

March 21, 2013

By Email and U.S. First-Class Mail

Steven T. Miller, Acting Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Re: Unlawful Disclosure of Tax-Exempt Organizations Confidential Taxpayer Information

Dear Acting Commissioner Miller:

As attorneys representing tax-exempt organizations, we are writing to express our grave concern about recent unlawful disclosures of pending applications and unredacted tax returns of certain tax-exempt organizations. We request that the Internal Revenue Service take immediate steps to determine how these disclosures of confidential taxpayer information occurred, to take any and all necessary steps to prevent similar disclosures in the future, and to make a detailed public statement describing these steps to reassure the tax-exempt community.

Recent reports and discussions make it clear one or more IRS employees responded to a public information request from the news organization ProPublica by giving ProPublica pending applications and subsequent extensive correspondence with the IRS regarding the applications from a number of organizations seeking recognition of their exemption from tax under Section 501(c)(4) of the Internal Revenue Code.

As you know, application documents are subject to public disclosure after recognition of the organization's tax-exempt status, but still-pending (or withdrawn) applications are not. This restriction recognizes that pending applications are often incomplete and may include information about proposed activities that are questioned by the IRS determination agent and that the organization subsequently has a chance to clarify or eliminate from its plans before they are made public.

It is clear that the IRS recognized that the applications should not have been released to Pro Publica. Following the publication of the first article describing the disclosed application of one of the organizations, IRS employees contacted other organizations to warn them that their applications and associated materials "probably" had likewise been improperly disclosed. Indeed, ProPublica subsequently published additional confidential taxpayer information for a number of other organizations with pending applications.

These disclosures come on the heels of another recent allegation of an unredacted copy of a Form 990 annual information return (including an unredacted Schedule B showing major donors to the organization) for a 501(c)(4) organization that was released by someone at the IRS (or at least someone with access to IRS files).

All of these recent disclosures appear to have involved organizations with a conservative political ideology (although we are aware of similar improper disclosures that involved both conservative and liberal or progressive organizations in the past).

We are concerned that these recent reports will have significant negative consequences. Organizations fearful of such disclosures may be less forthcoming and intentionally vague about their activities on applications for exemption, Form 990s, and other filings. Donors may be deterred from giving if they fear their contributions might be improperly disclosed.

Moreover, organizations that espouse particular ideologies may be convinced – and may persuade others – that the IRS or its employees are biased against those ideologies and are engaged in a deliberate effort to undermine the organizations through deliberate improper disclosures. These results are all possible, whether improper disclosures by the IRS are malicious or merely the result of unintentional errors by agency staff.

The IRS is clearly aware that it has a problem – as demonstrated by the calls to organizations that were the victims of the disclosure to ProPublica – but the IRS needs to do more. The recent spate of improper disclosures requires a public statement to make it clear that the IRS has identified how these disclosures came about and describing the concrete steps the IRS has put in place to prevent any further such disclosures. Inaction or silence by the IRS fuels both fear of further disclosures and narratives alleging IRS ideological bias.

We urge you to address these issues promptly and forcefully. This is a public confidence issue where the Service is uniquely-positioned to reassure the public. It should.

Sincerely,

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[Firm names are listed for identification purposes only. Inclusion of the firm's names does not indicate and should not be understood to imply endorsement of the views expressed in this letter by any of these firms or by other attorneys who are part of these firms but not listed here.]

cc: Lois G. Lerner, Director, Exempt Organizations Division, Internal Revenue Service
William J. Wilkins, Chief Counsel, Internal Revenue Service
The Honorable Max Baucus, Chair, U.S. Senate Finance Committee
The Honorable Orin Hatch, Ranking Member, U.S. Senate Finance Committee
The Honorable Dave Camp, Chair, U.S. House of Representatives Ways and Means
Committee
The Honorable Sander Levin, Ranking Member, U.S. House of Representatives Ways and
Means Committee