

October 6, 2011

Douglas H. Shulman
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Commissioner Shulman:

In the last few years, Congress and the Internal Revenue Service (“IRS”) have focused on the tax-exempt sector in an effort to increase compliance and improve oversight. These efforts led to new rules to prevent self-dealing and similar abuses, increased reporting requirements, and a well-publicized compliance program that resulted in thousands of tax-exempt status revocations for non-compliant organizations.

In addition to these new rules and compliance initiatives, the House Ways and Means Subcommittee on Oversight has continued to explore current issues involving the tax-exempt sector. As you know, in April of this year, the Subcommittees on Health and Oversight held a joint hearing that focused on AARP, one of the oldest and largest tax-exempt organizations in the United States. During that hearing, many issues were raised regarding AARP’s tax-exempt status, including its organizational structure and business activities, casting doubt on whether the organization acts exclusively to promote the welfare of all seniors or if it has simply become a for-profit enterprise. Indeed, AARP is not the only tax-exempt organization that more closely resembles a for-profit enterprise, rather than an organization formed for social welfare or public charity. Members of both Subcommittees have expressed concern that other tax-exempt organizations may not be complying with the letter or the spirit of the tax-exempt regime, yet continue to enjoy the benefits of tax exemption.

Therefore, it is my responsibility as the Chairman of the Oversight Subcommittee to explore the current regulatory environment, review the status of new laws and ongoing enforcement initiatives, and gather information on critical issues involving the tax-exempt sector. Your responses to the questions detailed below will provide the Subcommittee with a better understanding of the tax-exempt sector and some of the issues raised during the Subcommittees’ hearing on AARP. Please remit your responses no later than October 20, 2011.

1. Overview of the Tax-Exempt Sector

- a. Provide a detailed breakdown of the number of active tax-exempt organizations in good standing with the IRS, broken down by type (e.g., 501(c)(4), 501(c)(10)).

- b. Provide a detailed breakdown of the IRS Tax Exempt and Government Entities Division's budget for 2008 through 2011. Specify the total number of employees dedicated to tax-exempt organization work and how these resources are allocated across the division.
- c. How many tax-exempt organizations have been audited since 2008? Provide a breakdown of all audits opened for each type of tax-exempt entity, the issues identified for audit, and the current status of such audits. What was the average length of a tax-exempt audit during this period?
- d. How many new tax-exempt organizations did the IRS recognize in each of the last three years for which data is available? Provide a breakdown of all new applications for tax-exempt status by organization type and year for those years. Describe the process by which an entity is granted tax-exempt status. What is the IRS procedure for conducting periodic reviews of an organization's tax-exempt eligibility?

2. Compliance

Form 990 was recently revised and reorganized to require additional information reporting on issues such as governance, financial and tax reporting, and foreign activities. For example, a new schedule, Schedule R, was added to Form 990 for organizations to report information on related organizations. Among the goals motivating the redesign of Form 990 was the need to improve compliance and increase the transparency and accountability of tax-exempt organizations.

- a. Provide a detailed explanation of how the IRS is using the new information obtained from the new Form 990 to improve current enforcement efforts and future compliance.
- b. Provide a detailed explanation of how the redesigned Form 990 increased transparency and accountability of tax-exempt organizations.
- c. Have taxpayers expressed concerns to the IRS regarding the compliance burden associated with the redesigned Form 990? If so, describe the primary compliance issues identified by taxpayers and what the IRS has done, or plans to do, to address taxpayer concerns.
- d. Is the IRS contemplating any additional changes to Form 990 to further compliance goals? If so, describe the planned modifications and their estimated effect on compliance.
- e. How is the IRS using the related organization information from the Schedule R? What type of compliance problems is this schedule designed to curb? Is the information reported on the Schedule helpful in improving compliance? If not, are further changes to the schedule contemplated? If so, please describe the planned modifications and their estimated effect on compliance.

- f. Has the IRS identified any specific governance issues based on the additional information provided on the redesigned Form 990? If so, provide a detailed description of the new issues identified.
- g. The IRS recently revoked the tax-exempt status of thousands of organizations across the country for failure to file tax returns as part of the automatic revocation program.
 - i. What is the current status of this program?
 - ii. How many taxpayers reinstated their tax-exempt status using the procedures in Revenue Procedures 2011-8, 2011-36, and 2011-43?
 - iii. How many taxpayers are currently in the process of being reinstated?
 - iv. What is the average length of time for the processing of a reinstatement request?
 - v. Is the IRS planning to issue any further guidance related to the automatic revocation program?

