organization meets the requirements of section 501(c)(4), must be decided on the specific facts of each case, and no one factor is determinative.
- Selection of an organization's application for further review and development does not dictate how the case is ultimately resolved. It simply means that the IRS needs additional information before a determination can be made.

Fact sheet—630pm

Introduction:

Law in the Area

An organization is described in section 501(c)(3) of the tax code if it is organized and operated for religious, charitable, educational and certain other specified purposes.

An organization is described in section 501(c)(4) if it is operated exclusively for the promotion of social welfare.

There are specific rules relating to exemption and political campaign intervention. Organizations described in section 501(c)(3) may not engage in such activity. Social welfare organizations described in section 501(c)(4) may engage in a limited amount of political campaign activity. Note that there are no bright-line tests for what constitutes political campaign intervention or whether an organization is primarily engaged in social welfare activities.

The applications for exemption (Form 1023 for recognition under 501(c)(3); Form 1024 for recognition under 501(c)(4)) contain questions about such activity as does the Form 990, the annual report filed by these organizations.

Determination letter process

Section 501(c)(3) organizations must apply to be recognized for tax exempt status by the IRS. Although the tax law allows section 501(c)(4) organizations to operate as tax-exempt without applying for IRS recognition of their status, most apply. Once an organization does apply for recognition, EO must ensure the organization meets the applicable legal requirements before granting recognition.

All applications for tax exempt status are sent to the IRS Exempt Organization offices in Cincinnati. A group of experienced revenue agents screens all EO Determination Letter applications before the applications are assigned to other revenue agents for review. Based on that screening, a case may be handled in one of the following ways:

- (1) Cases resolved on screening—if the application clearly meets the requirements for exempt status on its face and all necessary documents are provided, the case is forwarded from screening to a closing unit which issues a favorable letter.
- (2) Cases with minor omissions—if the application clearly meets the requirements for exempt status but the file lacks some required documentation (for example the articles of incorporation are not executed) then the case is forwarded to a unit which will contact the

organization by letter to complete the file. Once the file is completed, the unit will issue a favorable determination.

- (3) Cases that cannot be resolved favorably without further development—if the application leaves open questions as to the adequacy and scope of the exempt purposes, the presence of private benefit, or the presence of other activities inconsistent with exempt status, then the case is forwarded for full development to a Revenue Agent who will work with the taxpayer to resolve the questions raised and to ascertain whether the organization qualifies.
- (4) Cases in category 3 that present novel issues or particularly complex fact patterns are sometimes handled on a coordinated basis by a particular group of agents in order to ensure proper development of the issues and consistency in handling (e.g. credit counseling cases, down payment assistance cases, advocacy cases, etc.).
- (5) In either categories 3 or 4 assistance from career specialists in the Headquarters office of Exempt Organizations may be sought.

Trend line of applications for 501(c)(4) status

The IRS has seen a steep increase in the number of applications for section 501(c)(4) status and there are indications of a large increase in political campaign activity by social welfare organizations.

Between FY2008 and 2012, the number of applications for 501(c)(4) status more than doubled.

	FY2008	FY2009	FY2010	FY2011	FY2012	% Chg
501(c)(4) applications received	1,631	1,751	1,735	2,265	3,357	+105%

Not all exempt organizations must file the annual Form 990, only those with gross receipts of more than \$200,000 or total assets greater than \$500,000. Within this population, IRS has seen a growth in reported political campaign activity since 2008.

	TY2008	TY2009	TY2010	TY2011	% Chg TY08-10
§501(c)(4) organizations filing F990	8,962	9,133	11,486	9,444	28%
Number of those returns reporting political campaign activity (PCA)	107	93	196	121	83%
Reported PCA expenditures of organizations with revenues of \$10 million or more (\$M)	\$17.3	\$1.1	\$46.7	\$6.0	170%

Federal electoral cycles in bold.

Based on historic filing patterns, TY11 data are ~90% complete.

Between the 2008 and 2010 electoral cycles, the number of §501(c)(4) organizations reporting political campaign activity nearly doubled, outpacing the overall growth in the §501(c)(4) population. At the same time, the value of campaign expenditures by large §501(c)(4) organizations nearly tripled..

While Tax Year 2012 Form 990 filings are due beginning this week, Federal Election Commission data from 2012 electoral cycle are available. Although the definitions of reportable spending are different, a

preliminary analysis of FEC data indicates another significant increase in spending in the most recent electoral cycle. The same large §501(c)(4) organizations that reported PCA to IRS in 2010 also doubled their levels of campaign expenditures reported to the FEC between 2010 and 2012. (Note that this reflects an increase in expenditures among the population of filers identified from 2010 F990 data. It will not reflect *additional* organizations that may have undertaken political campaign activity in 2012.)

