

Exhibit A

Known Correspondence Between Senator Carl Levin and IRS Officials

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

March 30, 2012

MICHAEL L. ALEXANDER, STAFF DIRECTOR
NICHOLAS A. ROSSI, MINORITY STAFF DIRECTOR

VIA U.S. MAIL & EMAIL (Floyd.Williams@IRS.gov)

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

RECEIVED

MAR 30 2012

CONG. CORR. BR
CL:LA

Dear Commissioner Shulman:

Some entities claiming tax-exempt status as social welfare organizations under 26 U.S.C. §501(c)(4) appear to be engaged in political activities more appropriate for political organizations claiming tax-exempt status under 26 U.S.C. §527. Because of the urgency of the issues involved in this matter, please provide the following information by April 20, 2012.

- (1) Are entities seeking tax-exempt status under Section 501(c)(4) required to submit an application to the IRS for review and approval, or can they hold themselves out as having that tax-exempt status without filing an application or undergoing IRS review?
- (2) For entities that submit an application for tax-exempt status under Section 501(c)(4), please indicate:
 - (a) the approximate average number of days between the date on which an entity submits an application for 501(c)(4) tax-exempt status and the date on which that application is approved or denied;
 - (b) if it is not provided on a routine basis, approximately what percentage of such applicants receive an IRS questionnaire seeking information about any political activities, and how the IRS determines whether and when to send that questionnaire; and
 - (c) approximately how many days after an application is filed that questionnaire is typically sent.
- (3) A 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, copy attached, made public in connection with a Senate investigation into federal election campaigns, indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)." and "benefit[s] select individuals or groups, instead of the community as a whole."

Is it still the position of the IRS that a 501(c)(4) organization cannot engage in any partisan political activity, even as a secondary activity?

- (4) Is it the position of the IRS that an entity claiming tax-exempt status under Section 501(c)(4) can engage in nonpartisan political activity as a secondary activity, and that political activity can consume up to 49% of the entity's expenditures and resources?
- (5) A Treasury regulation applicable to 501(c)(4) organizations states: "The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office." Treas.Reg. §1.501(c)(4)-1(a)(2)(ii). Would the IRS generally view it as a violation of that regulation if a 501(c)(4) organization:
 - (a) made a cash contribution to a political organization which is tax-exempt under Section 527 and functions as a campaign committee to elect a particular candidate to public office?
 - (b) made a cash contribution to a political action committee which was established under the Federal Election Campaign Act (FEC Act) and which routinely makes cash contributions to campaign committees, each of which was established to elect a particular candidate to public office?
 - (c) made a cash contribution to a political action committee or Section 527 political organization which makes independent expenditures on behalf of or in opposition to one or more candidates for public office?
 - (d) made a cash contribution to a national political party which engages in partisan political campaigns to elect multiple candidates from the same political party to public office?
 - (e) made a cash contribution to a political action committee or Section 527 political organization which is engaged in partisan political activity, but does not campaign on behalf of or in opposition to any particular candidate for public office?
 - (f) made a cash contribution to a political action committee or Section 527 political organization which is engaged in nonpartisan political activity and does not campaign on behalf of or in opposition to any particular candidate for public office?
- (6) Would the IRS generally view it as a violation of Treasury Regulation §1.501(c)(4)-1(a)(2)(ii), if a 501(c)(4) organization were to coordinate its political activities with a campaign committee, political action committee, or national political party? Please explain.

- (7) I understand that some persons have petitioned the Treasury Department to clarify or revise Treasury Regulation §1.501(c)(4)-1(a)(2)(ii). Please indicate whether the IRS plans to engage in such a rulemaking, whether it would first solicit comments on what should be included in that rulemaking, and whether or when any such rulemaking effort has been scheduled to begin.
- (8) If the IRS were to deny an entity's request to be treated as tax exempt under Section 501(c)(4), would the IRS automatically apply corporate income taxes to that entity or would it allow the entity to apply for tax-exempt status on other grounds?
- (9) If the IRS were to determine that an entity was impermissibly participating in partisan political activity, does the IRS have unilateral authority to reclassify it as a Section 527 political organization instead of a Section 501(c)(4) social welfare organization?
- (10) If an entity were denied tax-exempt status by the IRS under Section 501(c)(4), how would past contributions and income earned on those funds generally be treated under the tax code?
- (11) What considerations does the IRS use to determine when an entity that is denied tax-exempt status under Section 501(c)(4) should be subject to a penalty? What penalties are available and how are they calculated?
- (12) Please provide a copy of the standard questionnaire that the IRS sends to entities claiming tax-exempt status under Section 501(c)(4) to obtain information about their political activities. In addition, please provide any written guidance provided to IRS agents regarding the issue of political activity in connection with Section 501(c)(4).
- (13) Please indicate how many letter rulings have been issued by the IRS since January 1, 2007, to deny or revoke the tax-exempt status of an organization under Section 501(c)(4) due to involvement with partisan or nonpartisan political activity. If the IRS has issued 10 or less such letter rulings, please provide copies of all such letters. If the IRS has issued more than 10 such letter rulings, please provide a sample containing discussions of the widest variety of issues related to the denial of tax-exempt status under Section 501(c)(4) due to partisan or nonpartisan political activity.

Thank you for your assistance on this matter. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110.

Sincerely,



Carl Levin
Chairman
Permanent Subcommittee on Investigations



DEPUTY COMMISSIONER

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

June 4, 2012

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Senate Committee on Homeland Security
and Government Affairs
United States Senate
Washington, D.C. 20515

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated March 30, 2012, requesting information about the tax-exempt sector. We appreciate your interest and support of the IRS efforts in the administration of the tax law as it applies to tax-exempt organizations. This response follows the telephone conversation held with your staff on May 4, 2012.

Question 1. Are entities seeking tax-exempt status under Section 501(c)(4) required to submit an application to the IRS for review and approval, or can they hold themselves out as having tax-exempt status without filing an application or undergoing IRS review?

The law allows section 501(c)(4) organizations to hold themselves out as tax-exempt. Organizations also can apply for IRS recognition as tax-exempt. Whether an organization is self-declared under section 501(c)(4) or has been determined by the IRS to meet the requirements of section 501(c)(4), the organization must file Form 990 annual information returns.

Question 2.

To assist in responding to your specific sub-questions, we are providing background information about our system for processing applications for tax-exempt status, as well as the statutory disclosure rules that govern public inspection of IRS documents relating to tax-exempt organizations.

Application Process

All applications for tax-exempt status, including applications for status under section 501(c)(4), are filed with a centralized IRS Submission Processing Center, which enters the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent to the Exempt Organizations (“EO”) Determinations office in Cincinnati, Ohio for initial technical screening.

This technical screening is conducted by experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case.¹

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances set forth in the application, the revenue agent requests additional information and documentation to complete the file pertaining to the exempt status application materials² (the so-called “administrative record”) and makes a determination. Where an application for exemption presents issues that require further development to complete the application record, the revenue agent engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and allows the IRS to obtain all the information relevant to the determination.

¹ Enclosure A describes the criteria used to determine the appropriate level of experience.

² The application for recognition of tax exempt status, any papers submitted in support of the application, and any letter or other document issued by the IRS with respect to the application. See IRC § 6104(a), (d)(5).

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, in these cases, EO Technical (an office of higher graded specialists in Exempt Organizations), in consultation with the IRS Office of Chief Counsel, may develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

It is important to develop a complete administrative record for the application. Because the administrative record must either support exemption or denial, it is important for the record to be complete. If the application is approved, not only is the administrative record made publicly available (with certain limited exceptions outlined below), but organizations that act as described in the administrative record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Office of Appeals. The Appeals Office, which is independent of Exempt Organizations, reviews the complete administrative record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. It is to the organization's benefit to have all of its materials in the file in the event EO Determinations denies exemption and the organization seeks Appeals review. If, based on the information in the administrative record, the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, the organization may challenge its non-exempt status by paying any tax owed as a taxable entity, and seeking a refund in federal court.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations may refer the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. EO Technical staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record. If, upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a "conference of right" where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the administrative record is made publicly available, and if the organization acts as described in the application record, it has reliance on the IRS determination. If the application is denied, the applicant may challenge its non-exempt status by paying any tax owed as a taxable entity, and seeking a refund in federal court.

Statutory Disclosure Rules

Public disclosure regarding tax exempt organization filings is principally governed by sections 6103, 6104 and 6110 of the Internal Revenue Code. Generally, section 6103 of the Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by a provision of the Code. Section 6104 of the Code requires the IRS to make certain materials available for public inspection, including an organization's approved application for recognition of tax exemption and Form 990 annual information returns.³ If the IRS approves an organization's application for tax-exempt status, section 6104(a) requires that the application and supporting materials be made available for public inspection. The only exception to that requirement is found in section 6104(a)(1)(D), which exempts from disclosure information that the IRS determines relates to any "trade secret, patent, process, style of work, or apparatus of the organization" that would adversely affect the organization or information that could adversely affect national defense.

The long-standing statutory requirements regarding exemption applications, including Form 1024, are separate from those requiring public availability of Form 990 annual information returns, which are contained in section 6104(b). Under section 6104(b), Form 990 annual information returns are also subject to public inspection, with the sole exception of donor information contained in Schedule B of the Form 990. The withholding of names and addresses of donors from public disclosure applies only to Form 990; this exception does not extend to information obtained from Form 1024 and supporting materials.⁴

In light of the statutory requirement to make approved applications public, organizations are notified that information they provide will be available for public inspection on page two of the Form 1024 instructions. This notice is reiterated in any development letters sent to the organizations. The administrative record of approved applications, including the application, supporting documents and correspondence between the applicant and the IRS are available upon request.

Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information will be open to public inspection, with certain identifying and other information redacted.

³ The disclosure rules have been in place since 1958, and the legislative history provided the following rationale for public disclosure of exemption applications: "[the] committee believes that making these applications available to the public will provide substantial additional aid to the Internal Revenue Service in determining whether organizations are actually operating in the manner in which they have stated in their applications for exemption." H.R. Rep. No. 85-262, at 41-42 (1957). In 1987, Congress added what is now section 6104(d) to the Code, that requires organizations to make their returns available to the public, and in 1996 extended this rule to application materials.

⁴ The withholding exception does not apply to donor information for organizations that file Form 990-PF or to those section 527 organizations that are required to file Form 990 or 990-EZ.

For entities that submit an application for tax-exempt status under Section 501(c)(4), please indicate:

- (a) the approximate average number of days between the date on which an entity submits an application for 501(c)(4) tax-exempt status and the date on which the application is approved or denied;**

The average case processing time for determination cases closed in FY2011 was 104 days. However, it is difficult to predict how long it will take to fully process any specific application. Case processing time can vary greatly depending on a number of factors, including whether the case can be closed through technical screening or requires full development, the availability of an agent with the appropriate experience level to fully develop the application, the particular issues and individualized facts and circumstances presented in the application, the back and forth dialogue between the revenue agent and the applicant to fully develop the application, and whether a case is transferred to EO Technical.

