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United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

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May 20, 2013

Honorable Steven Miller
Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20230

Dear Commissioner Miller:

The Senate Finance Committee has jurisdiction over revenue matters, and the Committee is responsible for conducting oversight of the administration of the federal tax system, including matters involving tax-exempt organizations.

The Treasury Inspector General for Tax Administration (TIGTA) report released on May 14, 2013 entitled “Inappropriate Criteria Were Used to Identify Tax-exempt Applications for Review” raises troubling questions about the operation of the IRS in processing applications for tax-exempt status.

According to the report, the IRS developed and used inappropriate criteria to identify applications from organizations applying for tax-exempt status based “upon their names or policy positions instead of indications of potential political campaign intervention.”

In addition, the 48-page report finds that “ineffective management” at the IRS allowed for this inappropriate practice to stay in place for 18 months, resulted in substantial delays in processing certain applications, and allowed unnecessary information requests to be issued.

While the TIGTA report does not say that the IRS was intentionally partisan, it did find that the agency’s use of narrow screening criteria “gives the appearance that the IRS is not impartial in conducting its mission.”

These actions by the IRS appear to be a clear breach of the public’s trust. Targeting groups based on their political views is not only inappropriate but it is also intolerable.

Several members of this Committee received reports over the last two years from numerous nonprofit civic organizations that had applied to the IRS for 501(c)(4) tax-exempt status. The reports conveyed instances of excessive and intrusive IRS inquiries regarding the internal operations and practices of these organizations, such as requiring them to provide donor lists, as well as copies of all internal and public communications. In response to these reports, Senator Hatch, together with several other Senate colleagues, wrote to Commissioner Shulman on March 14, 2012 and again on June 18, 2012, expressing concern over possible selective enforcement of the tax laws and inquiring as to the procedures employed by the IRS when considering applications for 501(c)(4) tax-exempt status. While the responses provided a basic description of general IRS procedures for processing applications for 501(c)(4) tax-exempt status, they failed to acknowledge that the IRS had, based on information presented in the TIGTA report, improperly targeted certain groups based on their political views and subjected them to intrusive and unwarranted scrutiny of their donor lists and activities. In addition, the TIGTA report noted that the IRS also improperly targeted certain groups applying for 501(c)(3) tax-exempt status.

Targeting applicants for tax-exempt status using political labels threatens to undermine the public's trust in the IRS. Lack of candor in advising the Senate of this practice is equally troubling. To help us begin to explore the facts in this matter, we respectfully request that you provide us with the following information:

1. Provide a copy of any and all questions, questionnaires and information requests used by the IRS to attempt to elicit additional information from 501(c)(3)-(6) applicants from February 1, 2010 to the present regarding their donor lists, volunteer lists, financial support for, and relationships with, political candidates, and any and all other similar information.
2. The TIGTA Report indicates that the number of applications for 501(c)(4) tax-exempt status remained relatively constant between fiscal year (FY) 2009 (1,751 applications) and FY 2010 (1,735 applications). Explain why the Determinations Unit considered it necessary or expedient in February 2010 to develop and begin using criteria to identify potential political cases for review that inappropriately targeted specific applicants based on the existence of words or phrases in their applications.
3. Provide a list of all words and phrases used by the IRS to target applications for additional scrutiny, including words or phrases that were not reported in the TIGTA audit regarding BOLO criteria.
4. How many applications for each tax-exempt status, 501(c) (3)-(6), were filed and processed each year from FY 2005 through the present? In addition, provide the number of people in the Determinations Unit tasked with handling these applications during each fiscal year.
5. Please provide a description of the training given to the Determinations Unit to review tax-exempt applications from February 1, 2010 to the present. Please also provide copies of all training materials.

