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## The IRS Moratorium on Section 501(c)(4) Gift Tax Enforcement Was The Right Thing To Do

Recently, news stories appeared in the *New York Times* and on *Huffington Post*, indicating that former IRS Exempt Organizations Director Marc Owens had written to Treasury on behalf of clients unhappy with the IRS July 7 announcement on section 501(c)(4) gift tax enforcement.

I agree with Marc that it would have been better for the IRS to state definitively whether the federal gift tax does or does not apply. A “no” answer might come more easily to that question—that donations to 501(c)(4) organizations made for the betterment of society through policy advocacy or other means are so different from giving to the natural objects of one’s bounty that they don’t qualify as taxable gifts. A “yes” answer would be more problematic because the IRS would need to address issues such as the distinction between a gift and a payment for advocacy services and whether a gift earmarked to influence candidate elections could properly be taxed.

I am not so convinced as Marc seems to be that the IRS capitulated in the face of Republican pressures in calling 501(c)(4) gift tax enforcement to a halt, or that this result benefited solely or mainly Republican donors. As counsel for one of the donors, I do not know the party affiliations of the others. The criticism of the IRS audits originated not with Congressional Republicans, but with tax-exempt law practitioners at the American Bar Association Tax Section meeting in May of 2011, and concern was expressed from many points of the political compass. In fact, the 501(c)(4) gift tax moratorium ultimately announced by the IRS closely matched a recommendation from a 2004 ABA task force—hardly a partisan group.

Most importantly, I differ with Marc’s view that the IRS announcement made things worse for the taxpaying public.

It may have been clear to Marc, and to me, that the tax cases and rulings of 30 or 50 years ago supported imposition of the gift tax on donations to Section 501(c)(4) organizations, but the IRS by its own admission had “little enforcement history.” As Barbara Rhomberg wrote in 2003 and 2004, application of the gift tax was “unsettled” and “clouded” by constitutional issues. For decades, confusion and uncertainty had been widespread among donors, their accountants, and their legal counsel.

The July 7 IRS announcement, for the time being, relieved that confusion and uncertainty: no one will be audited for non-payment of gift tax on donations to Section 501(c)(4) groups, and enforcement will be “prospective only after notice to the public.”

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It is good that the IRS acted quickly to halt enforcement of gift tax on 501(c)(4) donors, with a public announcement, rather than letting months or years pass while the audits dragged on, went through appeals and into litigation, with the outcome in doubt.

The termination of audits applies not only to the original five donors, but to all other, similarly-situated taxpayers. The IRS memorandum is clear that no examination resources should “be expended on this issue,” and that includes “initiating referrals or developing audits.” The IRS message is quite plain. “Go ahead and make donations to Section 501(c)(4) organizations without fear of gift tax until we tell you otherwise.”

That levels the playing field for everybody, which is a vast improvement. No doubt more wealthy donors will give to 501(c)(4) organizations active during the 2012 elections, but that opportunity is available to all regardless of risk tolerance and regardless of political affiliation.

Additional Links:

1. [Colvin comments to Bureau of National Affairs, August 23, 2011](#)
2. [IRS Faces New Questions About Gift-Tax Stance, \*Chronicle of Philanthropy\*, August 10, 2011](#)
3. [Adler & Colvin client alert, May 12, 2011](#)