3. Unrelated Business Income

- a. In 2009, the Congressional Research Service estimated that revenues from tax-exempt organizations were \$1.4 trillion and the value of assets held by tax-exempt organizations totaled \$2.6 trillion.¹ Provide IRS data regarding the revenue and assets of tax-exempt organizations for 2008, 2009, and 2010.
- b. How does the IRS identify unrelated business taxable income issues for audit? Provide a breakdown of the total number of tax-exempt audits opened by the IRS in 2009 and 2010 that involved unrelated business taxable income issues.
- c. Provide the following figures concerning all 501(c) organizations for the 2009 and 2010 tax year, identifying each type separately.
 - i. How many organizations reported unrelated business taxable income and income exempt from the unrelated business income tax?
 - ii. How many organizations reported both unrelated business taxable and income exempt from the unrelated business income tax?
 - iii. What is the total amount of tax-exempt royalty income, and tax-exempt rental income reported? What is the average amount of those sources of income among the entities that reported receiving at least some such income?

¹ See *An Overview of the Nonprofit and Charitable Sector*, Congressional Research Service (Nov. 17, 2009).

- iv. What are the most common tax-exempt organization errors related to reporting trade or business income?
- v. Describe IRS procedures for reviewing returns by tax-exempt organizations that report unrelated business taxable income.

4. Audits

- a. What percentage of the Tax Exempt and Government Entities Division's budget is allocated towards audits and examinations?
- b. Explain how the IRS reviews allegations of excessive political campaign activity by tax-exempt organizations.
- c. What issues does the IRS prioritize when conducting audits of tax-exempt organizations, or reviewing the returns of such organizations?
- d. The redesigned Form 990 requires additional information on related and subsidiary organizations. Has the new information prompted an audit or been of assistance during the course of an audit? If so, please describe the manner in which the information has been used.

5. Current Tax-Exempt Enforcement Initiatives

- a. In addition to the Hospitals and Universities projects (referenced in sections (c) and (d)), are there any tax-exempt compliance projects that the IRS is currently undertaking? Does the IRS have plans to launch any such projects in the upcoming year? If so, please describe the anticipated compliance project.
- b. Excise Taxes/Penalties
 - i. How many disqualified persons or organization managers were subject to penalties under IRC §4958 for violating the excess benefit rules between 2006 and 2010?
 - ii. How many donor advised funds or supporting organizations were subject to the excess benefit rules of IRC §4958 between 2006 and 2010? Have any of these organizations lost their tax-exempt status?
 - iii. How many tax-exempt organizations have been subject to the excise tax under IRC §4911 between 2006 and 2010 for failure to comply with the lobbying rules?
 - iv. How many tax-exempt organizations has the IRS found to be engaged in tax shelter transactions between 2006 and 2010? Provide a breakdown of the type of transaction and the results of the audit/investigation.

c. Hospitals

- i. Describe the IRS's current plans to comply with the new requirement in IRC §4959 to review, at least once every three years, the community benefit activities of each hospital organization that is subject to the requirements under IRC §501(r).
- ii. What steps is the IRS taking to comply with the requirement under IRC §9007(e) of Pub. L. 111-148, Patient Protection and Affordable Care Act, to submit an annual report to Congress, including the Ways and Means Committee, regarding the level of charity care provided by all hospitals (taxable, charitable, and government)?

d. Universities

- i. On May 7, 2010, the IRS issued its interim report on the colleges and universities compliance project. What is the status of the final report and when does the IRS anticipate completing the final report?
- ii. Based on college and university responses to the compliance project questionnaire, the IRS has initiated audits looking at a number of issues, including excessive compensation and unrelated business income.
 1. Provide a detailed explanation of how the IRS is identifying and selecting issues for audit as part of the college and university compliance project.
 2. List all issues the IRS has identified for audit related to the college and university compliance project.

Thank you in advance for your prompt attention to this matter.

Sincerely,

Charles Boustany, Jr., MD
Chairman
Subcommittee on Oversight