6. Explain the circumstances of how the IRS discovered that the practice of targeting certain organizations seeking tax-exempt status for additional scrutiny had occurred.
7. Identify by name, grade and position title the IRS supervisor(s), manager(s) and official(s) who made, participated in, or approved the decision to target tax-exempt applications for additional review if the applications contained words or phrases identified as inappropriate by TIGTA. In addition, provide the same information pertaining to IRS employees who approved BOLO criteria that was not identified as inappropriate by TIGTA.
8. Identify by name, grade and position title every IRS supervisor, IRS manager or other IRS employee who become aware of the procedures that were being used in the Cincinnati office to inappropriately target these applications, the manner in which such persons became aware of such procedures, including but not limited to notification by TIGTA, the date that the supervisor, manager or other employee became aware of the practice. Explain what each supervisor, manager or other employee identified immediately above did in response, including but not limited to, his or her actions when they first became aware of the existence of the practice.
9. Provide all documents related to the manner in which any person identified in the previous question became aware of such procedures, including, but not limited to, notification by TIGTA, as well as any and all documents and communications related to the identified persons' response to such knowledge.
10. Evidence suggests an IRS component may have disclosed the National Organization of Marriage's 2008 Form 990 Schedule B to the press. Has the IRS performed, or requested TIGTA to perform, an internal inquiry to determine whether the 2008 Form 990 Schedule B was disclosed to the press by the IRS? If so, please inform the Committee of the results of any internal inquiry into this disclosure. If not, please explain why the IRS has not undertaken a review of this matter.
11. Provide copies of all documents between IRS employee(s) and anyone else regarding the targeting of applications based on the existence of certain phrases and/or subjecting those targeted applications to full development or heightened scrutiny.
12. Was the decision to target any tax-exempt applications for review and subject them to full development or heightened scrutiny influenced or prompted in any way by political pressure directed at the IRS from any members of the Congress or other elected officials?
13. Did the actions of employees in the Determinations Unit in designating applications and organizations for heightened scrutiny based on the existence of inappropriate words or phrases in their applications violate existing IRS policy?
14. If so, provide a copy of the existing policy and every version of that policy from February 1, 2010 to July 31, 2012.
15. What disciplinary action has been taken against IRS employees who were responsible for targeting applications for additional scrutiny based on the existence of inappropriate words or phrases in the applications?

16. Identify each employee by name, grade and position title and the level of disciplinary action that has been taken against that employee.
17. Provide a list of every 501(c)(3)-(6) applicant organization that was targeted for additional scrutiny based on the existence of inappropriate words or phrases in its application.
18. Provide a list of every targeted organization subjected to full development or heightened scrutiny that withdrew its application for 501(c)(3)-(6) status and the date of the withdrawal.
19. Does the IRS intend to contact organizations subjected to such scrutiny that withdrew their applications and invite them to re-submit those applications?
20. Was any targeted organization denied tax-exempt status based on the results of heightened scrutiny from February 2010 to the present? If so, please provide a list of those organization(s) and the date(s) of the denial(s).
21. Will the IRS re-examine the applications of targeted organizations denied tax-exempt status in order to determine whether they were properly decided?
22. Will the IRS offer any type of restitution for the time, expense, and effort that targeted organizations expended to comply with IRS's excessive scrutiny?
23. Have any applicant organizations or individuals connected to the organizations targeted for additional scrutiny as a result of their application received additional IRS attention in the form of tax return audits or other action?
24. Have any donors to the applicant organizations been subjected to full development or heightened scrutiny as a result of their applications being audited or suffered any additional attention from the IRS by virtue of their donor status?
25. What changes in IRS policy has the IRS taken to prevent future targeting of certain 501(c)(3)-(6) applicants based on their political affiliation and or views?
26. Provide copies of the new IRS procedures instituted to ensure that IRS will no longer target organizations seeking 501(c)(3)-(6) status by virtue of their political affiliation and or views, as opposed to amount of their political activities, and include the date on which those procedures were implemented.
27. What corrective actions will the IRS take to ensure that employees of the Determinations Unit will apply the tax laws in the future fairly and without regard to the political affiliation and/or views of citizens and organizations whose applications for 501(c)(3)-(6) tax-exempt status they review?
28. Have there been, or will there be, any changes in the management of the Determinations Unit or the Exempt Organizations Department as a consequence of the practice of inappropriately targeting certain organizations for heightened scrutiny?
29. Provide copies of all documents, between any IRS employee and anyone else, including, but not limited to, individuals outside the IRS, that were generated as a consequence of, or that relate to, the letters sent by members of the Congress to the IRS since 2012 regarding the issue of inappropriately targeting organizations seeking 501(c)(4) status for heightened scrutiny.
30. According to the May 14, 2013 TIGTA report, after the Determination Unit specialists and managers created the BOLO criteria, 298 applications were selected for additional review. Please provide copies of the 298 applications pursuant to the Senate Finance Committee's §6103 authority.

