

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

WASHINGTON, DC 20515

June 3, 2011

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Ave., NW
Washington, D.C. 20004

Dear Commissioner Shulman:

On May 13, 2011, the IRS confirmed that it began examinations of five taxpayers that donated money to IRC §501(c)(4) organizations to determine whether “the donations were taxable gifts and if a gift tax return should have been filed.” The applicability of the gift tax to §501(c)(4) donations is an unsettled area of tax law and it appears that it has been applied only a handful of times. Both taxpayers and tax practitioners were stunned at the IRS interest in this issue after decades of silence.

As Chairman of the Committee on Ways and Means, I find the lack of IRS transparency deeply troubling. Taxpayers already struggle to comply with a Tax Code that is too complex. Now, with no warning, the IRS appears to have selectively targeted certain taxpayers who are engaged in political speech. Not only does this threaten political speech, it casts doubt on the IRS’ credibility as an impartial enforcer of the nation’s tax law. The IRS’s ability to effectively enforce tax law and work with taxpayers to ensure compliance is not served by auditing unsuspecting taxpayers for violating tax laws the IRS has not acknowledged for decades.

There are approximately 120,000 §501(c)(4) organizations operating across the United States. For decades, donors to these organizations and the donee organizations have relied on the IRS for certainty in this area of tax law. Now, they can no longer do so. All IRC §501(c)(4) organizations must now advise donors that their contributions may result in a targeted audit, despite uncertainty in this area of tax law. Donors, in turn, must then determine whether a donation to a §501(c)(4) organization will trigger an IRS audit based on the political activities of the organization.

This sudden, unexplained enforcement of the gift tax in these circumstances raises a number of questions regarding IRS actions. The Committee has an obligation to conduct oversight of the IRS and its enforcement of our country’s tax laws. Because of the serious nature of the IRS’s audit activities in this area of gift tax, I request that the IRS answer

the following questions in an effort to promote transparency and reassure taxpayers that fair and consistent enforcement of the country's tax laws is the norm. Please respond no later than June 17, 2011.

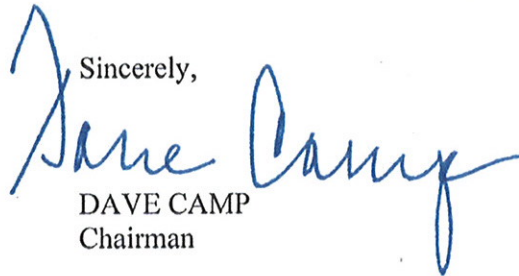
1. The names, titles, and divisions and/or offices of any and all individuals who were involved or contributed to the decision to investigate whether taxpayer contributions to §501(c)(4) organizations should be subject to the gift tax rules.
2. All IRS rulings and internal memoranda relating to the applicability of the gift tax to §501(c)(4) organizations. Please provide copies of all records, internal working documents, and correspondence relating to the same.
3. Provide a detailed explanation and relevant documents related to the following issues:
 - a. How are the employees that work on estate and gift taxes organized within the Small Business/Self-Employed Division?
 - b. Where are employees that work on estate and gift tax issues physically located?
 - c. How many employees in the IRS work on estate and gift tax issues? Provide an organizational chart that identifies each employee within the organizational structure.
 - d. Does the estate and gift tax office prepare an annual work plan similar to the annual work plan released by the Tax Exempt/Government Entities Division? If so, provide a copy of the last five years' annual reports. If not, how does the IRS oversee the office's workload and allocate resources to this office?
 - e. How many estate and gift tax audits were conducted in 2006, 2008, and 2010, related to gifts made to 501(c)(4) organizations?
 - f. How do employees that work on estate and gift tax issues within the Small Business/Self-Employed Division gain access to the Form 990s for 501(c)(4) organizations?
 - g. How did employees in the Exempt Organizations Division assist in the sharing of the Form 990 information with other IRS employees? Is this a common practice? If so, how many examinations have originated from shared Form 990s to other IRS divisions?
 - h. Provide the name(s) of the individual(s) who decided, after 35 years, to treat contributions to a 501(c)(4) organization as subject to the gift tax?
 - i. Criteria that are used to select taxpayers for gift tax examination.

- j. Provide all information that analyzed the legal or political consequences of auditing gift tax returns for contributions to 501(c)(4) organizations
4. How are tax-exempt organizations generally selected for audit?
5. How many §501(c)(4) audits are usually conducted every tax year? Provide a breakdown of the total number of §501(c)(4) examinations conducted annually over the last five years and identify the tax issues involved.
6. What percentage of gift and estate tax office examinations typically originate from an internal referral? Please describe IRS protocol for making internal referrals and how referrals are processed.
7. Provide any correspondence and records shared with the Department of the Treasury regarding the application of gift tax to §501(c)(4) organizations. Detail all communications (written or verbal) between the IRS and the Department of the Treasury on this topic since 2004.

Please note that, for purposes of responding to this request, the terms “records,” “communication,” “relating,” should be interpreted consistent with the attached *Definitions of Terms*.

Thank you for your prompt attention to this matter.

Sincerely,

A handwritten signature in blue ink that reads "Dave Camp". The signature is written in a cursive style with a large initial "D".

DAVE CAMP
Chairman

Attachment

DEFINITIONS OF TERMS

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