Centralization of Advocacy Cases

Early in 2010, a 501(c)(4) application from a Tea Party organization indicated its intention to influence elections as part of its activities. This led a group manager in the Cincinnati office to take the following actions in February and March of 2010: handle this type of application as an emerging issue, and that screeners look for and identify similar cases in order to ensure appropriate and consistent handling. The Cincinnati office had people try to identify and coordinate cases raising the issue of political activity using verbal and email reminders to look for cases involving the Tea Party, Patriots, 9/12 and other 501(c)(4) applications involving names suggestive of political activity. See Appendix A for the iterations of the lists that were used, along with relevant timelines. An increasing number of cases were found. The list is adopted as a method to replace the ad hoc email approach previously used to identify cases requiring coordination. On that initial list one of the categories was listed as "various local organizations in the Tea Party movement . . . applying for exemption under 501(c)(3) or 501(c)(4). See

In June 2011, concerns about the progress, identification and handling of these cases led to conversations among senior staff culminating in a briefing of the EO Director at the end of June. The EO Director instructed that the list should be revised immediately to use criteria focused on whether (c)(4) or (c)(3) applicants were involved with political, lobbying, or advocacy activities, and that headquarters should work on facilitating the resolution of the now over 100 cases.

Late in 2011, efforts to facilitate case processing were slow. A new team was formed in Cincinnati to begin developing and resolving the cases with assistance from Headquarters specialists.

In January of 2012, without any executive knowledge, staff in Cincinnati updated the list of centralization criteria out of concern that the criteria were over broad and pulling in too many cases. The new criteria read "political action type organizations involved in limiting/expanding Government, educating on the Constitution and Bill of Rights, social economic reform/movement." Headquarters in Exempt Organizations was not informed.

In January through February 2012, the centralized team started issuing development letters to the applicants using the standard response time provided in the manual (21 days) and asking for voluminous information from some applicants, including in some cases web information and donors. Note that these letters went to organizations representing the full political spectrum.

Increasing public concern (news articles/letters from Congressional) was being expressed about the singling out of certain types of organizations, the nature of the questions in the development letters and the short turnaround time given to respond.

At the end of February the Director EO stopped the issuance of additional information letter requests pending new guidance to the Determinations unit. At the same time, in light of the public nature of the discussion of the letters, the Deputy Commissioner, Services and Enforcement became aware that cases were being centralized in this area. In early March, after consultation with the Deputy Commissioner, a letter was sent to organizations with a pending development letter giving them a sixty day extension and allowing flexibilities on what information to provide.

At the end of March, the Deputy Commissioner Services and Enforcement requested that the Senior Technical Advisor (STA) to the Acting Commissioner (TEGE) conduct a review of what had happened with respect to determination letter inventory in this area and report back on the review and on recommendations for how to address any issues. At the same time, TIGTA indicated that they were going to review this area.

The review by the STA was initiated by going to Cincinnati with a team of specialists to interview people about the process to date and to conduct a review of a broad cross section of the files and of the development letters issued.

On May 3, 2012, the STA reported back to the Deputy Commissioner, Services and Enforcement and to the Acting Commissioner TEGE identifying significant concerns in the case handling including:

- (1) Use of inappropriate criteria in the emails and then the list used to identify the cases that should go to the advocacy case group;
- (2) Use of development letters that included troubling questions;
- (3) Delays in resolution of applications; and
- (4) A failure to provide the agents with the training and the tools they needed in order to handle this inventory appropriately and on a timely basis.

The review did not identify:

- (1) Any evidence of improper influence on the IRS from any party external to the Service.
- (2) Any evidence of partisan motivation or behavior by any IRS employee.

Note that May 3, 2012, was the first date that the Deputy Commissioner had knowledge that a list with inappropriate names was being utilized by the Cincinnati Office. [Shortly thereafter, the Commissioner was made aware of the situation.]

Corrective Actions Taken

On May 3, 2012, the STA recommended that training be conducted for a cadre of experienced agents including quality review staff and that it be followed by having a joint team of technical specialists from headquarters and agents go through the inventory together to group the cases into four categories: (1) cases that could be closed on their merits with the information in the file; (2) cases that required focused development; (3) cases that needed significant development; and (4) cases that presented significant concerns and might well conclude as adverse determinations. This process was designed both to enhance training, experience, and consistency while also moving the inventory forward to resolution as swiftly as possible. This approach was approved and implemented.

Procedures were put in place to advise organizations that they generally did not need to provide donor information and that donor information that had been received in response to development letters was neither utilized nor retained. [when was this?]

In addition, having learned in April of 2012 that the centralization criteria had changed again in January, the Director EO Rulings & Agreements directed changes to the BOLO criteria and issued a memorandum requiring Director R&A approval for any listing to centralize determination applications. [This approach was concurred in by the Deputy Commissioner on May 3, 2012.]

The Numbers and Demographics

Through May 9, IRS identified 472 applications for exemption for review of potential advocacy issues (including 301 §501(c)(4) applications). The balance of applicants are for section 501(c)(3) status. To date, 176 applications have been approved (136 of which §501(c)(4) applications). There have been 37 withdrawals, inclusive of both §501(c)(3) and (4) organizations.

Of the cases reviewed by TIGTA, only one-third have a name listed for centralization. y of those have been approved. Moreover, while it is impossible based on name alone to determine with specificity the political alignment of all organizations, in their totality it is clear that they span the entire political spectrum.

Of the approximately 300 section 501(c)(4) advocacy cases noted in the TIGTA report, more than 120 have been approved and nearly 30 have withdrawn. The difference in numbers is due to the point in time when TIGTA did its work.

Consistent Treatment for Determination Letter cases

I need help here.

