

May 23, 2013

J. Russell George
Tax Inspector General for Tax Administration
1401 H Street, NW
Suite 469
Washington, DC 20005

Dear Inspector General George:

According to testimony you presented to the Senate Finance Committee on May 21, 2013, your office is undertaking an audit into how the Exempt Organization division of the Internal Revenue Service “monitors I.R.C. §§ 501(c)(4)–(6) organizations to ensure that political campaign intervention does not constitute their primary activity.” Testimony at 3 n.14.

We believe this audit is essential in light of the failure of the Internal Revenue Service to enforce the tax laws against groups improperly claiming status as section 501(c)(4) “social welfare” organizations and in light of the IRS failure to replace the agency’s flawed regulations that have been wrongly interpreted to allow section 501(c)(4) groups to conduct far more campaign finance activities than the tax laws permit.

Starting in October 2010, Democracy 21 and the Campaign Legal Center have called on the IRS to investigate a number of groups apparently engaged primarily in campaign activities that have abused the tax laws by improperly claiming tax status as section 501(c)(4) organizations in order to hide their donors from the American people.

These improper claims of tax status under section 501(c)(4) have deprived citizens of basic information on the source of funds that were spent to influence their votes. More than \$250 million of this “dark money” was spent in the 2012 presidential and congressional elections by groups claiming tax status as section 501(c)(4) “social welfare” organizations, making this evasion of disclosure requirements a major scandal in its own right.

Since our first letter in October 2010, we have sent a total of 15 letters to the IRS challenging these abuses of the tax laws and requesting a rulemaking to replace section 501(c)(4) regulations that are in conflict with the statute and with court decisions interpreting the statute.

Our letters have presented documented cases to the IRS regarding the abuse of section 501(c)(4) by pro-Republican, pro-Democratic and independent candidate groups – including Crossroads GPS, Priorities USA, Americans Elect and American Action Network. These groups claimed section 501(c)(4) tax status to shield their donors from disclosure, even though the groups appear to be engaged primarily in campaign activities, in contravention of the eligibility requirements for section 501(c)(4) tax status.

Our IRS letters presented specific evidence regarding the extent of the campaign activities by these groups and called for an IRS investigation into their campaign activities. To date, however, no public action has been taken by the IRS against these groups and they have been improperly allowed to continue to function as section 501(c)(4) “social welfare” groups.

Attached are copies of the letters we sent to the IRS calling for investigations and seeking appropriate action regarding these groups.

During this same period, Democracy 21, joined by the Campaign Legal Center, also filed a petition with the IRS in July 2011, calling on the IRS to institute a rulemaking to replace its deeply flawed regulations implementing section 501(c)(4) of the tax laws. Attached are copies of the petition and the subsequent letters we sent in regard to it.

As the petition sets forth, the existing IRS rules, which are more than a half century old, provide that in order to be eligible for section 501(c)(4) tax status an organization must be “primarily engaged” in social welfare activities. The petition explains that the rules are contrary to the statutory language of section 501(c)(4), which provides that such groups must be “exclusively” engaged in social welfare. The petition further explains that the rules are also contrary to court cases construing the statute, which conclude that such groups may engage in no more than an “insubstantial” amount of non-social welfare activity.

The IRS rules, their lax interpretation and the absence of IRS enforcement, all combined to play a central role in the blatant abuses of the tax laws by groups improperly claiming section 501(c)(4) tax status to hide the sources of the funds being spent by the groups to influence federal elections.

We strongly urge you to fully investigate the failure of the IRS to properly enforce the requirements of section 501(c)(4), which resulted in the improper spending of hundreds of millions of dollars of secret money in the 2010 and 2012 federal elections.

We would be happy to provide any additional information to you regarding this matter that might be helpful to your audit.

Sincerely,

/s/ Gerald Hebert

J. Gerald Hebert
Executive Director
Campaign Legal Center

/s/ Fred Wertheimer

Fred Wertheimer
President
Democracy 21