Be On the Look Out

Chief Justice John Marshall famously declared that “the power to tax involves the power to destroy.” The same can be said of the power to grant, deny, and administer tax exemptions.

To the great credit of the Internal Revenue Service, for most of its history, with some notable exceptions, it has been guided by a culture of professionalism, philosophical impartiality, and respect for privacy in its administration of tax laws for exempt organizations.

As the scathing May 2013 report by the Treasury Department’s Inspector General for Tax Administration makes clear, the IRS has been seriously violating its own standards in recent years. The Inspector General found that beginning in 2010 the IRS used “inappropriate criteria” and asked “unnecessary information” in subjecting organizations to additional scrutiny based on their names and policy positions, resulting in “substantial delays” in their applications for tax-exempt status. While the IG report focused on applications for 501(c)(4) “social welfare” status, it found that “inappropriate criteria” were used in evaluating 501(c)(3) charities as well.

Americans from across the political spectrum are rightly alarmed by the IRS’s “Be On the Look Out” list targeting organizations with “Tea Party” or “Patriots” in their name, or with a mission to educate about the Constitution and Bill of Rights, or to “make America a better place to live.” There is also widespread shock at allegations by the National Organization for Marriage, in testimony before Congress, that the IRS illegally leaked confidential donor information to the organization’s opponents.

It remains to be determined whether political abuse of the IRS was directed by the White House, as has occurred in the past with both Democratic and Republican presidents. Whatever the source, a return to impartial application of tax laws governing non-profits is crucial for active citizenship and democratic discourse in our free society.

At The Philanthropy Roundtable, and our legislative arm the Alliance for Charitable Reform, the IRS scandal has reinforced our commitment to protect philanthropic freedom, and to work closely with Congress to guard against the creation of new laws or agencies that would unintentionally make such political abuse more likely in the rules governing charities and foundations.

We will strongly oppose any effort to make tax-exempt status contingent on accreditation, as the Senate Finance Committee staff proposed in a 2004 white paper. Congress wisely decided not to proceed along these lines, as this would have been an open invitation for the political abuse we have seen in the IRS scandal.

We will strongly oppose any effort to expand the IRS’s oversight over foundations and public charities, beyond its historic role of ensuring compliance with the tax code. In 2007, Steven Miller, then director of the agency’s exempt organizations and government entities division and more recently acting IRS commissioner until his dismissal in May, said that the IRS was planning “to promote standards of good governance, management, and accountability” at non-profits and was considering making assessments of the effectiveness and efficiency of tax-exempt organizations. Giving the IRS the authority to assess the effectiveness, efficiency, and governance of tax-exempt organizations would give it unprecedented discretionary power and be a threat to the independence of foundations and charities.

We will strongly oppose the creation of a new regulatory agency to oversee foundations and charities, as was proposed in a Congressional Research Service report in 2009.

Some have suggested that the answer to IRS abuses might be to transfer the administration of tax laws for non-profits from the IRS to an independent agency. But such an independent agency would be more likely to be subject to political pressure and manipulation from interest groups within the non-profit sector itself than is the IRS with its century-long tradition of professionalism and impartiality. For similar reasons, we will oppose any initiative for formal mandatory industry-wide self-regulation as an alternative to IRS oversight.

Finally, we will strongly oppose efforts by federal and state legislators to restrict what is considered charitable. Americans have historically enjoyed wide discretion in choosing their charitable causes, even unpopular ones. The tax code itself is broad-ranging, stating that “The exempt purposes set forth in section 501(c)(3) are charitable, religious, educational, scientific, literary, testing for public safety, fostering national or international amateur sports competition, and preventing cruelty to children or animals.” The Philanthropy Roundtable and the Alliance for Charitable Reform will continue to work closely with Congress to ensure that our laws protect philanthropic freedom and are impartially administered.

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