There are certain protections against any adverse action in a determination letter case. Any adverse rulings against section 501(c)(4) organizations require multiple layers of review. No single person makes the determination, and multi-person review provides further protection for the integrity of the review process.

[anything in this case—partner with specialist from dc—mandatory review for all or just adverse?]

IRS Analysis of this Matter

The Internal Revenue Service is dedicated to reviewing applications for tax-exempt status in an impartial manner.

Similar to our approach in other areas (e.g., credit counseling, down payment assistance organizations, etc.), EO sought to centralize work and assign cases to designated employees in an effort to promote consistent treatment of applications. Given what was happening in the community in terms of the number of organizations and concerns on campaign spending, centralizing advocacy cases for review in the determination letter process made sense. The way it was done did not. It was inappropriate but there has been no finding of political motivation.

It should be noted that the vast majority of entities that were centralized would still have been centralized on a less narrow, more appropriate, centralization listing. Organization names did not play a role in the

Flax Nikole C

From: Paz Holly O
Sent: Friday, February 08, 2013 9:28 AM
To: Flax Nikole C; Lerner Lois G; Marks Nancy J; Light Sharon P
Subject: Advocacy Data Request
Importance: High

Below are the latest advocacy case numbers:

429 total cases have been bucketed as follows:

- 501(c)(3).... 145
- 501(c)(4).... 281
- 501(c)(6).... 2
- 501(c)(10).. 1

The 429 total cases have been placed in the following buckets:

- bucket 1.....94
- bucket 2.....96
- bucket 3.....141
- bucket 4.....75
- misc.....1
- no bucket.22

Note: The cases identified as "no bucket" include 6 cases that are currently in the process of being bucketed. 1 case closed status 01 and 15 cases closed status 04.

Total number of determinations processed is 156 cases:

- 501(c)(3)..... 32 approvals
- 501(c)(4)..... 117 approvals
- 501(c)(6)..... 1 approvals
- FTE status 11 closure....5
- FTE status 12 closure....1

The 156 total number of determination cases processed by bucket:

- Bucket 185
- Bucket 2 46

2/8/2013

- Bucket 3 21
- Bucket 4 3
- No bucket ... 1

Total number of withdrawals is 33 cases.

The total number of open cases is 240. Total number of development letters sent on open cases is 136

- Number of bucket 1 cases that are open: 8 (6 additional info letters)
- Number of bucket 2 cases that are open: 45 (23 additional info letters)
- Number of bucket 3 cases that are open: 111 (80 additional info letters)
- Number of bucket 4 cases that are open: 69 (27 additional info letters)
- Number of cases open not bucketed: 6 (no additional info letters)
- Number of cases in MISC open status: 1 (additional information letter sent)

Note: Open cases are cases in status 31, 32, 37, 51, 52, 55, 57, 58, 74, 74PC, and 75

2/8/2013

from Lois

**Recent section 501(c)(4) activity
Draft 7-17-12**

Legal requirements:

- The law allows section 501(c)(4) organizations to hold themselves out as tax-exempt or to apply for IRS recognition as tax-exempt.
- All section 501(c)(4) organizations must file Form 990 annual information returns.
- To qualify under section 501(c)(4), organizations 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.
- The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.
- The regulations do not impose a complete ban on political activity by section 501(c)(4) organizations. A section 501(c)(4) social welfare organization can engage in some political activities as long as it is primarily engaged in activities that promote social welfare. Whether an organization meets the requirements of section 501(c)(4) depends upon all of the facts and circumstances of the particular applicant, and no one factor is determinative.

Background:

- Starting in 2010, EO observed an increase in the number of section 501(c)(3) and section 501(c)(4) determination applications from organizations that appeared to be potentially engaged in political advocacy activities

Increase in section 501c4 applications

2008 - 1410
 2009 - 1571
 2010 - 1591
 2011 - 2242
 2012 - 1715 (through April 1, 2012)

- EO took steps to coordinate the handling of the cases to ensure consistency. As sometimes happens, however, coordination efforts resulted in some cases being in inventory for a longer time than expected.
- In early 2012, after development letters were sent to some applicant organizations, issues with respect to these cases were brought to the attention of EO management, who requested a status of the inventory.

- After receiving the inventory status, EO management determined that a more refined approach was warranted to ensure more timely and consistent handling of the cases. EO management put together a team of highly experienced technical experts to work with the revenue agents in Cincinnati handling the cases.
- EO now has a process where each revenue agent assigned these cases works in coordination with a specific technical expert assigned to assist the agent. On section 501(c)(3) and section 501(c)(4) cases where there appears to be potential political intervention, the EO staff member processing the application consults with his or her assigned technical expert on a real-time basis as to whether the facts raise issues of significant potential political intervention, and as to what information is needed to fully develop those issues.
- We have made significant progress on these cases to date.
 - 320 total advocacy cases
 - 97 (c)(3) cases
 - **223 (c)(4) cases**
 - More than 55 approvals have been granted to date [7 c3s and **51 c4s** + 15 withdrawals]
 - There have been no denials at this time. (Emerge cases were worked in 2008. Recent activity was revoking the 5 organizations that were wrongly approved.)
 - For many cases updated information requests have been sent to focus on the specific legal issues in question. We are in process of an active back and forth with organizations in those cases where there are questions as to whether the legal requirements for tax exemption are satisfied.