- (b) if it is not provided on a routine basis, approximately what percentage of such applicants receive an IRS questionnaire seeking information about any political activities, and how the IRS determines whether and when to send that questionnaire; and**

We understand that the reference in your letter to "questionnaire" is intended to relate to development letters the IRS sends to organizations in the ordinary course of the application process to obtain the information as the IRS deems necessary to make a determination whether the organization meets the legal requirements for tax-exempt status. There is no standard questionnaire used in the determinations process seeking information about political activities.

The IRS contacts the organization and solicits additional information when the organization does not provide sufficient information in response to the questions on the Form 1024 to make a determination or if issues are raised by the application. When an application needs further development, the case is assigned to a revenue agent with the appropriate level of experience for the issues involved in the application.

The general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual. Although there is a template letter that describes the general information on the case development process, the letter does not, and could not, specify the information to be requested from any particular organization because of the broad range of possible facts. Enclosure B is a copy of the template letter.

The amount and nature of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are attached to the above described general template letter. With certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, may develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination regarding the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application.

The below chart provides the total number of applications closed for FY 2008-2011,⁵ as well as preliminary information for part of 2012.⁶ The below chart provides the percentage of all exemption applications closed each year through the technical screening process (i.e., no development letters sent).

	Fiscal Year				
	2008	2009	2010	2011	2012
Total number of applications closed	84,220	77,305	65,590	61,004	28,570
Percentage of applications closed through technical screening	59%	57%	56%	60%	70%

Although we are able to produce the number of cases closed during this time period that received development letters, our systems do not track the specific types of questions asked in the development letters for these cases. Therefore, manual review of each file would be necessary to determine the particular organization and the development letters sent.

⁵ Reports of the IRS data requested are created and published by Statistics of Income (SOI) Division. The IRS Data Book provides information on IRS activities conducted during a fiscal year period (October 1 through September 30). Data Book information is updated annually. This SOI data is from IRS Data Book, Table 24, Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (and subsequent fiscal years 2009-2011) at <http://www.irs.gov/taxstats/index.html>. This data reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

⁶ The data for FY 2012 reflects the preliminary information available through the second quarter from October 1, 2011 through March 30, 2012. SOI Data Book information is updated annually, with the complete FY 2012 information expected in March 2013.

(c) approximately how many days after an application is filed that questionnaire is typically sent.

As mentioned above, organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case. Once the case is assigned, the revenue agent notifies the organization and reviews the application.

Based upon the established precedent and the facts and circumstances set forth in the application, the revenue agent will request additional information and documentation to complete the file. If applicable, the revenue agent will coordinate with EO Technical and Chief Counsel to develop requests for information to be issued to the organization. For all of these reasons, it is difficult to predict the time frame between the filing of an application for tax-exemption and the issuance of a development letter.

Question 3. A 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, copy attached, made public in connection with a Senate investigation into federal election campaigns, indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that “partisan political activity does not promote social welfare as defined in section 501(c)(4),” and “benefit[s] select individuals or groups, instead of the community as a whole.” Is it still the position of the IRS that a 501(c)(4) organization cannot engage in any partisan political activity, even as a secondary activity?

As noted above, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status and supporting materials only after the organization has been recognized as exempt. Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter is subject to public inspection, with identifying and other information redacted, to assist the public in understanding the IRS' reasoning while also protecting the identity of the organization. Although you reference what appears to be a proposed denial letter that may have been made available publicly by sources other than the IRS, IRS Disclosure Counsel has advised that section 6103 continues to apply and we are legally prohibited from discussing taxpayer information.⁷ However, we are able to respond to your question generally.

To qualify for exemption as a social welfare organization described in section 501(c)(4),

⁷ Section 6103(f) of the Code sets forth the means by which congressional committees may obtain access to return and return information (that is not otherwise made publicly available under sections 6104 and 6110). We are available to discuss these rules in more detail with your staff.

the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual.⁸ The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.⁹ Nevertheless, a section 501(c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare.¹⁰ The regulations do not impose a complete ban on political activity by section 501(c)(4) organizations.¹¹ Whether an organization meets the requirements of section 501(c)(4) depends upon all of the facts and circumstances of the particular applicant, and no one factor is determinative.

A revenue agent must first determine whether activities undertaken by the organization primarily further an exempt purpose. If the organization is engaged in some activities that do not promote social welfare, then the agent must review the scope of the activities to determine whether, based on all the facts and circumstances, the organization's exempt activities are the primary activities. If the application is unclear or not sufficiently detailed as to whether the primary activity conducted by the organization is exempt social welfare activity, the revenue agent will need to follow-up on this issue in a development letter.

It is also important to note that section 6110(k)(3) provides that determination letters (including both proposed and final letters) may not be used or cited as precedent. Determination letters are based on the specific facts and circumstances of the applicant.

Question 4. Is it the position of the IRS that an entity claiming tax-exempt status under section 501(c)(4) can engage in nonpartisan political activity as a secondary activity, and that political activity can consume up to 49% of the entity's expenditures and resources.

To determine whether an organization operates primarily for the promotion of social welfare, the courts and the IRS consider all the facts and circumstances, including but not limited to the organization's stated purposes, expenditures, principal source of revenue, number of employees and volunteers, and time and effort.¹² The IRS has taken no position on a fixed percentage or any one factor in precedential guidance.

⁸ IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1.

⁹ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

¹⁰ Rev. Rul. 81-95, 1981-1 C.B. 332.

¹¹ Rev. Rul. 81-95, 1981-1 C.B. 332.

¹² Treas. Reg. § 1.501(c)(4)-1(a)(2) (No percentage test established). Rev. Rul. 68-45, 1968-1 C.B. 259 (Principal source of income does not determine an organization's primary activity under § 501(c)(4); all the facts and circumstances are considered). See, generally *Haswell v. United States*, 500 F.2d 1133, 1142, 1147 (Cl. Ct. 1974) ("A percentage test . . . is not appropriate. Such a test obscures the complexity of balancing the organization's activities in relation to its objectives and circumstances in the context of the totality of the organization."). See, *Contracting Plumbers v. United States*, 488 F.2d 684, 686 (2d Cir. 1973) (multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). See generally *Seasongood v. Commissioner*, 227 F.2d 907, 909, 912 (6th Cir. 1955) (expenditures, employees, and organization's time and effort considered).

Question 5. A Treasury regulation applicable to 501(c)(4) organizations states: “The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office.” Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii). Would the IRS generally view it as a violation of that regulation if a 501(c)(4) organization:

- (a) Made a cash contribution to a political organization which is tax-exempt under Section 527 and functions as a campaign committee to elect a particular candidate to public office?**
- (b) Made a cash contribution to a political action committee which was established under the Federal Election Campaign Act (FEC Act) and which routinely makes cash contributions to campaign committees, each of which was established to elect a particular candidate to public office?**
- (c) Made a cash contribution to a political action committee or Section 527 political organization which makes independent expenditures on behalf of or in opposition to one or more candidates for public office?**
- (d) Made a cash contribution to a national political party which engages in partisan political campaigns to elect multiple candidates from the same political party to public office?**
- (e) Made a cash contribution to a political action committee or Section 527 political organization which is engaged in partisan political activity, but does not campaign on behalf of or in opposition to any particular candidate for public office?**
- (f) Made a cash contribution to a political action committee or Section 527 political organization which is engaged in nonpartisan political activity and does not campaign on behalf of or in opposition to any particular candidate for public office?**

As noted previously, a section 501(c)(4) organization may directly or indirectly participate or intervene in a political campaign as long as it is primarily engaged in activities that promote social welfare. Treasury regulations provide that promotion of social welfare does not include certain activities, including political campaign intervention.¹³ This regulation does not prohibit a section 501(c)(4) organization from engaging in such activity. Rather, the political campaign intervention activity does not count towards the organization's exempt activities that promote social welfare. Therefore, if the organization engages in such activity, it has “violated” no rule under the regulations. As discussed, all facts and circumstances are relevant in determining whether the requirements for tax exemption are ultimately satisfied.

The same legal requirements apply in each of the facts patterns articulated in your questions. With respect to each of the fact patterns that you specify, while depending

¹³ Treas. Reg. § 1.501(c)(4)-1(a)(2)(ii).

on the facts and circumstances, political activity would not be for a social welfare purpose, the organization does not violate any Internal Revenue Code rule applicable to section 501(c)(4) organizations if it engages in such activity. All the facts and circumstances need to be considered to determine whether this activity affects the section 501(c)(4) organization's tax-exempt status.¹⁴

Question 6. Would the IRS generally view it as a violation of Treasury Regulation § 1.501(c)(4)-1(a)(2)(ii), if a 501(c)(4) organization were to coordinate its political activities with a campaign committee, political action committee, or national political party? Please explain.

As stated, section 501(c)(4) organizations may engage in some political campaign activity provided that such intervention, along with other activity that does not promote social welfare, does not constitute the organization's primary activities. The tax law does not explicitly prohibit a section 501(c)(4) organization from coordinating political activity.

However, such coordination could raise issues of primary activity, inurement or private benefit. Thus, for example, if an organization's activities are conducted primarily for the benefit of a political party or any other private group of individuals, rather than the community as a whole, the organization is not operated primarily to promote social welfare. Accordingly, conferring a sufficient amount of private benefit on select individuals will preclude exemption under section 501(c)(4) if that private benefit is the primary activity of the organization.¹⁵

Question 7. I understand that some persons have petitioned the Treasury Department to clarify or revise Treasury Regulation § 1.501(c)(4)-1(a)(2)(ii). Please indicate whether the IRS plans to engage in such a rulemaking, whether it would first solicit comments on what should be included in that rulemaking, and whether or when any such rulemaking effort has been scheduled to begin.

The IRS, in collaboration with the Treasury Department's Office of Tax Policy ("Treasury"), annually develops a list of the guidance that Treasury and the IRS intend to work on during the upcoming guidance plan year. Certain types of guidance are issued in proposed form to allow an opportunity for public comment.

The IRS is aware of the current public interest in this issue and will seriously consider any proposed changes. Treasury and the IRS have not yet established the list of the

¹⁴ Rev. Rul. 68-45, 1968-1 C.B. 259. See also, e.g. *Contracting Plumbers Coop. Restoration Corp. v. U.S.*, 488 F.2d 684 (2d Cir. 1973) (There are multiple factors relevant in applying this standard, including formative history, stated purposes, and actual operations). Note that tax may apply in certain cases under Internal Revenue Code section 527(f).

¹⁵ IRC § 501(c)(4); Treas. Reg. § 1.501(c)(4)-1. See *Contracting Plumbers Coop. Restoration Corp. v. U.S.*, 488 F.2d 684, 687 (2d Cir. 1973) (Organization was not primarily devoted to the common good when it provided substantial and different benefits to both the public and its private members). *American Campaign Academy v. Commissioner*, 92 T.C. 1053, 1078 (1989), a section 501(c)(3) case, held that an organization was not operated exclusively for exempt purposes when it conferred substantial private benefits on a political party and its candidates.

guidance that Treasury and the IRS intend to work on from July 1, 2012, through June 30, 2013. The selection of items for the 2012-2013 Guidance Priority List will be made in collaboration with Treasury after review and evaluation of comments received.

