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Congress of the United States

U.S. House of Representatives

COMMITTEE ON WAYS AND MEANS

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Washington, DC 20515-6348

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JANICE MAYS,
MINORITY CHIEF COUNSEL

March 9, 2015

The Honorable Jacob Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Dear Secretary Lew,

As the Chairman of the Committee on Ways and Means, I am writing to renew former Chairman Camp's request of January 30, 2014, for documents pertaining to the 501(c)(4) rulemaking.

On February 25, 2014, the Treasury Assistant Secretary for Legislative Affairs, Alistair Fitzpayne, responded to Chairman Camp's document request with a letter, but did not provide the documents Chairman Camp requested. Our investigation into the Internal Revenue Service's targeting of conservative groups applying for tax-exempt status is ongoing, and many of our questions remain unanswered. Further, it is my understanding that these documents are the subject of outstanding FOIA litigation and have already been collected, thus I do not anticipate that production of the documents to the Committee will create a significant burden on the Department.

Accordingly, on behalf of the Committee, I ask you again for all documents and communications sent by, received by, or copied to any employee of the Department of the Treasury between January 1, 2009 and November 29, 2013 relating to rulemaking or proposed guidance for 501(c)(4) organizations—including, but not limited to, e-mails, memoranda, drafts, calendar events, and meeting notes. Please produce the information in electronic format as soon as possible, but no later than March 23, 2015, to Carly McCallie, in 1136 Longworth House Office Building.

If you have any questions about this request, please contact Committee staff at (202) 225-5522. Thank you for your attention to this matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "Paul Ryan", with a stylized flourish extending to the right.

Paul Ryan
Chairman

Attachments:

January 30, 2014 Letter from Chairman Camp to Secretary Lew

February 25, 2015 Letter from Assistant Secretary Fitzpayne to Chairman Camp

DAVE CAMP, MICHIGAN,
CHAIRMAN

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JANICE MAYS,
MINORITY CHIEF COUNSEL

January 30, 2014

The Honorable Jacob Lew
Secretary
Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

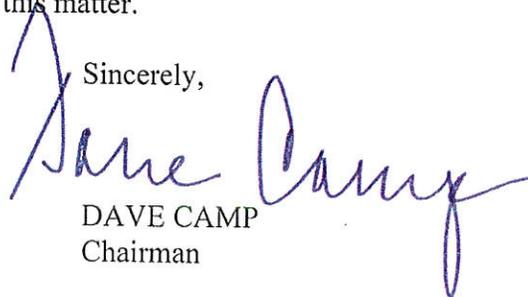
Dear Secretary Lew,

As you know, the Committee on Ways and Means is conducting an investigation of the Internal Revenue Service's targeting of conservative groups applying for tax-exempt status. On November 29, 2013, the Department of the Treasury published proposed new rules governing 501(c)(4) organizations. I am writing now to request all documents pertaining to 501(c)(4) rulemaking.

Transparency in rulemaking is always important, but in the wake of the IRS's admitted targeting of conservative tax-exempt groups, it is critical that the first significant rulemaking governing 501(c)(4) organizations undertaken in more than fifty years be conducted in the open. Accordingly, I specifically request all documents and communications sent by, received by, or copied to any employee of the Department of the Treasury between January 1, 2009 and the present relating to rulemaking or proposed guidance for 501(c)(4) organizations—including but not limited to emails, memoranda, drafts, calendar events, and meeting notes. Please produce the information, in electronic format, as soon as possible, but no later than February 13, 2014, to Matt Hittle in 1136 Longworth.

If you have any questions about this request, please contact Committee staff at (202) 225-5522. Thank you for your attention to this matter.

Sincerely,



DAVE CAMP
Chairman



DEPARTMENT OF THE TREASURY
WASHINGTON, D.C. 20220

ASSISTANT SECRETARY

February 25, 2014

The Honorable Dave Camp
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Camp:

I write in response to your recent letter to Secretary Lew regarding a notice of proposed rulemaking (the NPRM) relating to tax-exempt organizations. We share your interest in this important issue, and we are committed to ensuring that the Internal Revenue Service (IRS) treats all applicants seeking tax-exempt status in a fair, even-handed, and transparent manner. This letter describes, in more detail below, the reasons that the Department of the Treasury and the IRS issued the NPRM, its scope and contents, and the standard rulemaking process we have followed and will continue to follow.

The Treasury Inspector General for Tax Administration (TIGTA), the National Taxpayer Advocate (NTA) and members of Congress recommended that Treasury and the IRS consider issuing new guidance in this area. The NPRM is consistent with those recommendations. Our ultimate goal—to which we are firmly committed—is to simplify the IRS determinations process and to provide greater clarity for organizations seeking tax-exempt status. The NPRM, however, is only the first step. There are many additional steps to be taken before any final rules are released. For example, the central purpose of issuing any NPRM is to solicit public comments on proposed regulations. We have already received over 76,000 comments, and we will consider them carefully before taking any further steps in the rulemaking process.

