



COMMISSIONER

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D.C. 20224

November 12, 2004

The Honorable Max Baucus  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, D.C. 20510

Dear Senator Baucus:

I am responding to your letter of October 29, 2004, regarding reports of the Internal Revenue Service's (IRS) examination of a particular tax-exempt organization. Your letter requests further information about this examination.

A primary focus of your letter is the concern that the IRS might have succumbed to political pressure in its choice of tax-exempt organizations for audit. I can assure you that we have received no request from the White House, or any political appointee in the Federal Government, to examine any entity for political campaign activity in connection with the 2004 Presidential Campaign or other election this cycle. We have, however, received two letters from Members of Congress requesting that we look at one or more organizations in this area. We have treated these requests identically to the way we have treated all other third party referrals of information concerning possible political intervention. As outlined below, career employees carry out any examination activity in this area in accordance with specific procedures. Acting by committee, these career employees determine whether specific information we review warrants further action.

As a further note, I am concerned that your letter perpetuates misconceptions regarding the IRS's relation with, and influence by, the Nixon White House. In fact, the record developed in 1973 by the staff of the Joint Committee on Internal Revenue Taxation shows that then-Commissioner of Internal Revenue Johnnie M. Walters and the IRS stood firm against attempted political interference in tax administration when asked to perform audits on individuals contained on an "enemies list" provided to Commissioner Walters by a member of the White House staff. The Joint Committee staff concludes that, with regard to those on the enemies list, it "found no evidence that any returns were screened as a result of White House pressure on the IRS." See Staff of Joint Committee on Internal Revenue Taxation, 93d Cong., Investigation into Certain Charges of the Use of the Internal Revenue Service for Political Purposes 11 (Comm. Print 1973).

In addition, both the law and IRS practice differ significantly from 30 years ago. The law has changed in two important respects. Code section 6103(g) now requires that any request for tax information from the White House be in writing and signed by the President, and that such a request be reported to the Joint Committee on Taxation. Second, all requests from employees of the White House, in general, and from cabinet members (other than the Attorney General) that an IRS officer or employee conduct or terminate an audit or other investigation of a particular taxpayer are prohibited by section 1105 of the Internal Revenue Service Restructuring and Reform Act of 1998, 26 U.S.C. § 7217. Any IRS officer or employee who receives such a request must report it promptly to the Treasury Inspector General for Tax Administration. Both the request and the failure to report it by the recipient IRS officer or employee are felonies, and subject the requestor and the IRS officer or employee to fines, imprisonment, or both.

As you are aware, I am unable to address certain matters that your questions raise, due to the protections afforded taxpayers by section 6103 of the Internal Revenue Code (Code). As a result, I can speak only generally about our review of potential political campaign intervention by tax-exempt organizations. Because of the restrictions of section 6103, I would suggest that you work with the Chairman of the Finance Committee to request a briefing for both of you and your respective staffs under the provisions of section 6103(f)(1), consistent with the practice followed in other situations involving specific taxpayer information. This would allow us to clear up any doubts you might have about our actions in this area. Given this opportunity, I am certain we will be able to demonstrate, convincingly, that the Internal Revenue Service has not allowed political considerations to taint enforcement decisions in this or any other area.

Your first question asks if the political intervention rules include a prohibition on statements that are critical of government policies. By way of background, the Code requires that, to qualify as a tax-exempt organization described in section 501(c)(3), the organization may not "participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office." Charities, educational institutions, and religious organizations, including churches, are among those that this Code section covers. These organizations cannot endorse candidates, make donations to their campaigns, engage in fund-raising, distribute statements, or become involved in any other activities that may be beneficial or detrimental to any particular candidate. Even activities that encourage people to vote for or against a particular candidate on the basis of nonpartisan criteria may violate the political campaign prohibition of section 501(c)(3). These standards are well established and have been sustained in a series of court cases.