Question 8. If the IRS were to deny an entity's request to be treated as tax-exempt under Section 501(c)(4), would the IRS automatically apply corporate income taxes to that entity or would it allow the entity to apply for tax-exempt status on other grounds?

When a section 501(c)(4) organization receives a final determination letter denying its application for tax-exempt status, the letter advises the organization that it must file Federal income tax returns for the years listed in the letter within 30 days of the issuance of the denial letter, unless the organization requests an extension of time to file. Enclosure C is a copy of this standard final denial letter.

If the revenue agent assigned to the case believes that the organization may not meet the requirements of a section 501(c)(4) organization, but may meet the requirements of another tax-exempt provision, the issue of whether the organization wants to be considered for exemption under that other provision could be discussed with the organization through development letters prior to the final resolution of the application. If the organization indicates that it does not want to proceed under the other provision and continues to pursue section 501(c)(4) exemption, the IRS would deny the application and the organization would be treated as a taxable entity.

Please note that some organizations withdraw their application for exemption when they learn that a denial is forthcoming. Others do not formally withdraw, but do not respond to requests for information necessary to develop their applications. After additional failed attempts to get the information from the applicant, those applications are closed as "failure to establish."

Question 9. If the IRS were to determine that an entity was impermissibly participating in partisan political activity, does the IRS have unilateral authority to reclassify it as a Section 527 political organization instead of a Section 501(c)(4) social welfare organization?

Whether an organization fails to qualify under section 501(c)(4) does not determine whether it is a political organization under section 527. Section 527 applies to a party, committee, or other organization that is organized and operated primarily for the purpose of accepting contributions or making expenditures for an exempt function (as defined in section 527(e)(2)). Subject to certain exceptions, to be tax-exempt under section 527, a political organization is required to give notice electronically to the Service.¹⁶

¹⁶ Section 527(i)(1); Rev. Rul. 2003-49, 2003-1 C.B. 903. Section 527 also provides for the taxation of certain organizations that do not provide notice to the IRS. IRC § 527(f), (i)(4).

As noted above, if the revenue agent assigned to the case believes that the organization may not meet the requirements of a section 501(c)(4) organization, but may meet the requirements of another tax-exempt provision, the issue of whether the organization wants to be considered for exemption under that other provision could be discussed with the organization through development letters prior to the final resolution of the application. If the organization indicates that it does not want to proceed under the other provision and continues to pursue section 501(c)(4) exemption, the IRS would deny the application and the organization would be treated as a taxable entity.

Question 10. If an entity were denied tax-exempt status by the IRS under Section 501(c)(4), how would past contributions and income earned on those funds generally be treated under the tax code?

If an organization is denied tax-exempt status, the organization is a taxable entity as of the date the organization originated. The final adverse determination letter states that the organization is required to file Federal income tax returns, generally a Form 1120, U.S. Corporation Income Tax. The tax treatment of the organization's contributions and other income is determined under normal rules of Subtitle A.

Question 11. What considerations does the IRS use to determine when an entity that is denied tax-exempt status under Section 501(c)(4) should be subject to a penalty? What penalties are available and how are they calculated?

There is no penalty specifically applicable to an organization as a result of a denial of tax-exempt status. An organization that is denied tax-exempt status is advised in the final denial letter that it has 30 days from the final denial letter to either file its income tax returns or request additional time to file the taxable returns. If the organization timely filed Form 990 annual returns during the period of time that the application for tax-exempt status was pending and timely files its taxable returns once tax-exemption is denied, the organization will not be subject to penalties. If the organization does not timely file taxable returns, the organization may be subject to failure to file or failure to pay penalties under section 6651 of the Code.

The failure to file penalty under section 6651(a)(1) of the Code, is calculated at a rate of 5 percent of the amount required to be shown as tax on the return if the failure to file is for not more than 1 month, with an additional 5 percent for each additional month or fraction thereof that the failure to file continues, not to exceed 25 percent in the aggregate.

The failure to pay tax penalty under section 6651(a)(2) of the Code, is calculated at a rate of 0.5 percent of the amount of the tax shown on the return if the failure to pay is for not more than 1 month, with an additional 0.5 percent for each additional month or fraction thereof that the failure to pay continues, not to exceed 25 percent in the aggregate.

Penalties assessed may be abated if the organization can show that the failure to file or failure to pay was due to reasonable cause and not due to willful neglect.¹⁷

Question 12. Please provide a copy of the standard questionnaire that the IRS sends to entities claiming tax-exempt status under Section 501(c)(4) to obtain information about their political activities. In addition, please provide any written guidance provided to IRS agents regarding the issue of political activity in connection with Section 501(c)(4).

There is no standard questionnaire used to obtain information about political activities. Although there is a template development letter that describes the general information on the case development process, the letter does not specify the information to be requested from any particular organization. Enclosure B is a copy of the template letter. The amount and type of development necessary to process a section 501(c)(4) application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are then attached to the above described general template letter.

In connection with recent cases, EO Technical prepared a draft educational guide sheet on the issue of political activity for section 501(c)(4) applications that was shared for comment with some employees in EO Determinations. That guide sheet was neither mandated nor finalized.

Question 13. Please indicate how many letter rulings have been issued by the IRS since January 1, 2007, to deny or revoke the tax-exempt status of an organization under Section 501(c)(4) due to involvement with partisan or nonpartisan political activity. If the IRS has issued 10 or less such letter rulings, please provide copies of all such letters. If the IRS has issued more than 10 such letter rulings, please provide a sample containing discussions of the widest variety of issues related to the denial of tax-exempt status under Section 501(c)(4) due to partisan or nonpartisan political activity.

Preliminarily, as previously stated, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision of the Internal Revenue Code. Section 6104(a) of the Code permits public disclosure of an application for recognition of tax-exempt status and supporting materials only after the organization has been recognized as exempt. Under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information is subject to public inspection, with identifying and other information redacted, to assist the public understand the IRS reasoning while also protecting the identity of the organization.

¹⁷ IRC § 6651(a).

The application process for tax-exempt status does not involve the revocation of tax-exemption; rather, it only concerns the denial of applications. IRS data on the denial of applications is kept in reports published by the IRS Statistics of Income (SOI) Division. The Data Book provides information on IRS activities conducted during a fiscal year period (October 1 through September 30). We have attached these reports as Enclosures D-1 through D-5. For your convenience, however, we are replicating the total number of determination denials for section 501(c)(4) organizations for FY 2007-2012 in the chart below.

Note that the number of denials does not reflect a full picture of applications not approved. Some organizations withdraw their application for exemption when they learn that a denial is forthcoming. Others do not formally withdraw, but do not respond to requests for information necessary to develop their applications. After additional failed attempts to get the information, those applications are closed as "failure to establish."

Fiscal Year	The Number of Social Welfare Organization Applications that were Denied
2007	8
2008	*
2009	3
2010	3
2011	6
2012 ¹⁸	6

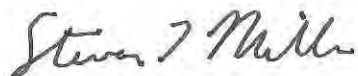
* Fewer than 3

Please note that although IRS automated systems track the numbers of applications closed as denied, they do not track the names of the applicant organizations or the reasons for the denials. Absent manual review of the files, we are unable to state whether any of these denials were issued due to involvement with partisan or nonpartisan political activity.

¹⁸ The data for FY 2012 reflects the preliminary information available for October 1, 2011 through April 11, 2012. SOI Data Book information is updated annually, with the complete FY 2012 information expected in March 2013.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,

A handwritten signature in cursive script that reads "Steven T. Miller".

Steven T. Miller
Deputy Commissioner for Services and
Enforcement

Enclosures

**EXEMPT ORGANIZATION DETERMINATIONS CASE ASSIGNMENT GUIDE
CASE GRADING CRITERIA**

CASE COMPLEXITY FACTORS	GRADE LEVEL DISTINCTIONS		
	GS-11	GS-12	GS-13
Analysis of Application	Application is basic; facts regarding nature and purpose are easily discernible. Private benefit/inurement issues unlikely but possible.	Application is complex and facts must be determined through analysis and questioning of applicant. Private benefit/inurement issues possible.	Application is extremely complex (e.g., involves inurement, private benefit, related entities) and significant additional documentation is required of applicant.
Factual Complexity of Issues	Issues are of average complexity and sensitivity. Established case development methods and procedures are usually adequate.	Issues may be sensitive or involve controversy. Case development methods and procedures must be adapted to case.	Case development methods and procedures must be adapted to unique situations. Issues are novel and unusual and involve the largest and most complex EO's.
Application of Tax Law	Tax laws are in most cases applicable but occasionally involve unusual interpretation and application.	Tax laws are not always directly applicable. Research and analysis are required to establish proper interpretation and use of precedents.	Tax laws or other legal issues involve points of law without precedent or with conflicting precedents. Research and analysis are necessary to establish significant similarities with related issues.
Interpersonal Skills	Contacts are with representatives of applicants, organization members and contributors. Tact and diplomacy are required to resolve and elicit information and resolve questions and problems.	Contacts are with a variety of EO representatives and officers of considerable prominence in the community including accountants and legal representatives. Considerable tact and skillful negotiations are necessary since issues discussed are sometimes controversial and sensitive.	Contacts are with officials of very large or prominent organizations and persons with national reputations in business, legal and accounting circles and others of outstanding political, social or economic influence. Considerable tact and discretion are required for resolution of issues.
Impact of Work	Determination decision may impact other organizations; applicant's sole source of income may be from donations; and, the likelihood of media attention is limited.	Determination decision may affect larger organizations of regional or national stature; applicant's income is from a variety of sources; and media attention is likely.	Determination decision may impact other organizations nationwide; applicant has significant resources and determination decision may have significant social and economic implications with recurring effects in prior or subsequent tax years; and, widespread media attention is probable.

Internal Revenue Service
P.O. Box 2508
Cincinnati, OH 45201

Department of the Treasury

Date: *

*
*
*
*

Employer Identification Number:

XX-XXXXXXX

Person to Contact – Group #:

Specialist Name - XXXX

ID# XXXXXXX

Contact Telephone Numbers:

XXX-XXX-XXXX Phone

XXX-XXX-XXXX Fax (859-669-3783 for TEDS)

Cases)

Response Due Date:

*

Dear Sir or Madam:

We need more information before we can complete our consideration of your application for exemption. Please provide the information requested on the enclosed Information Request by the response due date shown above. Your response must be signed by an authorized person or an officer whose name is listed on your application. Also, the information you submit should be accompanied by the following declaration:

Under penalties of perjury, I declare that I have examined this information, including accompanying documents, and, to the best of my knowledge and belief, the information contains all the relevant facts relating to the request for the information, and such facts are true, correct, and complete.

If we approve your application for exemption, we will be required by law to make the application and the information that you submit in response to this letter available for public inspection. Please ensure that your response doesn't include unnecessary personal identifying information, such as bank account numbers or Social Security numbers, that could result in identity theft or other adverse consequences if publicly disclosed. If you have any questions about the public inspection of your application or other documents, please call the person whose name and telephone number are shown above.