31. Of the 108 applications approved by the Determinations Unit by December 17, 2012, how many contained inappropriate BOLO criteria?
32. According to the TIGTA report, 89 applications for 501(c)(3) tax-exempt status were selected for additional review. Out of these 89 applications, how many contained inappropriate BOLO criteria?
33. Were any 501(c)(3) applications from February 1, 2010 to April 30, 2010 that contained any of the inappropriate BOLO criteria approved? If so, please provide a list of these organizations.
34. For the period July 2010 to the present, has the IRS conducted any investigations of 501(c)(3)-(6) organizations for engaging in political activity, beyond the 298 organizations referenced in the TIGTA report?
35. Provide the names and titles of all managers who worked in the Tax Exempt and Government Entities Division and the Exempt Organizations (EO) Department, including EO Rulings and Agreements, Determinations (in all locations), and Technical, Guidance and Quality Assurance components, and their dates of service, from March 1, 2010 to the present.
36. Provide every version of every organization chart for the following components from February 1, 2010 to the present: Office of the IRS Commissioner and Deputy Commissioner for Services and Enforcement; Tax Exempt and Government Entities Division and Exempt Organizations Department; IRS Office of Chief Counsel; and Department of Treasury.
37. Explain the actions taken by the IRS to investigate or review the disclosure of pending applications for tax exemption to ProPublica in November 2012.
38. Provide all documents pertaining to the disclosure of pending applications for tax exemptions to ProPublica including records related to any IRS internal investigation of that disclosure. Provide all documents relating to any and all communications between any and all IRS employees and any and all Treasury Department employees regarding the targeting of organizations seeking 501(c)(3), (4), (5), or (6) tax-exempt status for full development or heightened scrutiny based on the existence of certain words or phrases in their applications, from February 2010 to the present.
39. Provide documents relating to communications between any and all IRS employees and any and all White House employees including, but not limited to, the President, regarding the targeting of organizations seeking 501(c)(3), (4), (5), or (6) tax-exempt status for full development or heightened scrutiny based on the existence of certain words or phrases in their applications, from February 2010 to the present. This includes documents relating to communications received by any IRS employee from either the White House or Treasury, whether or not the IRS employee was simply the recipient of such a communication from either the White House or Treasury.
40. Identify by name, grade and position title every IRS supervisor, IRS manager or other IRS employee who become aware that any individual in the White House or Treasury Department became aware of any improper targeting of an organization applying for 501(c)(3)-(6) tax-exempt status, as well as the name and title of the individual(s) in the

White House or Treasury Department, and the date such individual(s) in the White House or Treasury Department became aware of any improper targeting.

41. Please provide any written communication, memos, policy drafts, or other documents related to the interpretation of section 501(c)(4) of the Internal Revenue Code since 2009.

In addition to providing a narrative response to the above-mentioned inquiries, the information requested and documents should be provided, where possible or practicable, in a searchable or sortable electronic format, such as Excel or PDF.

For purposes of this request, the term "document" or "documents" includes writings or records of every kind or character, conveying information by electronic, photographic, or other means, whether encoded, taped, stored or coded electrostatically, or otherwise. "Document" or "documents" includes, but is not limited to, correspondence, e-mail, notes, memoranda, minutes, summaries, telephone records, telephone message logs or slips, calendars, date books, interoffice communications, results of investigations, videotapes, audiotapes, any electronic media, and accounting and financial records of any kind. "Document" or "documents" refers to any record in the IRS's possession, custody, or control, and "document" or "documents" includes all drafts or unfinished versions of a document or documents.

To the extent the response to this letter requires the production of returns or return information covered by section 6103, pursuant to section 6103(f)(4)(A), the Chairman will designate appropriate staff to receive such information. In your response, please identify material that is covered by section 6103.

We request that you provide your response no later than May 31, 2013. Should you have any questions regarding this letter, please have your staff contact [REDACTED] of the Finance Committee staff at (202) 224-4515.

Sincerely,



Orrin G. Hatch
Ranking Member
Senate Finance Committee



Max Baucus
Chairman
Senate Finance Committee