



COMMISSIONER

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

December 22, 2004

The Honorable Charles B. Rangel
Ranking Member
Committee on Ways and Means
U.S. House of Representatives
Washington D.C. 20515

Dear Mr. Rangel:

Thank you for your letter of December 1, 2004, which responded to my letter of November 16, 2004. In my earlier letter I discussed our compliance efforts toward potentially unlawful campaign intervention by Internal Revenue Code (Code) section 501(c)(3) organizations. Your follow-up letter posed six additional questions. In some of my responses, however, I can provide only general, non-taxpayer specific, information. This is because section 6103 of the Code prohibits the IRS from disclosing any particular taxpayer's return information. As I indicated in my earlier letter, this means that I cannot acknowledge whether we are examining a specific organization, nor can I identify the origin or source of the information we receive about an organization.

My responses to your six questions follow.

1. In your letter, you assure me that the IRS has not received any 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. Have you received any such request from the Republican National Committee, one of its entities, or any other outside political group?

During this past election cycle, we received information from a wide array of sources that indicated possible noncompliance with Federal tax law by many organizations. However, just as the confidentiality dictates of section 6103 noted above protect information concerning taxpayers under review, these rules also preclude me from providing the identity of any individual or entity making a referral to the IRS. Due to these confidentiality dictates, I again suggest, as I did in my November 16 letter, that you take advantage of the provisions of Code section 6103(f)(1) and (4), under which the Chairman of the Ways and Means Committee may request a briefing for you, himself, and your staffs on this matter.

2. Your letter also says that the IRS has received two letters from Members of Congress requesting that the IRS look at one or more organizations in the area.

Was the audit of the NAACP generated by a letter (or "third party referral") from a Member of Congress? Is the NAACP entitled to know the basis of its examination, including the IRS's review of any third-party referral materials or related information?

Concerning the first part of the question, as indicated above, under section 6103 of the Code, I cannot acknowledge whether we are examining a specific organization, nor am I able to answer any question that presumes the existence of the examination of a specified organization.

Concerning the second part of the question, taxpayers are told the basis for their examination as long as it does not adversely affect the examination. In appropriate cases, therefore, if asked, we may tell a taxpayer that its examination is based on information received from a third-party. However, it is the Service's policy to protect the identity of third-party sources. This is important to avoid discouraging third parties, whether individuals or entities, from coming forward with information that otherwise might be unavailable to us. In addition, we keep this information confidential to protect the privacy of individual sources. When we receive information from a third-party, we evaluate it for reliability and accuracy before using it as the basis of an examination or an investigation; we do not merely assume that third-party allegations are accurate.

Moreover, if we use information provided by a third party, the taxpayer always has the right to review, and to challenge with us, the factual and legal basis of any proposed adverse finding or IRS determination before we reach a final administrative conclusion. The taxpayer has the right to appeal our final administrative conclusion in court, as well.

3. Your letter provides a brief explanation of the process for selecting organizations for examination to determine if they have intervened in a political campaign. In doing so, you state that the IRS has reviewed information alleging improper political intervention in the 2004 Presidential election cycle of more than 100 charities, churches, and other (c)(3) groups. How many non-church organizations, other than the NAACP, were sent an audit letter from the IRS two weeks before the 2004 election?

In the period from October 18, 2004, through November 2, 2004, we sent seven letters, all of which were follow-ups to earlier letters.

4. Your letter describes a "committee" of IRS tax-exempt experts which was created in the summer of 2004 to review allegations of political intervention. Who, specifically, is on this committee? Are any non-career employees or non-IRS employees involved with this committee?

Since its creation in the summer of 2004, the committee has consisted of three career employees of the Tax Exempt and Government Entities Division of the IRS. No non-career or non-IRS employees have been involved with the committee.

5. Your letter describes how this committee is run out of the IRS Tax-Exempt Organization Division. This internal "contact program" sounds much like the IRS's earlier (and controversial) "independent review process" which you shut down upon becoming Commissioner after the Division acted to restore the tax-exempt status of groups connected with former House Leader Gingrich for violating the prohibition on political activities. How and when was this committee created? Are there any IRS employees serving on the new committee that also served on the earlier independent review process panel?

The Independent Review Process was terminated on August 5, 2003, eleven months before the committee assessing the referrals in question was formed. No member of the committee reviewing referrals was ever part of the former Independent Review Process. The former Independent Review Process and the process discussed in this letter are wholly unrelated.

6. Your letter states that more than 60 organizations were selected for review by the committee and that about one-third of the referrals were not selected for examination because the referrals did not show that the organizations engaged in political campaign intervention. How many of the approximately 40 organizations selected for examinations were non-churches and were sent IRS examination letters between August 31 and November 2, 2004. How do these 40 selected organizations break down by type of (c)(3)?

We sent letters to twenty non-church organizations between August 31 and November 2, 2004. A review of the names of those organizations indicates that the group represents a broad cross-section of the tax-exempt community and a wide range of viewpoints.

I am pleased to respond to these questions because I fully recognize their importance to you and their significance to the sound and fair administration of the tax law. I want to reiterate that I have every confidence that our administration of the rules regarding political conduct of exempt organizations is being conducted in a fair and impartial manner. 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

cc: The Honorable Fortney Pete Stark
The Honorable John Conyers, Jr.