To facilitate processing of your application, please attach a copy of this letter and the enclosed Application Identification Sheet to your response and all correspondence related to your application. This will enable us to quickly and accurately associate the additional documents with your case file. Also, please note the following important response submission information:

- Please don't fax and mail your response. Faxing and mailing your response will result in unnecessary delays in processing your application. Each piece of correspondence submitted (whether fax or mail) must be processed, assigned, and reviewed by an EO Determinations specialist.
- Please don't fax your response multiple times. Faxing your response multiple times will delay the processing of your application for the reasons noted above.

Name
EIN

- Please don't call to verify receipt of your response without allowing for adequate processing time. It takes a minimum of three workdays to process your faxed or mailed response from the day it is received.

If we don't hear from you by the response due date shown above, we will assume you no longer want us to consider your application for exemption and will close your case. As a result, the Internal Revenue Service will treat you as a taxable entity. If we receive the information after the response due date, we may ask you to send us a new application.

*****DELETE IF NOT A 501(c)(3) APPLICATION*****

In addition, if you don't respond to the information request by the due date, we will conclude that you have not taken all reasonable steps to complete your application for exemption. Under Internal Revenue Code section 7428(b)(2), you must show that you have taken all the reasonable steps to obtain your exemption letter under IRS procedures in a timely manner and exhausted your administrative remedies before you can pursue a declaratory judgment. Accordingly, if you fail to timely provide the information we need to enable us to act on your application, you may lose your rights to a declaratory judgment under Code section 7428.

*****DELETE IF NO POWER OF ATTORNEY*****

We have sent a copy of this letter to your representative as indicated in Form 2848, Power of Attorney and Declaration of Representative.

If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,

Specialist Name
Exempt Organizations Specialist

Enclosure: Information Request
Application Identification Sheet

Additional Information Requested:

Name
EIN

*

PLEASE DIRECT ALL CORRESPONDENCE REGARDING YOUR CASE TO:

Selective:

(EDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 2508
Cincinnati, OH 45201
ATT: Specialist Name
Room XXXX
Group XXXX

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
550 Main St, Federal Bldg.
Cincinnati, OH 45202
ATT: Specialist Name
Room XXXX
Group XXXX

(TEDS Cases)

US Mail:

Internal Revenue Service
Exempt Organizations
P. O. Box 12192
Covington, KY 41012-0192

Street Address for Delivery Service:

Internal Revenue Service
Exempt Organizations
201 Rivercenter Blvd
ATTN: Extracting Stop 312
Covington, KY 41011



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Date:

Contact Person: (Specialist Name)

Identification Number: (Specialist ID #)

Contact Number: (Specialist Phone #)

Employer Identification Number:

Form Required To Be Filed:

Tax Years:

Third Party Communication

Date:

Category:

Comment [B1]: Delete this section if you do not have a Third Party Communication.

Dear Applicant:

This is our final determination that you do not qualify for exemption from Federal income tax as an organization described in Internal Revenue Code section 501(c)(). Recently, we sent you a letter in response to your application that proposed an adverse determination. The letter explained the facts, law and rationale, and gave you 30 days to file a protest. Since we did not receive a protest within the requisite 30 days, the proposed adverse determination is now final.

You must file Federal income tax returns on the form and for the years listed above within 30 days of this letter, unless you request an extension of time to file.

We will make this letter and our proposed adverse determination letter available for public inspection under Code section 6110, after deleting certain identifying information. Please read the enclosed Notice 437, *Notice of Intention to Disclose*, and review the two attached letters that show our proposed deletions. If you disagree with our proposed deletions, you should follow the instructions in Notice 437. If you agree with our deletions, you do not need to take any further action.

If you have any questions about this letter, please contact the person whose name and telephone number are shown in the heading of this letter. If you have any questions about your Federal income tax status and responsibilities, please contact IRS Customer Service at

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

1-800-829-1040 or the IRS Customer Service number for businesses, 1-800-829-4933. The IRS Customer Service number for people with hearing impairments is 1-800-829-4059.

Sincerely,

Lois G. Lerner
Director, Exempt Organizations
Rulings & Agreements

Enclosure
Notice 437
Redacted Proposed Adverse Determination Letter
Redacted Final Adverse Determination Letter

Letter 4040 (CG) (11-2005)
Catalog Number 47635Z

Table 24. Tax-Exempt Organization and Other Entity Applications or Disposals, by Type of Organization and Internal Revenue Code Section, Fiscal Year 2007

Type of organization, Internal Revenue Code section	Total applications or disposals	Approved	Disapproved	Other [1]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total	91,742	72,869	1,628	17,245
Section 501 (c) by subsection, total [2]	91,689	72,856	1,628	17,205
(1) Corporations organized under act of Congress	d	0	d	d
(2) Title-holding corporations	158	111	d	d
(3) Religious, charitable, and similar organizations [3]	85,771	68,278	1,607	15,886
(4) Social welfare organizations	1,867	1,394	8	465
(5) Labor and agriculture organizations	233	188	0	45
(6) Business leagues	1,615	1,370	6	239
(7) Social and recreation clubs	1,036	711	d	d
(8) Fraternal beneficiary societies	25	16	0	9
(9) Voluntary employees' beneficiary associations	356	286	3	67
(10) Domestic fraternal beneficiary societies	44	21	0	23
(12) Benevolent life insurance associations	116	94	0	22
(13) Cemetery companies	174	156	0	18
(14) State-chartered credit unions	10	7	0	3
(15) Mutual insurance companies	d	21	d	d
(17) Supplemental unemployment benefit trusts	6	3	0	3
(19) War veterans' organizations	131	99	0	32
(25) Holding companies for pensions and other entities	106	101	0	5
Section 501 (d) Religious and apostolic associations	5	5	0	0
Section 521 Farmers' cooperatives	28	8	0	20
Nonexempt charitable trusts	20	0	0	20

d—Not shown to avoid disclosure about specific taxpayers. However, data are included in the appropriate totals.

[1] Includes applications withdrawn by the organization; applications which failed to provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the IRS National Office; IRS correction disposals; and others.

[2] No applications were filed for teachers' retirement funds [section 501(c)(11)]; corporations to finance crop operations [section 501(c)(16)]; employee-funded pension trusts [section 501(c)(18)]; black lung trusts [section 501(c)(21)]; multiemployer pension plans [section 501(c)(22)]; veterans' associations founded prior to 1880 [section 501(c)(23)]; trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) [section 501(c)(24)]; State-sponsored high-risk health insurance organizations [section 501(c)(26)]; and State-sponsored workers' compensation reinsurance organizations [section 501(c)(27)].

[3] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations, Rulings and Agreements, Determinations SE:T:EO:RA:D

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2008 (Revised March 2011)

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total (1)	Approved (2)	Disapproved (3)	Other [2] (4)
Tax-exempt organizations and other entities, total [3]	84,220	69,957	1,242	13,021
Section 501 (c) by subsection, total	84,180	69,943	1,240	12,997
(2) Title-holding corporations	114	93	0	21
(3) Religious, charitable, and similar organizations [4]	79,107	65,761	1,221	12,125
(4) Social welfare organizations	1,492	1,202	d	d
(5) Labor and agriculture organizations	269	235	0	34
(6) Business leagues	1,477	1,296	6	175
(7) Social and recreation clubs	894	691	d	d
(8) Fraternal beneficiary societies	20	11	d	d
(9) Voluntary employees' beneficiary associations	249	197	4	48
(10) Domestic fraternal beneficiary societies	40	18	d	d
(12) Benevolent life insurance associations	91	66	0	25
(13) Cemetery companies	155	148	d	d
(14) State-chartered credit unions	8	5	0	3
(15) Mutual insurance companies	26	15	d	d
(17) Supplemental unemployment benefit trusts	4	4	0	0
(19) War veterans' organizations	128	101	0	27
(25) Holding companies for pensions and other entities	106	100	0	6
Section 521 Farmers' cooperatives	14	d	d	d
Nonexempt charitable trusts	14	d	0	d

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals, and others.

[3] No applications were filed for corporations organized under an act of Congress (section 501(c)(1)); teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored high-risk health insurance organizations (section 501(c)(26)); State-sponsored workers' compensation reinsurance organizations (section 501(c)(27)); and religious and apostolic associations (section 501(d)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

NOTE: Revised March 2011 to correct errors attributed to a transition in reporting systems.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2009 (Revised March 2011)

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total	Approved	Disapproved	Other [2]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [3]	77,305	62,459	480	14,366
Section 501 (c) by subsection, total	77,221	62,392	480	14,349
(1) Corporations organized under an act of Congress	6	0	0	6
(2) Title-holding corporations	137	112	0	25
(3) Religious, charitable, and similar organizations [4]	70,624	56,943	472	13,209
(4) Social welfare organizations	1,922	1,507	3	412
(5) Labor and agriculture organizations	601	543	0	58
(6) Business leagues	1,960	1,742	d	d
(7) Social and recreation clubs	1,115	848	d	d
(8) Fraternal beneficiary societies	16	5	0	11
(9) Voluntary employees' beneficiary associations	257	210	d	d
(10) Domestic fraternal beneficiary societies	45	25	0	20
(12) Benevolent life insurance associations	76	56	0	20
(13) Cemetery companies	209	194	0	15
(14) State-chartered credit unions	d	d	0	0
(15) Mutual insurance companies	6	3	d	d
(17) Supplemental unemployment benefit trusts	6	d	0	d
(19) War veterans' organizations	175	142	0	33
(25) Holding companies for pensions and other entities	62	57	0	5
(27) State-sponsored workers' compensation reinsurance organizations	d	0	0	d
501 (d) Religious and apostolic associations	59	55	0	4
Section 521 Farmers' cooperatives	13	7	0	6
Nonexempt charitable trusts	12	5	0	7

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals; and others.

[3] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Security Act of 1974 (ERISA) (section 501(c)(24)); and State-sponsored high-risk health insurance organizations (section 501(c)(26)). Tax-exempt status for legal service organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

NOTE: Revised March 2011 to correct errors attributed to a transition in reporting systems.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2010

Type of organization, Internal Revenue Code section	Applications for tax-exempt status [1]			
	Total	Approved	Disapproved	Other [2]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [3]	65,590	53,693	517	11,380
Section 501 (c) by subsection, total	65,548	53,668	517	11,363
(1) Corporations organized under an act of Congress	6	d	0	d
(2) Title-holding corporations	155	117	0	38
(3) Religious, charitable, and similar organizations [4]	59,945	48,934	500	10,511
(4) Social welfare organizations	1,741	1,447	3	291
(5) Labor and agriculture organizations	310	273	0	37
(6) Business leagues	1,695	1,509	6	180
(7) Social and recreation clubs	884	710	d	d
(8) Fraternal beneficiary societies	16	11	0	5
(9) Voluntary employees' beneficiary associations	162	133	d	d
(10) Domestic fraternal beneficiary societies	37	18	d	d
(12) Benevolent life insurance associations	77	66	0	11
(13) Cemetery companies	155	148	0	7
(14) State-chartered credit unions	d	d	0	0
(15) Mutual insurance companies	16	8	4	4
(17) Supplemental unemployment benefit trusts	5	d	0	d
(19) War veterans' organizations	164	135	0	29
(25) Holding companies for pensions and other entities	177	151	0	26
(26) State-sponsored high risk health insurance organizations	d	0	0	d
Section 501 (d) Religious and apostolic associations	14	d	0	d
Section 521 Farmers' cooperatives	23	d	0	d
Nonexempt charitable trusts	5	0	0	5

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals, when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC office; IRS correction disposals; and others.

