



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224
SEP 10 2012

The Honorable Raúl M. Grijalva
U.S. House of Representatives
Washington, DC 20515

Attention: Adam Sarvana

Dear Mr. Grijalva:

This responds to your June 21, 2012 letter to Commissioner Shulman, requesting a report detailing IRS rulemaking authority with regard to non-profit financial disclosure requirements and the feasibility of certain proposals. This letter also follows up a discussion on July 18, 2012 with your staff and IRS staff.

The regulatory process is a joint effort of the IRS and the Treasury Department. Consistent with that process, we are not able to elaborate on the feasibility of certain proposals at this time, but note that there could be statutory constraints related to a number of the changes that you suggest.

With respect to the regulatory changes requiring tax-exempt organizations (other than 501(c)(3) organizations) to publicize contributions and expenditures (other than staff compensation) of more than \$25,000, this issue is addressed by statute. Congress enacted section 6103 of the Internal Revenue Code, which prohibits the IRS from disclosing taxpayers' returns and return information. Congress provided several exceptions to these nondisclosure rules in section 6104, notably the exemption applications and annual information returns (Form 990, for example) filed by exempt organizations. An organization's expenditures are reported on Part IX, Statement of Functional Expenses, of the Form 990, and the IRS and the organizations are required by section 6104 to make that part of the Form available to the public.

However, section 6104(b) specifically states that "[n]othing in this subsection shall authorize the Secretary to disclose the name or address of any contributor to any organization or trust (other than a private foundation, as defined in section 509(a))" The statute expressly prohibits the IRS from publicizing (except for specified organizations) contributors to organizations.

With respect to your recommendation that the IRS require section 501(c)(4), (c)(5) and (c)(6) organizations file a Form 1024 application for recognition of exemption, this issue is also addressed by statute. The Internal Revenue Code expressly provides that certain tax-exempt organizations must give notice to the IRS, by filing an application for exemption, in order to claim tax-exempt status. The Internal Revenue Code does not require an organization to provide notice to the IRS to be treated as described in section 501(c)(4), (5) or (6). By contrast, the Code does require other tax-exempt organizations, for example, most section 501(c)(3)

organizations, to provide notice to the IRS before it will be treated as tax-exempt.¹ Although an organization may claim to be exempt under section 501(c)(4), (c)(5), or (c)(6) without filing an application with the IRS, an organization generally must file Form 1024 to be recognized as exempt by the IRS.² Organizations claiming to be tax exempt under section 501(c)(4), (5) or (6) generally are required to file Form 990 annually regardless of whether the IRS has recognized them as exempt.³

With respect to your suggestion that the IRS establish a transparent and thorough process allowing the public to file complaints about the activities of tax-exempt organizations, please note that such complaint process currently exists. The process, IRS Complaint Process For Tax Exempt Organizations, is described in more detail at irs.gov/newsroom/article/0,,id=178241,00.html. Anyone may send a referral to our Exempt Organizations Classification Unit in Dallas for consideration. A long-standing process exists for handling such referrals. We will treat your letter as a referral and send a copy to our EO Classification Unit.

However, section 6103 of the Internal Revenue Code includes taxpayer privacy provisions Congress enacted to protect the privacy of tax returns and return information of all taxpayers. We are not permitted to share with you details about the status or existence of an investigation of a taxpayer. Therefore, legally I cannot comment on what action, if any, we may take based on the information you provided.

If you have additional information about an exempt organization you want to submit for our consideration, please send it to:

IRS – EO Classification
1100 Commerce Street
MC 4910 DAL
Dallas, TX 75242

I hope this information is helpful. If you have any questions, please contact me at (202) 283-0289 or Matthew Giuliano (Identification Number 1055182) at (202) 283-8917.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations

¹ See IRC § 508(a).

² Treas. Reg. § 1.501(a)-1(a)(3).

³ Treas. Reg. § 1.6033-1(a)(1).