Disclosure of donor names:

- There are instances in which donor names are relevant in the course of the determination process. There is no legal basis for redacting such names from the application file if the information is used in making the determination on the application.
- We informed organizations that if they could provide information requested in an alternative manner, they should contact their agent and we would work with them.
- EO Determinations staff did ask for donor names from some applicants for c4 status. In cases in which the donor names were not used in making the determination, the donor information was expunged from the file.

EO Workplan

- Includes two separate projects that could be relevant here (exact language pasted below)
 - 501(c)(4), (5) and (6) self-declarers - These groups – social welfare organizations; labor, agricultural and horticultural groups; and business leagues, such as a chamber of commerce – can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules. In FY 2012, EO will send a comprehensive questionnaire to organizations based on Form 990 filings to assess compliance in this area.
 - Political activity - As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention. As in the past, information from outside sources about political campaign intervention will be reviewed by a committee of career civil servants. In addition, other potential violations identified through risk modeling of Form 990 data also will be sent to the committee for evaluation. The committee will focus on identifying the cases to refer for examination. EO will further refine its risk models based on the results of examinations. EO will also ensure reporting and payment compliance with section 527(f).

Other issues:

- Response times -- Normal timeline for responding to requests for additional information per IRM is 21 days. We have provided all organizations more time to respond and told them to contact us if they needed additional time.
- TIGTA – looking at consistency in identifying and reviewing applications for tax-exempt status involving political advocacy issues - opening letter June 22, 2012
- BOLO – procedures modified May 17, 2012 to require all changes to receive approval up to level of the Director, EO Determinations.

08/11/2009 13:36 53974

DGRR

PAGE 01/06

EDOLPHUS TOWNS, NEW YORK
CHAIRMAN

DARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

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

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

Majority (202) 225-5051
Minority (202) 225-8074

FACSIMILE TRANSMISSION

RECEIVED

AUG 11 2009

Date: August 11, 2009

CONG. CORR. BR
CL:LA

To: The Honorable Douglas Shulman
Commissioner
Internal Revenue Service

From: Darrell E. Issa, Ranking Member
Oversight & Government Reform Committee

Phone:

Fax: (202) 622-4733

There will be a total of 6 pages, including cover page.

Comments: _____

*If there are any questions or problems regarding this transmission,
please call the sender at 202-225-5074*

Please Note: The information on this facsimile is confidential and is intended only for the use of the person named above. If this facsimile has come to you in error, please call the sender at the number given above. Any distribution of this facsimile is strictly prohibited.

08/11/2009 13:36 53974

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PAGE 02/06

EDOLPHUS TOWNS, NEW YORK
CHAIRMANDARRELL E. ISSA, CALIFORNIA
RANKING MINORITY MEMBER

ONE HUNDRED ELEVENTH CONGRESS

Congress of the United States**House of Representatives**

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

2157 RAYBURN HOUSE OFFICE BUILDING

WASHINGTON, DC 20515-6143

Majority (202) 225-5051
Minority (202) 225-5074

August 11, 2009

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AUG 11 2009

The Honorable Douglas Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, D.C. 20224CONG. CORR. BR
CL:LA

Dear Commissioner Shulman:

The Committee staff has been investigating the Association of Community Organizations for Reform Now's ("ACORN") lack of compliance with various federal laws. Recently, I released a staff report entitled, "*Is ACORN Intentionally Structured As a Criminal Enterprise?*" ("ACORN Report").

The ACORN Report¹ found ACORN conspired to defraud the United States by using taxpayer funds for partisan political activities. ACORN submitted false filings to the IRS, in addition to failing to report and pay excise taxes on Dale Rathke's excess benefit transactions. Additionally, ACORN falsified and concealed facts concerning an illegal transaction between related parties in violation of the Employee Retirement Income Security Act of 1974 ("ERISA"). I am concerned ACORN has failed to comply with §§ 501(c), 527(f) of the Internal Revenue Code ("IRC") and other Internal Revenue Service ("IRS") regulations.

Our investigation has led to additional questions regarding ACORN's compliance with the Internal Revenue Code. It appears that ACORN, a taxable non-exempt corporation, has intentionally used gaps in the IRC and the Federal Election Campaign Act ("FECA") to engage in activities that would be subject to either prohibition or taxation under any reasonable contemplation of FECA and the IRC.

FECA² generally prohibits corporations from making a contribution or expenditure in connection with any election to any political office³ and from using

¹ See Minority staff report, *Is ACORN Intentionally Structured As a Criminal Enterprise?* COMM. OVERSIGHT AND GOV'T REFORM (2009) at 3-6, available at:

<http://republicans.oversight.house.gov/media/pdfs/20090723ACORNReport.pdf>.

² 2 U.S.C. § 431 *et seq.*

Mr. Douglas Shulman
 August 11, 2009
 Page 2

treasury funds to pay for electioneering communications.⁴ However, there are several exceptions to FECA's general prohibition on corporations making contributions or expenditures. Under 2 U.S.C. § 441b(b)(2), corporations may make expenditures: (1) to communicate with stockholders and executive or administrative personnel and their families; (2) to engage in nonpartisan voter registration or get-out-the-vote campaigns aimed at stockholders and executive or administrative personnel and their families; and (3) to establish, administer, and solicit contributions to a separate segregated fund for political purposes.

