

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

May 18, 2011

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th St. & Pennsylvania Avenue, NW
Washington, DC 20004

Dear Commissioner Shulman:

As members of the United States Senate Committee on Finance, we have an obligation to see that the Internal Revenue Service (“IRS”) enforces the nation’s tax laws appropriately and consistently. This includes reviewing actions by the IRS to ensure that it enforces the law in a nonpartisan manner, and that enforcement policy is never influenced by political considerations.

We note, therefore, with particular interest the recent accounts from the IRS concerning enforcement actions against individuals who have made previous donations to 501(c)(4) tax exempt organizations. The unusual character of these enforcement actions was enough to attract the interest of the *New York Times*. According to that report, “I.R.S. Moves to Tax Gifts to Groups Active in Politics,” May 12, 2011, the IRS is “invoking a provision that had rarely, if ever, been enforced,” informing a handful of individuals that their contributions to 501(c)(4) organizations may be subject to federal gift taxes.

As reported, the gift tax enforcement actions taken by the IRS relate to donations to 501(c)(4) organizations that the IRS has determined should be exempt from taxation. They are “[c]ivic leagues or organizations not organized for profit but operated exclusively for the promotion of social welfare...and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes.” In spite of their legal status and administrative approval, President Obama and his White House staff have made it clear that they view these organizations with deep hostility. The President himself, in a heated political context, referred to certain 501(c)(4) organizations as “a threat to our democracy.” His White House Communications Director, Dan Pfeiffer, charged that the “powerful interests” supporting some of these organizations “are literally buying elections,” *Washington Post*, October 8, 2010.

The applicability of gift taxes to 501(c)(4) contributions is ambiguous. Historically, the IRS has deliberately opted against vigorous enforcement of the gift tax on 501(c)(4) contributions. There are good reasons for this. First, it is unclear if contributions to these organizations are eligible for the gift tax given their gratuitous nature, and the fact that the donations are made with the expectation that the organization will work to advance the donor’s policy views. Moreover, these contributions are clearly not designed for tax planning purposes or to avoid the estate tax.

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Most importantly, however, enforcement of gift taxes on contributions to 501(c)(4) organizations engaged in public policy debate runs an unacceptable risk of chilling political speech, which receives the highest level of constitutional protection under the First Amendment.

This pattern of nonenforcement over a period of nearly three decades, coupled with the troubling issues regarding the adverse impact that enforcement might have on the exercise of constitutionally protected rights, raises important questions regarding the timing of the decision to enforce the gift tax on these contributions. Retroactive enforcement of the gift tax in this highly politicized environment raises legitimate concerns and demands further explanation.

The statement by IRS spokeswoman Michelle Eldridge did not assuage these concerns and left us with only more questions. According to Eldridge, “[a]ll of the decisions involving these cases were made by career civil servants without any influence from anyone outside the IRS.” We would expect that decisions regarding particular enforcement actions would be made by career civil servants. The more pressing question, not answered to date, is whether political appointees inside or outside the IRS were involved in any way in the decision to prioritize this category of cases.

To ensure that we fully understand the process that led to the IRS decision to enforce the gift tax in these instances, we respectfully request that you provide us with the following information:

- 1) The names of any individuals at the IRS who contributed to the decision to enforce the gift tax against contributions to 501(c)(4) organizations, as well as the names of any other federal officials outside of the IRS that you had any discussions with regarding this decision.
- 2) Any correspondence (including phone logs, emails, written notes, or electronic documents) generated with respect to the decision to enforce the gift tax against contributions to 501(c)(4) organizations, including correspondence between IRS employees (including both career employees and political appointees), or between or among the IRS, the Department of the Treasury, the Office of the White House Counsel, the Office of the White House Press Secretary, the Office of White House Political Affairs, and the Executive Office of the President.
- 3) Any correspondence (including phone logs, emails, written notes, or electronic documents) generated with respect to the proposed executive order requiring disclosure of political contributions by potential government contractors, or enforcement actions against 501(c)(4) organizations by the Securities and Exchange Commission, the Federal Communications Commission, and the Federal Election Commission. Please include correspondence between IRS employees (including both career employees and political appointees), or between or among the IRS, the Department of the Treasury, the Securities and Exchange Commission, the Federal Communications Commission, the Federal Election Commission, the Office of the White House Counsel, the Office of the White House Press Secretary, the Office of White House Political Affairs, and the Executive Office of the President.

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- 4) Any analysis generated, requested, or obtained by IRS regarding the First Amendment implications of applying the gift tax to 501(c)(4) contributions.

Thank you for your prompt attention to this matter. We are sure that you share our concerns regarding these enforcement decisions. It is not only imperative that taxpayers are able to rely on consistent and foreseeable enforcement action from the IRS. It is also essential that citizens have confidence that those decisions are never influenced by political considerations.

We would appreciate a response to this letter before May 31, 2011. Should you have any questions regarding this letter, please contact either Brendan Dunn or Jesse Baker of the Finance Committee staff at 202-224-4515.

Sincerely,



Orrin G. Hatch



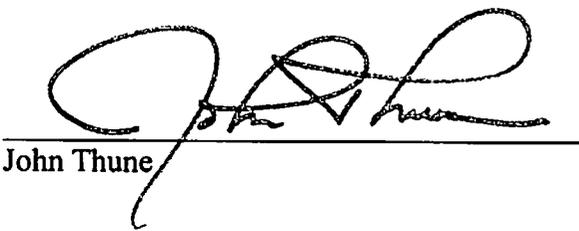
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