

United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

January 15, 2021

The Honorable Charles P. Rettig
Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, D.C. 20224

Commissioner Rettig,

Last week a violent insurrection at the U.S. Capitol sought to block certification of President-elect Biden's Electoral College victory, in one of the darkest episodes in American democracy since the Civil War. While many questions remain about the day's attack, it has become clear that this was an orchestrated, organized event.

According to press reports, groups exempt from tax under section 501(c)(3) and 501(c)(4) were involved in promoting and organizing events that ultimately led to the violent insurrection.¹ It is possible that tax-exempt organizations, including those recognized by IRS as charities and social welfare organizations, may have been involved in inciting or facilitating these illegal acts.

Established law has long held that an organization is not eligible for tax exemption under section 501(c)(3) if a purpose of the organization is contrary to public policy or is illegal.² IRS has established a three-part test to determine whether an organization's activities are consistent with exemption under section 501(c)(3): (1) whether the purpose of the organization is charitable; (2) whether the activities are not illegal, contrary to a clearly defined and established public policy, or in conflict with express statutory restrictions; and (3) whether the activities are in furtherance of the organization's exempt purpose and are reasonably related to the accomplishment of that purpose.³

¹ *Dark-Money GOP Fund Funneled Millions of Dollars to Groups that Pushed Voter Fraud Claims*, CNBC, Jan. 13, 2021,

<https://www.cnbc.com/2021/01/13/dark-money-gop-fund-funneled-millions-groups-that-pushed-voter-fraud-claims.html>;

Republican AGs Group Sent Robocalls Urging Protesters to the Capitol. GOP Officials now Insist they Didn't Know About it, Washington Post, Jan. 11, 2021,

<https://www.washingtonpost.com/nation/2021/01/11/gop-robocalls-trump-rally-capitol/>

² Restatement (Second), Trusts (1959) Sec. 377; *Bob Jones Univ. v. United States*, 639 F.2d 147 (4th Cir. 1980), *aff'd*, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983).

³ Rev. Rul. 80-278, 1980-2 C.B. 175.

Similarly, IRS has held that illegal acts may disqualify an organization from tax-exempt status under section 501(c)(4). IRS regulations provide that an organization is operated exclusively for the promotion of social welfare if it is primarily engaged in promoting in some way the common good and general welfare of the people of the community.⁴ IRS has held that “[i]llegal activities, which violate the minimum standards of acceptable conduct necessary to the preservation of an orderly society, are contrary to the common good and the general welfare of the people in a community.”⁵

IRS has strictly enforced these holdings with respect to incitement of violence and terrorism. In Rev. Rul. 75-384 IRS held that an antiwar protest organization that urged demonstrators to engage in civil unrest by committing violations of local ordinances and breaches of public order did not qualify as a tax-exempt entity under section 501(c)(4).⁶ Further, IRS has established that the severity of violent and terrorist acts must be considered beyond the mere proportion that such acts constitute of an organization’s overall activities. In GCM 34631, IRS stated even a small amount of violence or terrorism is sufficiently substantial to require revocation of exempt status:

To determine when disqualifying activities are present to a ‘significant extent’ (that is, when they become ‘substantial’), more must be considered than the ratio they bear to activities in furtherance of exempt purposes. The quality of such acts are as important as the quantity. A great many violations of local pollution regulations relating to a sizeable percentage of an organization’s operations would be required to disqualify it from 501(c)(3) exemption. Yet, if only .01% of its activities were directed to robbing banks, it would not be exempt. This is an example of an act having a substantial non-exempt quality, while lacking substantiality of amount. *Very little planned violence or terrorism would constitute ‘substantial’ activities not in furtherance of exempt purposes.*⁷

Not only are acts of terrorism or violence committed by an organization grounds for revocation of exempt status, but any 501(c)(3) or 501(c)(4) organization that encourages, plans, or supports an illegal act may be subject to revocation.⁸ Further, IRS has held that (1) acts conducted by organization officials under actual or purported authority to act for the organization, (2) acts by agents of the organization within their authority to act, or (3) acts ratified by the organization should be considered activities “of the organization.” While acts in excess of an officer’s authority will generally not be considered an act “of the organization,” if an organization allows such actions to go unchallenged, IRS will consider the act to be ratified by the organization.⁹

IRS tax exemption represents an official government endorsement of an organization and its activities, and bestows upon tax-exempt entities a significant financial benefit. Organizations that fail to provide for the public good, or worse—incite insurrection and violence at the core of our democracy—must not be allowed to remain in operation.

⁴ Treas. Reg. §§ 1.501(c)(4)-1(a)(2)(i).

⁵ Rev. Rul. 75-384, 1975-2 C.B. 204.

⁶ Rev. Rul. 75-384, 1975-2 C.B. 204.

⁷ GCM 34631, emphasis added.

⁸ GCM 36153; Rev. Rul. 75-384, 1975-2 C.B. 204.

⁹ GCM 34523.

Accordingly, I urge IRS, in coordination with other law enforcement agencies to investigate the extent to which tax exempt organizations were involved in any part of the Capitol insurrection or actions leading up to that event, and to the greatest extent of the law, revoke the exempt status of those organizations that played a role in inciting or committing violence and other illegal acts.

In addition, I ask that IRS prepare a report on the findings of this investigation for the Finance Committee to review in the appropriate venue.

Sincerely,



Ron Wyden
Ranking Member
Committee on Finance, U.S. Senate