I understand that § 527(f) of the IRC subjects § 501(c) organizations to tax if they make an expenditure for a § 527 "exempt function." The "influencing or attempting to influence the selection, nomination, election, or appointment of any individual to any Federal, State, or local public office or office in a political organization, or the election of Presidential or Vice-Presidential electors . . ." would constitute a § 527 "exempt function" under the IRC.⁵ According to the IRC, if a § 501(c) organization sets up a separate segregated fund, the fund will be treated as a separate § 527 political organization for tax purposes.⁶

However, a § 501(c) organization cannot set up a fund to conduct activities it cannot do – e.g. a § 501(c)(3) organization, which is prohibited from engaging in campaign activity under the tax laws, cannot set up a fund to engage in those types of activities.⁷ Treasury Regulation § 1.527-6(b)(1) states that FECA-permitted expenditures are taxable only to the extent provided by regulation. Unfortunately, the Treasury Department has not yet promulgated a regulation stating what that extent is.⁸ According to the Congressional Research Service, "[u]ntil the regulation addresses this matter, it appears a § 501(c) organization may engage in [political] activities without tax consequences under IRC § 527(f)."⁹

I understand that, for purposes of applying FECA, the FEC does not distinguish between tax-exempt nonprofit corporations like Project Vote and taxable nonprofit corporations like ACORN. However, the Congressional Research Service has informed me "for the purposes of determining whether a corporation is exempt from certain FECA

³ 2 U.S.C. § 441(a).

⁴ 2 U.S.C. § 441b(b)(2).

⁵ IRC § 527(e)(2).

⁶ IRC § 527(f)(3); Treas. Reg. § 1.527-6(f).

⁷ Treas. Reg. § 1.527-6(g).

⁸ Treas. Reg. § 1.527-6(b)(3).

⁹ Memorandum from L. Paige Whitaker, Legislative Attorney, Congressional Research Service and Erika Lunder, Legislative Attorney, Congressional Research Service to House Committee on Oversight and Government Reform, 2 (Aug. 4, 2009) (on file with author). See T.D. 7744, 1981-1 C.B. 360 (stating that when the matter is eventually addressed, the regulation will apply on a prospective basis); see also Judith E. Kindell and John Francis Reilly, Election Year Issues, IRS 2002 EO CPE TEXT, at 437 (2002), available at <http://www.irs.gov/pub/irs-tege/eotopici02.pdf>.

Mr. Douglas Shulman
 August 11, 2009
 Page 3

prohibitions, the tax-exempt status of a corporation is relevant.”¹⁰ These ambiguities create the concern that ACORN is permitted to engage in lobbying activities the IRC may wrongly believe are exempt. In addition to the difficulty my staff has faced in obtaining information concerning the IRC, the apparent gap in the rules of the IRS and the FEC signals an increased need for inter-agency communication and coordination.

To ensure that ACORN and ACORN-affiliated entities are complying with both the IRC and IRS regulations, please provide the following information and documents on or before August 20, 2009:

1. It is my understanding that the IRC or IRS regulations require political funds to be separate and segregated from tax-exempt accounts. The ACORN Report disclosed an audit by ACORN's outside counsel, finding ACORN and its affiliates lack an adequately documented delineation of 501(c)(3) from non-501(c)(3) work,¹¹ ACORN cannot prove that 501(c)(3) resources are not being directed to specific regions based on impermissible partisan considerations,¹² and Communities Voting Together (“CVT”), a § 527 organization, is “treated like a pot of money available to ACORN to carry out state-level political work.”¹³ Does ACORN's use of 501(c)(3) resources for impermissible partisan considerations and its use of § 527 funds as a “pot of money” constitute violations of the IRC?
2. Citizens Consulting Inc. (“CCI”), a taxable nonprofit, simultaneously managed the accounts of political and private donor-funded organizations.
 - a. Does CCI's co-management of various tax-exempt and non-exempt affiliate accounts, many of which receive federal funds and some of which are 527s, violate § 527(f) of the IRC?
 - b. If so, has the IRS taken steps to prevent CCI's co-management of affiliate accounts that are legally required to be separate and segregated?
3. It is my understanding that ACORN files Form 1120 corporate income tax with the IRS, has no tax-exempt status with the IRS, and is registered in multiple states as a nonprofit corporation.
 - a. If a taxable nonprofit corporation engages in lobbying and political expenditures/contributions, even those exempt under 2 U.S.C. § 441b(b)(2), where does it report those activities?

¹⁰ Memorandum from L. Paige Whitaker, Legislative Attorney, Congressional Research Service and Erika Lunder, Legislative Attorney, Congressional Research Service to House Committee on Oversight and Government Reform, 3 (Aug. 4, 2009) (on file with author).

