



COMMISSIONER

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

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Ms. Dorothy S. Ridings
President and CEO
Council on Foundations
1828 L Street, N.W.
Washington, D.C. 20036

Ms. Ellen Barclay
President
Forum of Regional Associations of Grantmakers
1111 19th Street, N.W.
Washington, D.C. 20036

Dear Ms. Ridings and Ms. Barclay:

Thank you for your recent letter concerning the Internal Revenue Service's approach toward prohibited political intervention by organizations described in section 501(c)(3) of the Internal Revenue Code. I appreciate your expression of support for our increased enforcement effort in this area, and also agree that as we augment our efforts we must proceed carefully in order not to diminish the right of the charitable sector to speak out on issues of public policy.

I would like to provide a brief description of the prohibited political activity program we undertook during the 2004 election cycle. In an election year, and particularly in a Presidential election year, the Service is faced with an important responsibility. Congress has restricted the manner in which section 501(c)(3) entities may participate in political campaigns; such entities 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." Our job is to ensure that the regulated community is aware of the rules pertaining to this restriction, and to enforce the rules in a considered and even-handed manner.

This election cycle, as we have in the past, we took a number of steps to educate the tax-exempt community about the rules related to political intervention:

- Exempt Organizations (EO) personnel conducted workshops in seven states during May and June 2004 that included a topic on prohibited political activities.

- The IRS Nationwide Tax Forums held in six states in July, August, and September 2004 included presentations that addressed prohibited political activities.
- As in previous Presidential election years, we issued a press release in April 2004 discussing prohibited political campaign activities for tax exempt organizations.
- We wrote to seven national political parties in June 2004 advising them of the prohibition on political intervention by section 501(c)(3) organizations.
- In October 2004 we issued a press release that reiterated the prohibition on political campaign activities, and outlined IRS enforcement activity intended to address potential prohibited political activities by section 501(c)(3) organizations.

While education and guidance hold a key place in our compliance program, we must also monitor actual compliance with the law, and apply the tools Congress created to address non-compliance. During this election cycle, our Tax Exempt and Government Entities Division (TE/GE) implemented a prohibited political activity program to contact organizations about which we had received reports of possible prohibited political intervention. We contacted these organizations only after a committee of experienced, career employees with our EO function determined that the alleged activity warranted further review. This EO referral committee based its decisions on its appraisal of information items provided to us through EO's established referral process. Information items come into the referral process in a variety of forms. These include letters, press accounts, and referrals from within the IRS or other governmental entities. They also come from a variety of sources, including the public, the media, various parts of the IRS, and other governmental entities or officials.

Because of the cyclical nature of political activity, TE/GE designed the prohibited political activity program to allow us to contact organizations selected by the EO referral committee for review promptly after selection. This program became more visible during the active part of the election cycle, which is when violations are most likely to occur and when we are most likely to receive information items regarding potentially prohibited political activity by section 501(c)(3) organizations. Our intent never was, and never is, to intimidate. Instead, we wanted to provide timely and direct guidance about the political intervention rules, review the organizations' activities to date, and prevent possible recurring violations of the rules. Between July 30 and November 22, 2004, the referral committee reviewed 131 information items and selected 80 organizations for review.¹

¹ Source: Treasury Inspector General for Tax Administration, *Review of the Exempt Organizations Function Process for Reviewing Alleged Political Campaign Intervention by Tax Exempt Organizations* (Reference No. 2005-10-035), at 6.

I must stress that the selection by the EO referral committee of an organization for review is not a finding that the organization has violated a rule or statute. When an organization is selected for review, we request pertinent information from the taxpayer. A request for information is but one example of the legitimate inquiries we make as a matter of course in day-to-day tax administration. Any finding that an organization has violated the rules is made only after an evaluation of information received through such requests, and only if the facts discovered during the examination warrant it.

Furthermore, in the case of section 501(c)(3) organizations, a finding of a violation need not always lead to the revocation of an organization's tax-exempt status. The Service has a range of tools available to it where it finds problems, including the imposition of the section 4955 excise tax.

I believe that we acted in an objective and nonpartisan manner, following established procedures, as we conducted the prohibited political activity program in 2004. However, last November, as is our practice when the integrity of our procedures is questioned, I asked the Treasury Inspector General for Tax Administration (TIGTA) to review our administration of the program. This action is particularly appropriate because, as I have stated before, any suggestion that the IRS has tilted its audit activities for political purposes is repugnant and groundless. TIGTA has now completed its work, and has just released a report of its findings. TIGTA notes that, in conducting its review, it was "alert for any indications that inappropriate actions, such as political influence, may have been taken" with regard to our handling of the information items sent to us. TIGTA also noted that if it found inappropriate actions, it would refer them to the TIGTA Office of Investigations for review.

In that regard, TIGTA's report found:

- that TIGTA did not identify any indications that EO inappropriately handled information items it received, and therefore did not make any referrals to the TIGTA Office of Investigations;
- that the EO referral committee followed a consistent process when reviewing information items, regardless of the source of the allegation or the nature of the alleged political activity;
- that TIGTA did not identify any cases where EO used the same criteria to select one information item for examination and to decline a similar item for examination; and
- that the information items EO selected and did not select for examination concerned organizations reflecting a variety of political views.

I am gratified by these results, because they demonstrate that while we are committed to enforcing the tax law that relates to tax-exempt organizations, including the portion that restricts political intervention by 501(c)(3) organizations, we are equally committed to doing so without regard to partisan considerations or political direction. This report confirms what we've said all along: political considerations played absolutely no part in the inquiries we launched last summer.

Some have asked whether our recent action means that the Service has modified its views on what constitutes campaign intervention. I can tell you with assurance that we have not; our analysis of the law remains the same. Further, although we are concerned, as you are, about prohibited political activity, none of our enforcement actions was intended to narrow or restrict the established rights of section 501(c)(3) entities to address issues of public policy. What has changed is the level of scrutiny in this area. During this past election cycle, questionable political activity by exempt organizations appeared more prevalent than in previous election years. Some organizations and candidates appeared to be growing increasingly bold in their attempts to use section 501(c)(3) entities for political purposes. Faced with this situation, the Service had an unambiguous obligation to act, and suggestions that we should have acted with less urgency are misguided.

In light of your interest in this area, I would like to extend an invitation to you to meet with TE/GE to discuss your views on political intervention and to hear your concerns. At the same time, we would like to talk with you and several other interested organizations on a related topic. TE/GE is evaluating last summer's prohibited political activity program, and will meet with a number of stakeholders who wrote to us about the program to consider concrete suggestions on how we should administer such a program in the future. To be helpful, suggestions must be balanced: they should include education, guidance and comprehensive examination components. We hope you will consider meeting with TE/GE, and look forward to receiving your suggestions.

Thank you again for contacting me on what we all can agree is an important but difficult area to administer.

Sincerely,

/s/

Mark W. Everson