[3] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Retirement Income Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored workers' compensation reinsurance organizations (section 501(c)(27)); and the National Railroad Retirement Investment Trust (section 501 (c)(28)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[4] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

Table 24. Closures of Applications for Tax-Exempt Status, by Organization Type and Internal Revenue Code Section, Fiscal Year 2011

Type of organization, Internal Revenue Code section	Closures of applications for tax-exempt status [1]			
	Total	Approved [2]	Disapproved	Other [2, 3]
	(1)	(2)	(3)	(4)
Tax-exempt organizations and other entities, total [4]	61,004	54,713	217	6,074
Section 501(c) by subsection, total	60,980	54,701	217	6,062
(1) Corporations organized under an act of Congress	d	d	0	0
(2) Title-holding corporations	92	81	0	11
(3) Religious, charitable, and similar organizations [5]	55,319	49,677	205	5,437
(4) Social welfare organizations	1,777	1,559	6	212
(5) Labor and agriculture organizations	294	268	0	26
(6) Business leagues	1,655	1,542	4	109
(7) Social and recreation clubs	1,012	855	0	157
(8) Fraternal beneficiary societies	39	32	0	7
(9) Voluntary employees' beneficiary associations	153	123	0	30
(10) Domestic fraternal beneficiary societies	49	41	0	8
(12) Benevolent life insurance associations	91	81	0	10
(13) Cemetery companies	282	267	0	15
(14) State-chartered credit unions	5	d	0	d
(15) Mutual insurance companies	13	d	d	d
(17) Supplemental unemployment benefit trusts	d	d	0	0
(19) War veterans' organizations	177	153	0	24
(25) Holding companies for pensions and other entities	17	14	d	d
(27) State-sponsored workers' compensation reinsurance organizations	d	0	0	d
Section 501(d) Religious and apostolic associations	13	6	0	7
Section 521 Farmers' cooperatives	5	d	0	d
Nonexempt charitable trusts	6	d	0	d

d—Not shown to avoid disclosure of specific taxpayer data. However, data are included in the appropriate totals, when possible.

[1] Reflects all case closures for the Exempt Organizations Determinations function. These include not only initial applications for tax-exempt status, but also other determinations, such as public charity and private foundation status determinations, advance approval of scholarship grant procedures, and group determinations of tax-exempt status.

[2] Beginning with Fiscal Year 2010, IRS initiated a revised application procedure that allows additional time for application closures. Therefore, fewer applications are reported in the "Other" category and more applications are reported in the "Approved" category.

[3] Includes applications withdrawn by the organization; applications that did not provide the required information; incomplete applications; IRS refusals to rule on applications; applications forwarded to other than the Washington, DC, office; IRS correction disposals; and others.

[4] No applications were filed for teachers' retirement funds (section 501(c)(11)); corporations to finance crop operations (section 501(c)(16)); employee-funded pension trusts (section 501(c)(18)); black lung trusts (section 501(c)(21)); multiemployer pension plans (section 501(c)(22)); veterans' associations founded prior to 1880 (section 501(c)(23)); trusts described in section 4049 of the Employee Retirement Income Security Act of 1974 (ERISA) (section 501(c)(24)); State-sponsored high-risk health insurance organizations (section 501(c)(26)); and the National Railroad Retirement Investment Trust (section 501(c)(28)). Tax-exempt status for legal services organizations (section 501(c)(20)) was revoked effective June 20, 1992.

[5] Includes private foundations. Not all Internal Revenue Code section 501(c)(3) organizations are required to apply for recognition of tax exemption, including churches, integrated auxiliaries, subordinate units, and conventions or associations of churches.

SOURCE: Tax Exempt and Government Entities, Exempt Organizations.

CARL LEVIN
MICHIGAN

United States Senate

WASHINGTON, DC 20510-2202

June 13, 2012

RECEIVED

JUN 14 2012

**CONG. CORR. BR
CL:LA**

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Commissioner Shulman:

Thank you for the June 4, 2012, response by Steven Miller, Deputy Commissioner for Services and Enforcement, to my March 30, 2012, letter. Internal Revenue Code Section 501(c)(4) organizations are increasingly active in partisan political campaigns. These organizations, working in conjunction with independent expenditure committees, or "Super PACs" that can raise unlimited amounts of money from individuals, corporations and unions, are able to avoid revealing their funding sources by hiding behind their tax-exempt status. This trend of using our tax code to limit campaign disclosure is deeply troubling.

A 1997 letter from the IRS denying tax-exempt status to the National Policy Forum, which was included in my March 30 letter, indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501 (c)(4)," and that the applicant "benefit[s] select individuals or groups, instead of the community as a whole."

The June 4 response from Mr. Miller has a somewhat weaker interpretation, as follows:

"To qualify for exemption as a social welfare organization described in section 501 (c)(4), the organization must be primarily engaged in the promotion of social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individuals. The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. Nevertheless, a section 501 (c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare."

At a minimum, under either the 1997 letter or Mr. Miller's interpretation, a message needs to be sent to Section 501(c)(4) entities on an urgent basis to ensure they understand that any political activities they undertake must constitute a secondary and not the primary activity of their organization. To make that message crystal clear, I urge the IRS to remind all 501(c)(4)

The Honorable Douglas H. Shulman
June 13, 2012
Page Two

organizations about their obligation to observe that restriction on their activities if they want to retain their tax exempt status.

I hope you will do that within the next 30 days. Please let me know what your decision is. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202-224-9110. Thanks.

Sincerely,

A handwritten signature in black ink that reads "Carl Levin". The signature is written in a cursive, slightly slanted style.

Carl Levin



TAX-EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

JUL 18 2012

The Honorable Carl Levin
United States Senate
Washington, D.C. 20510

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated June 13, 2012, requesting the IRS to remind section 501(c)(4) organizations regarding the limitations of engaging in non-exempt political activities. We appreciate your interest on this issue. The IRS recognizes the importance of outreach and educational materials to ensure that section 501(c)(4) organizations are aware of the requirements under the tax law.

The IRS takes steps to continually inform organizations of their responsibilities as social welfare organizations to help them avoid jeopardizing their tax-exempt status. For those seeking information on the requirements for section 501(c)(4) tax exempt status, we provide educational materials and published resources on our website at www.irs.gov/charities, including the responsibilities and limitations of these organizations. For instance, the web-page with general information on Social Welfare Organizations contains the following narrative with web links to educational resources:

The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity.

However, any expenditure it makes for political activities may be subject to tax under section 527(f). For further information regarding political and lobbying activities of section 501(c) organizations, see Election Year Issues, Political Campaign and Lobbying Activities of IRC 501(c)(4), (c)(5), and (c)(6) Organizations, and Revenue Ruling 2004-6.

Enclosed are print-outs of some of the aforementioned publicly-accessible pages on social welfare organizations and political activity limitations on the IRS website. These informative web-pages are regularly updated.

The IRS also addresses the issue of political activities during the application process.

In Form 1024, *Application for Recognition of Exemption under Section 501(a)*, under Schedule B: Organizations Described in Section 501(c)(4), the first question touches on the issue of political activity, and the Form Instructions references Publication 557, *Tax-Exempt Status for Your Organization*, which also addresses political activity under the chapter that includes specific information on section 501(c)(4) organizations. For instance, page 51 of Pub. 557, specifically states:

Political activity. Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, if you submit proof that your organization is organized exclusively to promote social welfare, it can obtain exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office. See the discussion in chapter 2 under Political Organization Income Tax Return.

When an applicant is recognized as tax-exempt, the IRS sends an approved determination letter, along with an educational booklet, Publication 4221-NC, *Compliance Guide for Tax-Exempt Organizations (Other than 501(c)(3) Public Charities and Private Foundations)*, about the various tax law requirements applicable to section 501(c)(4) organizations. This booklet contains useful information to ensure organizations understand their responsibilities under the tax law, including activities that may jeopardize exempt status and the limitations on political activities.

We also address the issue of political activities in the Forms 990 and 990-EZ, the annual information returns filed by tax-exempt organizations under section 501(c)(4). Organizations that engage in direct or indirect political campaign activities are required to complete a separate schedule (Schedule C).

As the above illustrates, the IRS actively educates section 501(c)(4) organizations at multiple stages in their development about their responsibilities under the tax law. We believe this approach is the appropriate method by which to educate organizations on their responsibilities.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,



Lois G. Lerner
Director, Exempt Organizations

Enclosures (2)

Hawkins Ann K

From: Hinton Irma D
Sent: Monday, July 30, 2012 12:35 PM
To: [REDACTED]
Subject: FW: Letter from Sen. Carl Levin to IRS Comm. Shulman (July 27 2012)
Attachments: How to UNZIP.html; SecureZIP Attachments.zip

pls process

From: Barre Catherine M
Sent: Friday, July 27, 2012 4:35 PM
To: Hinton Irma D; Grodnitzky Steven; Ortez Cumbuka I; Graves Diane M
Subject: Fw: Letter from Sen. Carl Levin to IRS Comm. Shulman (July 27 2012)

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JUL 30 2012

CONG. CORR. BR
CL:LA

Sent using BlackBerry

From: Robertson, Mary (HSGAC) [mailto:Mary_Robertson@hsgac.senate.gov]
Sent: Friday, July 27, 2012 02:51 PM
To: Barre Catherine M
Cc: Meier, Kaye (Levin) <Kaye_Meier@levin.senate.gov>; Bean, Elise (HSGAC) <Elise_Bean@hsgac.senate.gov>; Barkley, Chris (HSGAC) <Chris_Barkley@hsgac.senate.gov>; Robertson, Mary (HSGAC) <Mary_Robertson@hsgac.senate.gov>
Subject: Letter from Sen. Carl Levin to IRS Comm. Shulman (July 27 2012)

Attached please find a letter for IRS Commissioner Shulman from Senator Carl Levin. Chairman of the Senate Permanent Subcommittee on Investigations. The original will be dropped in the mail this afternoon.

It would be appreciated if you could make sure that Ms. Lois Lerner, Director of Exempt Organizations, also receives a copy of this letter.

PLEASE ACKNOWLEDGE RECEIPT OF THIS MESSAGE & ATTACHMENT. Thank you.