Unfortunately, there have been numerous misleading reports and public statements regarding the NPRM. Therefore, it also is important to highlight what the NPRM does not do. *First*, the NPRM does not restrict any form of political speech. It relates only to the qualification requirements for a particular type of tax-exempt status. *Second*, the NPRM does not favor any individual political party or group. It applies to all organizations, regardless of political affiliation. *Third*, the NPRM does not prevent politically-active organizations from qualifying for tax-exempt status. Congress provided a clear mechanism for political groups to organize as tax-exempt organizations—*i.e.*, under Internal Revenue Code Section 527. The major difference is that Congress requires Section 527 groups to be transparent and to disclose their financial donors. In requiring disclosure, Congress presumably made the judgment that political organizations should be open and transparent in their fundraising. *Fourth*, the NPRM does not seek to impose greater restrictions on Section 501(c)(4) organizations than on other tax-exempt organizations. In fact, it expressly seeks comments on whether the proposed rule should apply to other types of tax-exempt organizations.

1. In May-June 2013, TIGTA, NTA, and Congress Called for Clarity in the Rules Regarding Social Welfare Organizations.

Under the law enacted by Congress, only an organization that is “operated exclusively for the promotion of social welfare” is entitled to tax-exempt status. In 1959, Treasury and the IRS issued regulations interpreting this standard. The regulations allow a social welfare organization to qualify for tax-exempt status if it is “primarily engaged” in promoting social welfare. Those regulations also state that the promotion of social welfare does not include participation or intervention in political campaigns on behalf of or in opposition to any political candidate.

Beginning in 2010, Treasury and the IRS received requests, from members of Congress and other interested parties, to consider engaging in rulemaking to clarify the rules regarding social welfare organizations given the public attention this issue was receiving. As the NPRM makes clear, these requests included requests for guidance on the meaning of “primarily” as used in the current regulations under Section 501(c)(4).

In May 2013, TIGTA issued a report regarding the IRS’s processing of certain applications for tax-exempt status under Section 501(c)(4). In its report, TIGTA expressed concern that lack of specific guidance in the regulations may have led to confusion on the part of IRS employees tasked with assessing these applications. TIGTA recommended that guidance on how to measure the “primary activity” of social welfare organizations be included for consideration in the Primary Guidance Plan (PGP).¹ TIGTA summarized its recommendation on its “Highlights” page as follows: “TIGTA recommended that the IRS [] request that social welfare activity guidance be developed by the Department of the Treasury.” In its response to TIGTA’s recommendation, the IRS stated that it would “share this recommendation with the IRS Chief Counsel and Treasury Office of Tax Policy.”

In public testimony regarding his report, TIGTA Russell George repeated his call for increased clarity in the rules relating to social welfare organizations. In a May 22, 2013 hearing before the House Oversight and Government Reform Committee, Mr. George stated that “[t]here’s no question that clarity in – in the law and how to implement it would certainly help anyone who’s trying to apply the law in the instance” and that “one of the recommendations in this report, is that the Internal Revenue Service work with the Department of the Treasury for clarity in the area.”²

¹ The PGP, which is published yearly, sets forth the joint guidance priorities for IRS and Treasury for the coming year. Adding a guidance matter to the PGP represents a commitment by Treasury and the IRS to devote resources to a particular matter. However, it is important to note that the PGP is not a comprehensive list of all matters Treasury and the IRS are considering for future guidance.

² In a May 17, 2013 hearing before the House Ways and Means Committee, Mr. George stated that “we have indicated that some clarification from those in the policy area of the Department of the Treasury might be needed in this area.” He agreed that “further tightening” [of the definition of the criteria of ‘primarily engaged in social welfare’] would be helpful to IRS personnel when it comes time to review the applications.” In a June 3, 2013 hearing before the House Appropriations Committee, Mr. George repeated that it was the report’s recommendation “that the IRS seek further clarity” on this issue.

Both President Obama and Secretary Lew stated that all of the recommendations of the TIGTA report would be implemented. Members of Congress also urged implementation of TIGTA's recommendations. In a June 3, 2013 hearing before the House Appropriations Committee, Chairman Crenshaw told Acting IRS Commissioner Danny Werfel that "[w]e're going to insist that the IRS implement all nine of the recommendations in the inspector general's report to the satisfaction of the inspector general."

In addition, the National Taxpayer Advocate Nina Olsen recommended clarifying the standards for Section 501(c)(4) tax-exempt status in a special report issued in June 2013 relating to the TIGTA report. The special report stated that "there is very little guidance to guide IRS employees in determining whether an organization is operating 'primarily' for social welfare purposes or what level of political campaign activity is permissible." The report concluded that "[t]o enable the IRS's EO function to evaluate applicants for Section 501(c)(4) status in a consistent manner, the Advocate recommends that Congress or the Treasury Department provide clearer standards."

2. Treasury and the IRS Are Implementing The Recommendations from TIGTA, NTA, and Congress through Public Notice and Comment Rulemaking.

Consistent with these recommendations, Treasury and the IRS added guidance on how to measure the "primary activity" of social welfare organizations to the 2013-14 PGP, which was published in August 2013. Subsequently and consistent with standard agency rulemaking procedures, Treasury and the IRS issued the NPRM, containing a proposed rule and a number of requests for comments, last November.³

There are two principal questions about the interpretation of Section 501(c)(4): first, how to define the candidate-related political activity that does not promote social welfare; and second, how to determine what proportion of an organization's activities must be devoted to social welfare.