¹¹ Memorandum from Harmon, Curran, Spielberg, & Eisenberg, LLP [HCSE] on Organization Review to ACORN Beneficial Association, ACORN Housing Corporation, ACORN Institute, ACORN Votes, American Institute for Social Justice, Association of Community Organizations for Reform Now, Citizens Consulting, Inc., Citizens Services Inc., Communities Voting Together, Pennsylvania Institute for Community Affairs, Inc., Project Vote/Voting for America, Inc. (June 19, 2008) at 7 (ACORN_004933).

¹² *Id.*

¹³ *Id.* at 8.

Mr. Douglas Shulman
August 11, 2009
Page 4

- b. Provide copies of ACORN's 1120's from 2004 to the present.
4. Identify the number of times the IRS has:
publication.
5. Provide all documents showing ACORN/CCI's transfer of political contributions and dues met the requirements that
 - a. The § 501(c) uses procedures that satisfy federal and state campaign laws;
 - b. The § 501(c) organization maintains adequate records to show the transferred monies and political contributions and dues (not investment income); and
 - c. (3) the transferred monies were not used to earn investment income for the § 501(c) organization.¹⁴
6. The IRS requires exempt organizations to report embezzlements on its federal tax information return (Form 990, Form W-2, or Form 1099) or on an amended federal tax information return.¹⁵ Section 4958 of the Internal Revenue Code imposes an excise tax on excess benefit transactions between a disqualified person and an applicable tax-exempt organization.¹⁶ A disqualified person is liable for a twenty-five percent ("25%") tax on the excess benefit.¹⁷ An organization manager may also be liable for a ten percent ("10%") excise tax on the excess benefit transaction, if he or she "knowingly, willfully, and without reasonable cause" participated in the excess benefit transaction.¹⁸
 - a. Produce all IRS documents concerning fees assessed against Dale Rathke, Wade Rathke and the relevant ACORN-affiliated 501(c) corporations involved in the embezzlement.

¹⁴ Treas. Reg. § 1.527-6(e).

¹⁵ Economic Benefit Transactions, INTERNAL REVENUE SERVICE, available at: <http://www.irs.gov/pub/irs-tege/eotopice04>.

¹⁶ Intermediate Sanctions, *Tax Information for Charitable Organizations*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/charities/charitable/article/0,,id=123298,00.html>.

¹⁷ 2007 Instructions for Form 990 and Form 990-EZ, *Tax Information for Charities & Other Non-Profits*, INTERNAL REVENUE SERVICE, available at <http://www.irs.gov/pub/irs-pdf/i990-ez>.

¹⁸ *Id.*

Mr. Douglas Shulman
August 11, 2009
Page 5

- b. If no fees were assessed, provide a detailed explanation and any documents explaining why such a transaction is not considered a violation of the excess benefit rule.

- 7. According to ACORN's outside counsel, ACORN paid its embezzlement-caused deficits through an employee sponsored health fund. Produce all IRS documents concerning penalties assessed against ACORN or any of its affiliates concerning violations of ERISA. If no penalties were assessed, provide a detailed explanation and any documents explaining why such a transaction is not considered a violation of ERISA.

For purposes of your response to this letter, ACORN and its affiliates includes but is not limited to: ACORN, Project Vote/Voting for America, Inc., CCI, Citizens Services Inc. ("CSI"), ACORN Housing Corporation ("AHC"), ACORN Community Labor Organizing Center ("ACLOC"), American Institute for Social Justice ("AISJ"), SEIU Local 100, SEIU Local 880, ACORN Institute, ACORN Votes, and Communities Voting Together ("CVT").

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X.

Thank you for your attention to this matter. If you have any questions regarding this request, please contact Daniel Epstein of the Committee staff at (202) 225-5074.

Sincerely,



Darrell Issa
Ranking Member

cc: The Honorable Edolphus Towns, Chairman

From: Shafer John H
Sent: Tuesday, March 16, 2010 9:31 AM
To: Muthert Gary A
Subject: RE: TEA PARTY
Attachments: Notebook.jpg

Importance: Low

What's the 6103 movement?

John Shafer
Group Manager
SE:T:EO:RA:D:2:7838
Telephone: (513)263-3406
FAX: (513)263-5200

From: Muthert Gary A
Sent: Tuesday, March 16, 2010 10:27 AM
To: Shafer John H
Subject: TEA PARTY

I just looked at CNN.com. There is a major TEA Party protest in Washington D.C. today. I watched the video. It appears the TEA party is a Republican based entity. I am now a resident expert on the TEA Party. However, that being said, there is also an equal Democratic "tea party" type entity, called "Emerge". If you want more info, just ask.

Gary Muthert
TE/GE, ID #1000203255
Screening Group, Group 7838
550 Main Street
Cincinnati, Ohio 45201
513-263-3639 Phone
513-263-5200 FAX

From: Angner William J
Sent: Wednesday, April 11, 2012 3:32 PM
To: Seok Stephen D
Subject: RE: TIGTA audit 4/30-5/1/2012

pawns in chain of command are either overlooked or sacrificed....some one up the chain should take the heat for you:)

From: Seok Stephen D
Sent: Wednesday, April 11, 2012 4:29 PM
To: Angner William J
Subject: RE: TIGTA audit 4/30-5/1/2012

Boss,

You are going to save me, right?