Mary D. Robertson
 Chief Clerk
 U.S. Senate Permanent Subcommittee on Investigations
 199 Russell Senate Office Building
 Washington, D.C. 20510
 202/224-9868 - Direct
 202/224-9505 - Main
 202/224-7042 - Fax

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JUL 30

CONG. CORR. BR
CL:LA

7/30/2012

JOSEPH LIEBERMAN, CONNECTICUT, CHAIRMAN

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NICHOLAS A. BOSSI, MINORITY STAFF DIRECTOR

United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

July 27, 2012

VIA U.S. MAIL & EMAIL (Catherine.M.Barre@irs.gov)

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20004

RECEIVED

JUL 30 2012
CONG. CORR. BR
CL:LA

Dear Commissioner Shulman:

I am writing to express my concern about how the IRS interprets the law regarding the extent to which 501(c)(4) "social welfare" organizations can engage in partisan political activity. The July 13, 2012 response by Lois G. Lerner, Director of Exempt Organizations, to my June 13, 2012 letter was unsatisfactory.

In the response, Ms. Lerner stated that "The IRS takes steps to **continually inform** organizations of their responsibilities as social welfare organization to help them avoid jeopardizing their tax-exempt status," and "**actively educates** section 501(c)(4) organizations at multiple states in their development about their responsibilities under the tax law." [*Emphasis added.*]

Her discussion does not describe an IRS initiative to "continually inform" or "actively educate." Rather, it shows the IRS is passively making some information available once a 501(c)(4) entity is already in existence. Further, her discussion of the explanatory materials available to the public, and the materials themselves, are confusing. This leads to a predictable result: organizations are using Internal Revenue Code Section 501(c)(4) to gain tax exempt status while engaging in partisan political campaigns. There is an absurd tangle of vague and contradictory materials that the IRS provides. Making the problem worse is that the IRS knows there is a problem because of the public nature of the activity, but has failed to address it.

First, the law.

26 U.S.C. §501(c)(4) states that "Civic leagues or organizations not organized for profit but operated **exclusively for the promotion of social welfare**, or local associations of employees, the membership of which is limited to the employees of a designated person or persons in a particular municipality, and the net earnings of which are devoted exclusively to charitable, educational, or recreational purposes" are exempt from taxation.¹ [*Emphasis added.*] *Merriam-Webster* defines "exclusively" as "single, sole; whole; undivided." Therefore, it would appear that the law prevents entities that organize under Section 501(c)(4) from *any* activity that is not operated exclusively for the promotion of social welfare or an association of employees.

¹ 26 U.S.C. §501(c)(4).

Consistent with the law is a 1997 letter from the IRS denying tax-exempt status to a group called the National Policy Forum. The letter indicates that the IRS based its denial on the fact that the organization was engaged in partisan political activity, stating that "partisan political activity does not promote social welfare as defined in section 501(c)(4)," and that the applicant "benefit[s] select individuals or groups, instead of the community as a whole."²

One part of Internal Revenue Service Publication 557 in its guidance states, consistent with the law, that:

"If your organization is not organized for profit and will be operated **only** to promote social welfare to benefit the community, you should file Form 1024 to apply for recognition of exemption from federal income tax under section 501(c)(4)."³ [*Emphasis added.*]

Another part of Internal Revenue Service Publication 557 starts off by agreeing with the law and states, "Promoting social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office."⁴ The IRS is accurately and clearly stating, in some places at least, that "social welfare" advocacy does **not** include campaigning for or against a candidate or candidates.

So far, so good - - until that same Publication 557 states: "However, if you submit proof that your organization is organized exclusively to promote social welfare, it can obtain an exemption [from taxes] even if it participates legally in some political activity on behalf of or in opposition to candidates for public office."⁵

That language seems inconsistent with the other referenced parts of Publication 557 (as well as being inconsistent with law and precedent), unless it means that the exemption isn't available for the political activity portion funded by 501(c)(4) receipts.

Further, an IRS regulation that interprets Section 501(c)(4) states that, "An organization is operated exclusively for the promotion of social welfare if it is **primarily engaged** in promoting in some way the common good and general welfare of the people of the community."⁶ [*Emphasis added.*]

So the IRS regulation says the law's requirement of "exclusively" really means "primarily," something very different from "exclusively."

The IRS webpage cites an internal training article which states:

"'[S]ocial welfare' is inherently an abstruse concept that continues to defy precise definition. Careful case-by-case analyses and close judgments are still required."⁷ [*Emphasis added.*]

Fair enough.

² Internal Revenue Service letter to the National Policy Forum, February 21, 1997.

³ Publication 557 (Rev. October 2011), pg. 51.

⁴ *Id.*

⁵ *Id.*

⁶ Treasury Regulations, Subchapter A, Sec. 1.501(c)(4)-1.

⁷ <http://www.irs.gov/charities/nonprofits/article/0,,id=156372,00.html>.

In its Compliance Guide for Tax-Exempt Organizations, the IRS gives direction regarding how to make a case-by-case evaluation whether a communication is political.⁸ That Guide says that the following factors indicate that an advocacy communication is political campaign activity:

- The communication identifies a candidate for public office;
- The timing of the communication coincides with an electoral campaign;
- The communication targets voters in a particular election;
- The communication identifies the candidate's position on the public policy issue that is the subject of the communication;
- The position of the candidate on the public policy issue has been raised as distinguishing the candidate from others in the campaign, either in the communication itself or in other public communications; and
- The communication is not part of an ongoing series of substantially similar advocacy communications by the organization on the same issue.

The guide further lays out the factors that indicate when an advocacy communication is not political campaign activity:

- The absence of any one or more of the factors listed above;
- The communication identifies specific legislation, or a specific event outside the control of the organization, that the organization hopes to influence;
- The timing of the communication coincides with a specific event outside the control of the organization that the organization hopes to influence, such as a legislative vote or other major legislative action (for example, a hearing before a legislative committee on the issue that is the subject of the communication);
- The communication identifies the candidate solely as a government official who is in a position to act on the public policy issue in connection with the specific event (such as a legislator who is eligible to vote on the legislation); and
- The communication identifies the candidate solely in the list of key or principal sponsors of the legislation that is the subject of the communication.

It is clear from the application of those factors that what is going on in the U.S. with certain 501(c)(4) organizations in their television advertisements are political campaign activities.

Below are two transcripts of advertisements that were put on television by 501(c)(4) organizations. As you can see, the subject of Advertisement #1 is a Democratic Senator, and the subject of Advertisement #2 is a Republican Senator. This is not a partisan issue.

Television Advertisement #1:

“It’s time to play: Who is the biggest supporter of the Obama agenda in Ohio. It’s Sherrod Brown. Brown backed Obama’s agenda a whopping 95 percent of the time. He voted for budget busting ObamaCare that adds \$700 billion to the deficit. For Obama’s \$453 billion tax increase. And even supported cap-and-trade which could have cost Ohio over 100,000 jobs. Tell Sherrod Brown, for real job growth, stop spending and cut the debt. Support the new majority agenda at newmajorityagenda.org.”

⁸ Compliance Guide for Tax-Exempt Organizations, pgs. 4-5.

Television Advertisement #2:

“Before Wall Street gave him \$200,000 in campaign cash. ... Before he voted to let bank CEOs take millions in taxpayer funded bonuses. ... Dean Heller was a stockbroker. No wonder he voted against Wall Street reform; against holding the big banks accountable. Heller even voted to risk your Social Security here, in the stock market. Dean Heller: he votes like he still works for Wall Street, and that’s bad for you.”

Those ads, and so many like them, clearly fit the factors the IRS has laid out in its guide for what constitutes a political campaign activity. The advertisements make no pretense at nonpartisanship; they are blatantly and aggressively partisan communications.

Entities that file under Section 501(c)(4) of the Internal Revenue Code and take advantage of its tax exemption benefits should have to make a choice: either lose their exempt status (and pay taxes) or eliminate the partisan political activity.

The IRS needs to immediately review the activities of 501(c)(4) entities engaging in running partisan political ads or giving funds to Section 527 organizations that run such ads. The IRS needs to advise 501(c)(4) entities of the law in this area and the factors it will look at in reviewing 501(c)(4) status and tax exemption issues.

Please provide me with the following information no later than August 10, 2012:

1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate “exclusively” for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?
2. Since partisan political activity does not meet the IRS definition of “promoting social welfare,” how can an organization that participates in any partisan political activity be “organized exclusively to promote social welfare?”
3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: “As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention.”⁹
 - a. Typically, how long after a complaint to the IRS does a compliance review begin?
 - b. What approximate time does it take to review the complaint?
 - c. How many persons are involved in the enforcement of the 501(c)(4) rules?
4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations “can declare themselves tax-exempt without seeking a determination from the

⁹ Exempt Organizations 2011 Annual Report and 2012 Work Plan, pg. 8.

IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules.”¹⁰

- a. Why does the IRS allow 501(c)(4) organizations to self-declare?
- b. When an organization “self declares” as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that that organization has classified itself correctly?

5. The IRS Compliance Guide for Tax-Exempt Organizations states:

“When a 501(c)(4), (5) or (6) organization’s communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less.”¹¹

- a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?
- b. What is the reason for the requirement that the tax will be based on “whichever is less” between its net investment income for the year or the aggregate amount expended on political campaign activities?
- c. What tax would an organization have to pay if it spends *all* of its income on political advertising (therefore it has NO net investment income)?

6. Ms. Lerner’s letter quotes the IRS webpage on Social Welfare Organizations:

“The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in *some* political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f).” [*Emphasis added.*]

- a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in *some* political activities?
- b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

8. Internal Revenue Service Publication 557 states that, if a 501(c)(4) entity can “submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an

¹⁰

Id.

¹¹

Compliance Guide for Tax-Exempt Organizations, pgs. 3-4.

exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office.”¹²

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

- a. Crossroads Grassroots Policy Strategies
 - b. Priorities U.S.A.
 - c. Americans Elect
 - d. American Action Network
 - e. Americans for Prosperity
 - f. American Future Fund
 - g. Americans for Tax Reform
 - h. 60 Plus Association
 - i. Patriot Majority USA
 - j. Club for Growth
 - k. Citizens for a Working America Inc.
 - l. Susan B. Anthony List
9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

I have enclosed a copy of Ms. Lerner’s letter. If you have any questions, please contact me, or have your staff contact Kaye Meier of my staff at kaye_meier@levin.senate.gov or 202/224-9110. Again, it is urgent that I receive your answers by August 10, 2012.

Sincerely,



Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: Dr. Tom Coburn
Ms. Lois G. Lerner

¹² Publication 557 (Rev. October 2011), pg. 51.



DEPUTY COMMISSIONER

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

August 24, 2012

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Senate Committee on Homeland Security
and Government Affairs
United States Senate
Washington, D.C. 20515

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated July 27, 2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012 and July 13, 2012, and addresses the additional questions raised in your recent letter.

Question 1. How can the IRS interpret the explicit language in 26 U.S.C. §501(c)(4), which provides that 510(c)(4) entities must operate “exclusively” for the promotion of social welfare, to allow any tax exempt partisan political activity by 501(c)(4) organizations?

We note that the current regulation has been in place for over 50 years. Moreover, unlike Internal Revenue Code section 501(c)(3), which specifically provides that organizations may “not participate in, or intervene in . . . any political campaign on behalf of (or in opposition to) any candidate for public office.”), section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations.