The NPRM addresses the first question by defining the kinds of candidate-related political activity that will, if the rule is implemented, be deemed not to promote social welfare. The NPRM sets forth a clear rule, drawn primarily from existing laws and regulations, to replace the "facts and circumstances" test currently used by the IRS. Application of the "facts and circumstances" test can involve a fact-intensive inquiry into the planned or actual operations of organizations seeking tax-exempt status. In addition, making an organization's tax-exempt status dependent on a fact-specific agency inquiry can lead to uncertainty for individual organizations about whether they meet the criteria. A clear rule will reduce the need for detailed factual analysis in the IRS determinations process and provide greater certainty for organizations. The approach that we have taken provides Congress and the public an opportunity to comment on how this rule should be defined.

³ Because all IRS and Treasury regulations are issued pursuant to public notice and comment rulemaking procedures, as a result, neither IRS nor Treasury can (or do) engage in secret rulemaking.

The inclusion of voter guides and candidate forums in the definition of “candidate-related political activity” has attracted considerable public attention. Under the “facts and circumstances” test, these activities would be deemed to promote social welfare only if conducted in a neutral and unbiased way. However, determining whether these activities are conducted in a neutral and unbiased way can require a particularly fact-intensive and complicated inquiry by the IRS into the operations of an organization. For this reason, Treasury and the IRS included them in the proposed definition of campaign-related political activity. Treasury and the IRS will consider the public comments received on this issue before any final rule is issued. It is worth noting that, if implemented as proposed, the rule would not prevent an organization from distributing voter guides or holding candidate forums and maintaining its tax-exempt status. Social welfare organizations may engage in some amount of “candidate-related political activity.” In addition, as noted above, there are other ways to qualify for tax-exempt status, including as a political organization.

On the second question—what proportion of a social welfare organization’s activities must promote social welfare and how it should be measured—Treasury and the IRS chose to first solicit comments from the public before issuing a proposed rule. Treasury and the IRS understand that there is significant public interest in this question and recognize the importance of soliciting public feedback.⁴ Once we have reviewed all the comments, Treasury and the IRS hope to issue a proposed rule that will, to the extent possible, further clarify and simplify the determinations process for social welfare organizations.

The NPRM also seeks comments on the important question of whether the proposed (or a similar) definition of candidate-related political activity should be adopted for other tax-exempt organizations, such as Section 501(c)(5) (labor) or Section 501(c)(6) (business) organizations.⁵ We recognize the importance of promoting, to the extent possible, consistent definitions across tax-exempt organizations.

Treasury and the IRS recognize that social welfare organizations are a broad and diverse set of organizations. The notice and comment process allows us to hear from all concerned parties, and we look forward to reviewing their comments. Treasury and the IRS have already received over 76,000 comments in response to the NPRM. After the comment period closes on February 27, 2014, Treasury and the IRS will hold a public hearing or hearings as a standard practice, to allow for further public input regarding these important issues. Treasury and IRS will carefully consider the issues raised in the comments received before issuing any further guidance.

⁴ It bears repeating that Treasury and the IRS have not yet issued even a proposed rule on the important question of what proportion of a social welfare organization’s activities must promote social welfare and how it should be measured. As the NPRM states: “Given the potential impact on organizations currently recognized as described in section 501(c)(4) of any change in the ‘primarily’ standard, the Treasury Department and the IRS wish to receive comments from a broad range of organizations before deciding how to proceed.”

⁵ The NPRM states: “Recognizing that it may be beneficial to have a more uniform set of rules relating to political campaign activity for tax-exempt organizations, [we] request comments ... regarding whether the same or a similar approach in addressing political campaign activities of other section 501(c) organizations.”

3. Treasury and the IRS Are Committed to Cooperation with Your Committee.

Treasury and the IRS are committed to cooperating with your Committee. For the last several months, your Committee has conducted an investigation into the IRS's treatment of certain applications for 501(c)(4) tax-exempt status. As you know, IRS has devoted significant resources to your investigation and responding to your requests. To date, Treasury and the IRS have produced over 500,000 pages to Congress, responded to more than 200 formal Congressional inquiries regarding 501(c)(4) issues, and handled several hundred informal requests from Congress for information or documents. Treasury and IRS officials have answered questions relating to 501(c)(4) issues at 15 Congressional hearings. Treasury and the IRS have made over 35 current and former employees available for more than 60 interviews by Congressional committees. We understand that IRS employees are in regular contact with your Committee's staff and are working hard to satisfy outstanding requests for information regarding your investigation into the IRS's treatment of certain applications for 501(c)(4) tax-exempt status. We look forward to your report and any specific recommendations you may have for Treasury and the IRS regarding TIGTA's recommendation that we consider additional guidance in this area.

I hope this letter answers your questions about the rulemaking process. To the extent you may have additional questions, please do not hesitate to let me know.

Sincerely,



Alastair M. Fitzpayne
Assistant Secretary for Legislative Affairs