From: Angner William J
Sent: Wednesday, April 11, 2012 4:26 PM
To: Conley Melissa A; Davenport Sally B; Fletcher Brad S; Jennewein John A; Perry Veronica E; Sutfield Casey A; Woeste Bryan C; Hanson Michael J; Kiser Joan C; McLaughlin Geraldine R; Gentry Diane M; Luk Zenia; Perry Lori A
Cc: Seok Stephen D
Subject: TIGTA audit 4/30-5/1/2012

FYI:

Holly Paz and TIGTA employees will be here in Cincy 4/30-5/1/2012 to review advocacy cases (ie.TIGTA audit).

There will also be Congressional hearings about how we handle those cases as well.

Glad those are in another group worked by other agents! Please give Stephen all the morale support you can muster:)

From: Thomas Cindy M
Sent: Monday, May 10, 2010 7:27 PM
To: Herr Joseph R
Cc: Melahn Brenda; Camarillo Sharon L; Waddell Jon M
Subject: FW: Emerging Issue follow-up
Attachments: Issue Training-05092010-2.doc; Issue Form-05102010.doc

Joseph,

Sorry I missed this in first review --- there is reference to "See Below." I'm not sure where we are directing the reader. Refer to comment incorporated into attached document.

Regarding the concern I had regarding TAG issue, the bullet you included is good. But, I think the CPE instructors are going to need to make sure they explain that clear TAG referrals go directly to the TAG group and do not pass through Emerging Issue group first.

From: Herr Joseph R
Sent: Monday, May 10, 2010 2:07 PM
To: Thomas Cindy M
Cc: Melahn Brenda; Camarillo Sharon L; Waddell Jon M
Subject: RE: Emerging Issue follow-up

Cindy,

I made some updates to address your concerns.

Joseph

Joseph R. Herr
Manager Group 7825
Exempt Organizations Determinations
(513) 263-3725
(513) 263-4513 fax

From: Thomas Cindy M
Sent: Sunday, May 09, 2010 11:15 PM
To: Herr Joseph R
Cc: Melahn Brenda; Camarillo Sharon L; Waddell Jon M
Subject: FW: Emerging Issue follow-up

Joseph,

This is so much better than the prior document.

Attachment 1 includes changes I recommend (tracked through Word).
Attachment 2 is a clean copy, with outstanding comments/questions.

From: Herr Joseph R
Sent: Friday, May 07, 2010 12:17 PM
To: Thomas Cindy M; Melahn Brenda; Camarillo Sharon L; Waddell Jon M
Subject: Emerging Issue follow-up

All,

Attached please find the re-drafted CPE training handout as discussed in our meeting yesterday.

Joseph

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EMERGING ISSUE/COORDINATED PROCESSING REFERRAL FORM

NOTE: Applications involving an issue that has been identified on the TAG list or possessing other affirmative indicators of potential fraud or abuse should follow the TAG referral procedures in IRM 7.20.6.

Date:
Specialist Name:

Entity Information
Name: EIN:
Case number: POA (if applicable):

EMERGING ISSUES COORDINATED PROCESSING
Reason for Referral:
Additional Relevant Facts:

Referral Approval
Group Manager Date

(For Coordinating Group)
Recommendation:
Disposition:
Signature Date

TAG, Emerging Issue, Coordinated Processing, and Watch Issue Awareness

Background

As Determinations specialists, we are continually asked to be on the look out for various new issues, cases, POA's, tax law changes, or possible fraud and abuse issues. We receive multiple emails, spreadsheets, and lists and are responsible for managing this information. Without a single depository for this information, it is difficult to remember all the issues and more difficult to keep up to date on the status of them.

To assist with this, we created an Excel workbook to store all the information in one location. The workbook will be divided into five worksheets: TAG, TAG Historical Information, Emerging Issues, Coordinating Processing, and Watch Issues.

The Issues

What is a TAG issue?

Touch-and-Go (TAG) issues may involve abusive tax avoidance transactions, fraud, or terrorism. TAG procedures are described in full in IRM 7.20.6. TAG issues supersede all others. Therefore, applications involving an issue identified on the TAG list or possessing indicators of fraud or abuse should follow the TAG referral procedures.

What is an Emerging Issue?

An Emerging Issue is an issue identified in a group of cases for which no standard practice for handling has been established. Emerging Issues may arise in reaction to current events or changes to tax law, which are not addressed through existing precedent or procedures. Examples of Emerging Issues include the following:

- Tea Party cases
 - These cases were referred because of the number of applications, high profile, and inconsistent requests of 501(c)(3) and (c)(4).
- Pension trust 501(c)(2) non-traditional investment cases
 - These cases were referred because of the unusual note receivable asset, the involvement of the same law firm, high dollar amounts, and possible impact on Employee Plans (EP).

What is Coordinated Processing?

Coordinated Processing is the mechanism for promoting uniform case handling by assigning multiple related cases to a particular specialist or group when there

is existing precedent and procedures that cover the issues involved. Examples of Coordinated Processing include the following:

- A break-up of a large group ruling resulting in the subordinates seeking individual exemptions
- Multiple entities related through a complex business structure such as a senior housing management company and separate senior housing properties
- A change in state law requiring instrumentalities to change their Form 990 filing requirement

What is a Watch Issue?