Question 2. Since partisan political activity does not meet the IRS definition of “promoting social welfare,” how can an organization that participates in any partisan political activity be “organized exclusively to promote social welfare?”

As stated above, long standing Treasury Regulations have interpreted “exclusively” as used in section 501(c)(4) to mean primarily. Treasury Regulation § 1.501(c)(4)-1(a)(2)(i), promulgated in 1959, provides: “An organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting the common good and general welfare of the people of the community.” Applying this Treasury Regulation, Revenue Ruling 81-95, 1981-1 C.B. 332, concluded that “an organization may carry on lawful political activities and remain exempt under section 501(c)(4) as long as it is primarily engaged in activities that promote social welfare.”

Question 3. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states: "As in any election year, EO will continue its work to enforce the rules relating to political campaigns and campaign expenditures. In FY 2012, EO will combine what it has learned from past projects on political activities with new information gleaned from the redesigned Form 990 to focus its examination resources on serious allegations of impermissible political intervention."

- a. Typically, how long after a complaint to the IRS does a compliance review begin?**
- b. What approximate time does it take to review the complaint?**

The IRS routinely receives examination referrals from a variety of sources including the public, media, Members of Congress or their staff, and has a long standing process for handling referrals so that they receive an impartial, independent review from career employees. When the IRS receives a referral about a particular organization, it is promptly forwarded to the Classification unit of the Exempt Organizations (EO) Examination office in Dallas, Texas. Pursuant to IRM 4.75.5.4(1), within 30 days of receiving the referral, the Classification staff begins evaluating whether the referral has examination potential, should be considered in a future year, needs additional information to make a decision, or falls within the categories of matters that are referred for EO Referral Committee review.¹ Although IRM 4.75.5.4(1) sets a goal of 90 days to complete reviews of referrals, the time it takes to fully review a particular referral varies, depending on such factors as the issues involved and the availability of relevant information (i.e. organization's Forms 990, external sources such as media reports, internet searches, etc.).

In those cases in which the IRS needs additional information about the subject of a referral that is not readily available, such as its Form 990 that has not been filed yet for the tax year at issue, Classification may suspend classifying the referral and places it in the follow-up category until the additional information is available. Once the additional information is received, reviewed, and supports the referral being classified as having examination potential, the referral is sent to unassigned inventory, until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to conduct an examination.

Once in inventory, there are numerous factors that can affect how long it takes to complete the examination process. While it is difficult to predict how long any single examination will take, for cases closed in FY 2011, the average time it took to close a case was 210 days.

- c. How many persons are involved in the enforcement of the 501(c)(4) rules?**

¹ Pursuant to IRM 4.75.5(4), cases forwarded for Committee review include those: containing evidence or allegations of political or lobbying activities; involving sensitive information submitted by an elected official or a Member of Congress (or Congressional staff); or involving other factors indicating that review by the EO Referral Committee would be desirable for reasons of fairness or integrity.

The Exempt Organizations (EO) function is responsible for the enforcement of section 501(c)(4) statutory rules and regulations as well as those applicable to all other types of tax-exempt organizations.

For FY 2011, the total number of EO staff was 889. Other than the 14 employees in the Director's office, the three EO offices are staffed as follows:

- Rulings and Agreements (R &A), which includes EO Determinations and EO Technical, ensures organizations meet legal requirements during the application or private letter ruling process, and through guidance. In FY 2011, R&A had 332 employees.
- EO Examinations (Exam) is comprised of various units, including the Classification unit, the EO Compliance Unit, and the Review of Operations unit. Exam develops processes to identify areas of noncompliance, develops corrective strategies, and coordinates with other EO functions to ensure compliance, so that organizations maintain their exempt status. In FY 2011, Exam had 531 employees.
- EO Customer Education and Outreach (CE&O) coordinates, assists and supports the development of educational materials and outreach efforts for organizations to understand their responsibilities under the tax law. In FY 2011, CE&O had a staff of 12 employees.

The employees in these functions are responsible for the regulation of all types of tax-exempt organizations, including section 501(c)(4) organizations.

Question 4. The Exempt Organizations 2011 Annual Report and 2012 Work Plan states that 501(c)(4) organizations “can declare themselves tax-exempt without seeking a determination from the IRS. EO will review organizations to ensure that they have classified themselves correctly and that they are complying with applicable rules.”

a. Why does the IRS allow 501(c)(4) organizations to self-declare?

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). By contrast, for example, Section 508 generally requires an organization to provide notice to the IRS before it will be treated as described in section 501(c)(3).

b. When an organization “self declares” as a 501(c)(4) organization, how does the IRS get notice and how long does it take the IRS to conduct the review to ensure that the organization has classified itself correctly?

As with other tax exempt organizations, organizations claiming to be tax-exempt

under section 501(c)(4) generally are required to file a Form 990² on an annual basis.³

The Exempt Organizations office of the IRS is responsible for the compliance of over one million organizations with diverse goals and purposes. In order to ensure the highest degree of compliance with tax law while working with limited resources, EO maintains a robust and multi-faceted post-filing compliance program that conducts reviews of exempt organizations in various ways, such as:

- Review of Operations (ROO) reviews: Because a ROO review is not an audit, the ROO carries out its post-filing compliance work without contacting taxpayers. Instead, the ROO looks at an organization's Form 990, website, and other publicly available information to see what it is doing and whether it continues to be organized and operated for tax-exempt purposes. If it appears from a ROO review that an organization may not be compliant, the organization is referred for examination.
- Compliance checks: In a compliance check, IRS contacts taxpayers by letter when we discover an apparent error on a taxpayer's return or wish to obtain further information or clarification. A compliance check is an efficient and effective way to maintain a compliance presence without an examination. We also use compliance check questionnaires to study specific parts of the tax-exempt community or specific cross-sector practices.
- Examinations: Examinations, also known as audits, are authorized under Section 7602 of the Code. For exempt organizations, an examination determines an organization's continued qualification for tax-exempt status. We conduct two different types of examinations: correspondence and field.

Because the IRS cannot review every existing organization in every tax year, we use the review techniques described above to maximize our coverage of the tax exempt sector in both our general program work and our project work. The project work, which results from our strategic planning process, is designed to focus on specific areas affecting the EO sector and to direct more effective use of our resources in the effort to strengthen compliance and improve tax administration. Described in the EO 2012 Work Plan, the sections 501(c)(4), (5) and (6) Self-Declarers is one such project. This project focuses on organizations that hold themselves out as being tax-exempt rather than seeking IRS recognition of their exempt status.

Question 5. The IRS Compliance Guide for Tax-Exempt Organizations states:

² Reference to the Form 990 includes the entire applicable Form 990-series annual information returns, such as Forms 990, 990-EZ, 990-PF, and 990-N e-postcard.

³ Treas. Reg. § 1.6033-1(a)(1).

“When a 501(c)(4), (5) or (6) organization’s communication explicitly advocates the election or defeat of an individual to public office, the communication is considered political campaign activity. A tax-exempt organization that makes expenditures for political campaign activities shall be subject to tax in an amount equal to its net investment income for the year or the aggregate amount expended on political campaign activities during the year, whichever is less.”

- a. How does the IRS keep track of these explicit communications and ensure that the organization pays this tax?**

Tax-exempt organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

- b. What is the reason for the requirement that the tax will be based on “whichever is less” between its net investment income for the year or the aggregate amount expended on political campaign activities?**

The statute under section 527(f) explicitly states that a 501(c) organization is subject to its tax based on “an amount equal to the lesser of – (A) the net investment income of such organization for the taxable year, or (B) the aggregate amount expended during the taxable year for such an exempt function.”

- c. What tax would an organization have to pay if it spends *all* its income on political advertising (therefore it has NO net investment income)?**

Under the statute cited above, an organization that otherwise meets the requirements of section 501(c)(4) social welfare tax-exempt status, which spends all its income on political advertising and has no net investment income would not owe any tax under section 527(f). It may however, through such spending (and depending on the otherwise applicable facts of the case), no longer qualify as an organization that is tax-exempt under section 501(c)(4).

Question 6. Ms. Lerner’s letter quotes the IRS webpage on Social Welfare Organizations:

“The promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office. However, a section 501(c)(4) social welfare organization may engage in some political activities, so long as that is not its primary activity. However, any expenditure it makes for political activities may be subject to tax under section 527(f). [Emphasis added.]

a. What is the statutory basis of the language that allows 501(c)(4) organizations to engage in *some* political activities?

Please see responses to questions 1 and 2, above.

b. How does the IRS keep track of these political activities and ensure that the organization pays the tax under section 527(f)?

Section 501(c)(4) organizations filing Forms 990 or 990-EZ are required to report political activities. Organizations that engage in direct or indirect political campaign activities are also required to complete Schedule C of Form 990 or 990-EZ. Organizations subject to tax under section 527(f) are required to comply with the statutory reporting and payment rules. The IRS also receives referrals regarding such activities from a variety of sources that are handled through an impartial, independent review. See the response to question 3 for the description on the IRS referral process.

Question 7. In her July 13 letter, Ms. Lerner states that the IRS also addresses the issue of political activities in the Forms 990 and 990-EZ.

Are Forms 990 and 990-EZ made public? If so, where can they be accessed?

Yes, Forms 990 and 990-EZ are made public. Tax-exempt organizations are required to make their returns widely available for public inspection.⁴ Organizations are required to allow the public to inspect the Forms 990, 990-EZ, 990-N, and 990-PF they have filed with the IRS for their three most recent tax years.⁵ Exempt organizations also are required to provide copies of these information returns when requested, or make them available on the Internet.⁶ The annual information returns also are available from the IRS,⁷ as well as from third-party sources that post them on their websites.

Question 8. Internal Revenue Services Publication 557 states that, if a 501(c)(4) entity can “submit proof that [the] organization is organized exclusively to promote social welfare, it can obtain an exemption even if it participates legally in some political activity on behalf of or in opposition to candidates for public office.”

Have the following 501(c)(4) organizations a) applied for; and if so, b) received the described exemption for political activity from the IRS?

- a. Crossroads Grassroots Policy Strategies**
- b. Priorities U.S.A.**

⁴ IRC § 6104(d); Treas. Reg. §§ 301.6104(d)-1 and -2.

⁵ IRC § 6104(d)(2); Treas. Reg. § 301.6104(d)-1(a).

⁶ IRC § 6104(d)(1); Treas. Reg. § 301.6104(d)-2.

⁷ IRC § 6104(b); Treas. Reg. § 301.6104(b)-1. Due to disclosure laws, an organization must submit Form 4506-A, *Request for Public Inspection or Copy of Exempt or Political Organization IRS Form*, to the IRS office indicated on the form or accompanying instructions.