Whether statements made on behalf of an organization constitute intervention in a political campaign depends on all the facts and circumstances of the situation. Many charitable, educational, religious, and other section 501(c)(3) organizations speak out on public issues as an integral part of carrying on their exempt function. The determination whether such action is consistent with an organization's exempt purposes

does not take into consideration whether the organization supports or criticizes government policies. However, in the context of a political campaign, statements may constitute intervention on behalf of, or in opposition to, a candidate without expressly calling for the election or defeat of a particular candidate. The determinative factor is whether a statement on an issue or issues contains some reasonably overt communication to the recipient that the organization supports or opposes a particular candidate or candidates.

Your second, third, and sixth questions ask for information about our process for selecting organizations for examination to determine if they have intervened in a political campaign, and whether we are examining organizations representing the complete political spectrum.

By law, the IRS enforces the prohibition against political intervention by section 501(c)(3) organizations. We must also, however, balance this enforcement of the rules with recognition of important issues of free speech and religion. For this election cycle we have approached our responsibilities from two directions—with education and with an enforcement program.

Our program to educate taxpayers regarding intervention in political campaigns by section 501(c)(3) organizations has been ongoing. This year we took steps, as we have in recent presidential election cycles, to educate tax-exempt organizations about the restrictions established by the Congress, including:

- On April 28, 2004, we issued an advisory to charities noting that they should be careful to ensure that their efforts to educate voters comply with federal requirements concerning political campaign activities (Enclosure 1).
- We continue dissemination of our Publication 1828, Tax Guide for Churches and Religious Organizations. The political campaign prohibition as it applies to churches is discussed on pages 7 through 11 of the publication (Enclosure 2).
- On June 10, 2004, we sent a letter to the nation's political parties reminding them about the guidelines for political activities by charitable organizations (Enclosure 3).
- We continue outreach events with practitioners.

Our second tack involves our enforcement program. To date, we have reviewed information alleging improper political intervention in the 2004 election cycle by more than 100 charities, churches, and other section 501(c)(3) groups.

Because of heightened concerns about potential improper political activities during the presidential election season, the Tax Exempt and Government Entities Division (TE/GE) implemented a contact program. We created a committee of career civil servants, including two front-line managers and a revenue agent, who are experts in the tax-exempt area, to review allegations of political intervention that might be

forwarded to us. This committee follows similar procedures and employs similar safeguards to those used in our regular examination classification system.

We established the committee this summer as a pilot to expedite review of campaign intervention issues and to enable the IRS to make prompt contact in appropriate cases. The idea for the committee originated within TE/GE, and the program is run out of the office of Exempt Organizations, Examination. In recent months, TE/GE has begun contacting those organizations selected for review, in order to request information about alleged improper political activities.

While, under law, the IRS cannot disclose the names of these groups, we can state that the more than 60 organizations selected for review as part of the program represent a broad cross-section of the tax-exempt community and a wide range of viewpoints. About a third of the groups are churches, and the remainder includes other types of charitable organizations. More directly, and in response to your sixth question, the organizations selected for examination have been critical or supportive of a specific candidate, including President Bush, Senator Kerry, and others. I will also note that the committee concluded in about one-third of the referrals that the information did not show that the organization engaged in political campaign intervention and, as a result, did not select the organization for examination. These cases also reflect a diverse range of viewpoints.

Finally, you ask whether we received a referral relating to the particular tax-exempt organization and, if so, from whom. We are legally prohibited from answering this question under the limitations of section 6103. Again, we suggest that you request that we be given the opportunity to brief both you and Chairman Grassley under the provisions of section 6103(f)(1).

I agree that we must carefully guard the integrity of our tax enforcement system, and I assure you that we have operated in this area in a non-partisan and professional manner. Nevertheless, due to the serious nature of these allegations, we have referred this matter to the Office of the Treasury Inspector General for Tax Administration for investigation. If you have any questions, please contact me or Steven T. Miller, Commissioner, Tax Exempt and Government Entities Division, at (202) 283-2500.

Sincerely,



Mark W. Everson

Enclosures (3)