A Watch Issue is a general term for issues or cases in need of special handling. Examples of a Watch Issue include the following:

- A request from Criminal Investigation to look for an application from a specific organization
- A request from EO Technical to look for applications involving certain activities such as:
 - open software cases
 - Regional Health Information Organizations (RHIOs)

Workbook and Email Alerts

The Excel workbook stores all information in one location and individual worksheets will list the various issues and provide guidance on how to handle them. Also, we are in the process of establishing an email alert system to notify EO Determinations specialists of issues. These alerts will provide notification of new issues, updates on existing issues, and resolutions on closed issues.

- (1) TAG issues, Emerging Issues, Coordinated Processing and Watch Issues are tracked on a single Excel workbook.
 - Each of the issue types will have a separate worksheet.
 - Each worksheet lists the individual issues:
 - Issues are named and numbered.
 - Brief descriptions of the issues are provided.
 - Guidance on how to handle the issue is provided. (A cross reference to an email alert number will be referenced. See below.)
 - Individual issues and related cases will be assigned to different groups or different specialists.
 - A Coordinator will maintain the workbook.
 - add, update, or close issue information on the appropriate worksheet.
 - distribute the spreadsheet to EO Determinations specialists.

- (2) Email alerts will notify EO Determinations specialists of any additions, updates, or closures to issues in the workbook.
 - The Coordinator will compile and distribute the alerts:
 - Containing information on one or more issues.
 - Providing guidance in more specific detail than the Excel workbook.
 - Including numbers for cataloging.
 - Archiving for future reference.

Identification and Referral of Issues

- (1) EO Determinations specialists identify potential issues. Routinely, issues are identified in the technical screening process. However, issues can be identified at any stage of case processing.
- (2) When a potential issue is identified, the specialist will complete a referral to the appropriate coordinator.
 - TAG issues are referred following the procedures in IRM 7.20.6.
 - Emerging Issues or Coordinated Processing issues are referred to the Coordinator by completing the Emerging Issue/Coordinated Processing Referral Form. (See attached copy of form.)
 - The reasons for the referral must be clearly described.
 - The specialist's manager reviews and approves the referral prior to sending to the Coordinator.
 - Cases identified in technical screening are forwarded together with the approved referral sheet to the Group coordinating Emerging Issues.
 - Cases identified outside of technical screening remain with the specialists pending review of the referral form.
 - Watch Issues are referred to the screener/specialist's manager.

Analyzing the Referral

Upon receipt, the Coordinator reviews, researches, and analyzes the issue. The referral will result in one of the following recommendations:

- To follow Emerging Issue procedures
- To follow Coordinated Processing procedures
- To forward the referral to the TAG Coordinator

- If the Coordinator finds indications of fraud or abuse
- To not accept the referral
 - If the referral is not accepted, the referring group manager will receive feedback explaining why.
 - Cases transferred from technical screening will follow secondary screening procedures.

Emerging Issues Procedures

- (1) In the processing of an Emerging Issue Referral, the following will occur:
 - The issue will be researched and developed.
 - Research will include identifying any related cases.
 - Development will include identifying the significant facts and circumstances and the appropriate tax law.
 - The Coordinator will complete the following:
 - Add the issue to the Emerging Issues worksheet.
 - Issue an alert.
- (2) A white paper is prepared and elevated to the appropriate authority to decide how the issue is handled.
- (3) The Coordinator disseminates the decision through a follow-up email alert, and makes updates to the Emerging Issues worksheet.

Coordinated Processing Procedures

- (1) In the processing of a Coordinated Processing Referral, the following will occur:
 - The issue will be researched and developed.
 - Research will include identifying any related cases.
 - Development will include identifying the significant facts and circumstances and the appropriate tax law.
 - Determining what issue-specific procedures should be applied to the related cases.
 - The Coordinator will complete the following:
 - Add the issue to the Emerging Issues worksheet.
 - Issue an alert.
- (2) The Coordinator will disseminate follow-up information on the disposition of the issue through a follow-up email alert, and makes updates to the Coordinated Processing worksheet.

TIMELINE

Dates	Players	
2/25-26/10 email	Jack Koester to John Shafer to Sharon Camarillo to Cindy Thomas to Holly Paz	Jack sent an email to John [REDACTED] 6103 [REDACTED] 6103 [REDACTED] 6103
2/26- 4/5/2010	Gary Muthert and John Shafer	I was asked by John to query our system and find any Tea Party application and similar cases. John asked me to secure 10 Tea Party cases and transfer them to EOT for review. I conducted TEDS research and found 10 TP cases. Also had Karl Beckerich conduct EDS research to see if any TP received exemption or was being filed via paper. Had Karl Beckerich secure the paper files for me and prepared the cases for transfer.
3/16- 3/17/2010 email	John Shafer/Cindy Thomas/Holly Paz	Acknowledged that we have the 10 cases secured by me and really to transfer. They wanted only two and we us to keep the rest until notified.
4/5/2010	Gary Muthert acting for John Shafer	Received email from Cindy Thomas as acting manager -
Pre-2/25/10		3 TP were received exemption per EDS/TEDS
2/25/2010		Jack indentified Case #1 - [REDACTED] 6103
3/8/2010		Identified 7 Tea Party's and prepared for EOT transfer
4/2/2010		Identified 3 Tea Party cases