- c. **Americans Elect**
- d. **American Action Network**
- e. **Americans for Prosperity**
- f. **American Future Fund**
- g. **Americans for Tax Reform**
- h. **60 Plus Association**
- i. **Patriot Majority USA**
- j. **Club for Growth**
- k. **Citizens for a Working America Inc.**
- l. **Susan B. Anthony List**

Initially, to clarify, section 501(c)(4) organizations do not receive "exemption for political activity." Rather, organizations are recognized under section 501(c)(4) as tax-exempt when they demonstrate that they plan to be primarily engaged in activities that promote social welfare. If they meet that standard, the fact that they engage in other activities that do not promote social welfare, such as political campaign intervention, will not preclude recognition of their tax-exempt status. Whether an organization meets the statutory and regulatory requirements of section 501(c)(4) depends upon all of the facts and circumstances, and no one factor is determinative.

As discussed in our response to you dated June 4, 2012, section 6103 of the Internal Revenue Code prohibits the disclosure of information about specific taxpayers unless the disclosure is authorized by some provision in the Internal Revenue Code. The IRS cannot legally disclose whether the organizations on your list have applied for tax exemption (unless and until such application is approved). Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status only after the organization has been recognized as exempt.

Searching the names exactly as provided, our records show that the following organizations have been recognized by the IRS as tax exempt under section 501(c)(4).

Americans For Prosperity
American Future Fund
60 Plus Association
Patriot Majority USA
Citizens for a Working America Inc.

With respect to the other organizations for which you inquired, we will be able to determine if they have been recognized by the IRS as tax-exempt with additional information, such as an address or EIN, that specifically identifies the organization. Organizations often have similar names or maintain multiple chapters with variations of the same name. With respect to many of the other organizations you identified, numerous organizations in our records have very similar names. IRS staff can work with your staff in identifying the specific

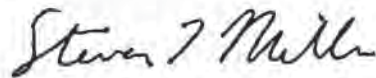
organizations for which you are interested. IRS staff is also available to assist your staff to navigate searchable databases on the IRS public website. As previously discussed, information on organizations with applications currently pending legally cannot be provided unless and until the application is approved. Please note that organizations that hold themselves out as tax-exempt without IRS recognition and organizations that have pending applications for recognition are required to file annual returns/notices.

Question 9. Have you reminded 501(c)(4)s which publicly seem to be operating in the partisan political arena as to the factors you will consider in determining whether they are engaging in partisan political activity? If not, why not?

As described in the July 13, 2012 response, the IRS takes several steps to continually educate organizations of the requirements under the tax law and inform them of their responsibilities to avoid jeopardizing their tax-exempt status. We believe these steps ensure the IRS administers the nation's tax laws in a fair and impartial manner.

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,



Steven T. Miller
Deputy Commissioner
for Services and Enforcement

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United States Senate

COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

WASHINGTON, DC 20510-6250

August 31, 2012

The Honorable Douglas H. Shulman
Commissioner
Internal Revenue Service
10th Street and Pennsylvania Avenue, NW
Washington, D.C. 20004

Dear Commissioner Shulman:

Thank you for the August 24, 2012 response by Steven T. Miller, Deputy Commissioner for Services and Enforcement, to my July 27, 2012 letter.

I find it unacceptable that the IRS appears to be passively standing by while organizations that hold themselves out to be "social welfare" organizations clearly ignore the tax code with no apparent consequences.

Frankly, the response that "long standing Treasury Regulations have interpreted 'exclusively'" as used in section 501(c)(4) to mean "primarily" and the argument that "section 501(c)(4) does not contain a specific rule or limitation on political campaign intervention by social welfare organizations" are not persuasive. The word "exclusively" as written in the statute is clear and speaks for itself. Its clarity is not diminished because the section does not mimic words in another section, which words are also clear.

As a follow-up to your letter, I would like to know the following:

1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes would be due? Will contributions that already have been made to that organization be taxable to that organization?

2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRA within the last 6 months that they may be in violation of the law?

It is urgent that I receive your answers promptly, and no later than September 10, please.

Sincerely,

A handwritten signature in black ink that reads "Carl Levin". The signature is written in a cursive, flowing style.

Carl Levin
Chairman
Permanent Subcommittee on Investigations

cc: Dr. Tom Coburn
Mr. Steven T. Miller



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

DEPUTY COMMISSIONER

September 14, 2012

The Honorable Carl Levin
Chairman
Permanent Subcommittee on Investigations
Senate Committee on Homeland Security
and Government Affairs
United States Senate
Washington, D.C. 20515

Dear Senator Levin:

I am responding to your letter to Commissioner Shulman dated August 31, 2012, requesting additional information about section 501(c)(4) organizations. This response supplements the previous responses dated June 4, 2012, July 13, 2012 and August 24, 2012, and addresses the additional questions raised in your recent letter.

Question 1. If the IRS determines that an organization that has been given 501(c)(4) status has not engaged primarily in social welfare activities, but instead was primarily engaged in activity within the scope of section 527, what are the consequences for the organization? What are the consequences for such an organization having not filed timely Forms 8871 and 8872? Must they file such forms after the fact? What taxes will be due? Will contributions that already have been made to that organization be taxable to that organization?

If an IRS audit or examination concludes that a section 501(c)(4) organization does not engage primarily in social welfare activities, the IRS may revoke the tax-exempt status of that organization. If the tax-exempt status is revoked, the organization is a taxable entity effective, in general, as of the first day of the tax year under examination. The organization is required to file Federal income tax returns, generally a Form 1120, U.S. Corporation Income Tax. The tax treatment of the organization's contributions and other income is determined under normal rules of Subtitle A.

Whether an organization no longer qualifies to be tax-exempt under section 501(c)(4) does not determine whether it is a political organization under section 527. Section 527(e)(1) defines a political organization as a party, committee, or other organization that is organized and operated primarily for the purpose of directly or indirectly accepting contributions or making expenditures for an exempt function (as defined in § 527(e)(2)). If an organization meets this definition, then its tax status is determined under section 527.

Subject to certain exceptions, to be tax-exempt under section 527,¹ a political organization is required to give notice electronically to the Service.² The required notice form is Form 8871, *Political Organization Notice of Section 527 Status*. To be tax-exempt, the political organization must file Form 8871 within 24 hours after the date on which it was established. If the organization has a material change in any of the information reported on Form 8871, it must file an amended Form 8871 within 30 days of the material change to maintain its tax-exempt status. When the organization terminates its existence, it must file a final Form 8871 within 30 days of termination.³

An organization that is required to file Form 8871, but fails to file on a timely basis, will not be treated as a tax-exempt political organization for any period before the date Form 8871 is filed.⁴ The taxable income of the organization for any period in which it failed to file Form 8871 (or, in the case of a material change, the period beginning with the date of the material change and ending on the date it satisfies the notice requirement) is subject to tax and must be reported on the annual income tax return Form 1120-POL.⁵ The tax is computed by multiplying the organization's taxable income by the highest federal corporate tax rate,⁶ currently 35 percent. For purposes of computing its taxable income for any period, the organization includes its exempt function income (including contributions received, membership dues, and political fundraising receipts), minus any deductions directly connected with the production of that income,⁷ but may not deduct its exempt function expenditures for the period.⁸

Generally, tax-exempt political organizations that have, or expect to have, contributions or expenditures exceeding \$25,000 during a calendar year are required to file Form 8872, *Political Organization Report of Contributions and Expenditures*, beginning with the first month or quarter during the calendar year in which they accept contributions or make expenditures.⁹ A tax-exempt political organization subject to the periodic reporting requirement may choose to file Form 8872 on a monthly basis or on a quarterly/semiannual basis, but it must file on the same basis for the entire calendar year. In addition, tax-exempt political organizations that make

¹ Tax-exempt political organizations generally are subject to tax on the excess of their gross income (excluding any exempt function income) over allowable deductions that are directly connected with the production of the gross income (excluding exempt function income). IRC § 527(c).

² IRC § 527(i)(1)(A), (i)(5), (i)(6); Rev. Rul. 2003-49, 2003-1 C. B. 903.

³ IRC § 527(i)(2).

⁴ IRC § 527(i)(1)(B).

⁵ IRC § 527(i)(4). A political organization, whether or not tax-exempt, that has taxable income in excess of the \$100 specific deduction allowed under § 527 is required to file an annual income tax return on Form 1120-POL, *U.S. Income Tax Return for Certain Political Organizations*. IRC § 6012(a)(6); Rev. Rul. 2003-49.

⁶ IRC § 527(b); Rev. Rul. 2003-49.

⁷ IRC § 527(i)(4); Rev. Rul. 2003-49.

⁸ IRC § 162(e) denies a deduction for political campaign expenditures.

⁹ IRC § 527(j); Rev. Rul. 2003-49. All tax-exempt political organizations are subject to the reporting requirements of IRC § 527(j), except for those political organizations described in § 527(j)(5).

contributions or expenditures with respect to an election for federal office (as defined in § 527(j)(6)) may be required to file pre-election reports for that election.¹⁰

A tax-exempt political organization that does not timely file the required Form 8872, or that fails to include the information required on the Form 8872, must pay an amount calculated by multiplying the amount of contributions and expenditures that are not disclosed by the highest federal corporate tax rate,¹¹ currently 35 percent.

Question 2. How many 501(c)(4) organizations which appear to be primarily engaged in political activity have been notified by the IRS within the last 6 months that they may be in violation of the law?

When the IRS examines a section 501(c)(4) organization, the objective of the audit is to determine whether that organization qualifies for tax-exempt status as a social welfare organization. As discussed in our June 4, 2012 response to your March 30, 2012 letter, that determination looks to whether the organization is primarily engaged in activities that promote social welfare, not organized or operated for profit, and the net earnings of which do not inure to the benefit of any private shareholder or individual. The examination looks at the activities engaged in during the complete taxable year at issue. Although the promotion of social welfare does not include direct or indirect participation or intervention in political campaigns on behalf of or in opposition to any candidate for public office, a section 501(c)(4) social welfare organization can engage in political activities as long as it is primarily engaged in activities that promote social welfare.

If the IRS believes that an organization does not meet the requirements under section 501(c)(4), the IRS notifies the organization of its intention to revoke the organization's exempt status, explaining the law and reasons for the proposed revocation. The organization has 30 days from the date of that letter to protest or appeal the determination before a final revocation letter is issued to the organization.

During the past six months, no notices of proposed or final revocation were issued to section 501(c)(4) organizations. Note that the IRS currently has more than 70 ongoing examinations of section 501(c)(4) organizations (this includes examinations for a variety of issues, some of which include whether the organization is primarily engaged in activities that promote social welfare). It is also important to note that the Service also maintains a determination process to review the operations of an organization to determine whether it should be recognized as tax exempt. In this area, we also review compliance with the legal requirements, including whether an organization is primary engaged in activities that promote social welfare. There are currently more than 1,600 organizations in the determination process seeking recognition as a section 501(c)(4) organization. The level of political activity is an issue in a number of these determination cases.

¹⁰ IRC § 527(j)(2)(A)(i)(II); Rev. Rul. 2003-49.

¹¹ IRC § 527(j)(1).

I hope this information is helpful. If you have questions, please contact me or have your staff contact Catherine Barre at (202) 622-3720.

Sincerely,

A handwritten signature in black ink, appearing to read "S. T. Miller". The signature is fluid and cursive, with a large initial "S" and "M".

Steven T. Miller
Deputy Commissioner
for Services and Enforcement