



U.S. Department of Justice
Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

SEP 08 2017

The Honorable Kevin Brady
Chairman
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

The Honorable Peter J. Roskam
Chairman
Subcommittee on Tax Policy
Committee on Ways and Means
U.S. House of Representatives
Washington, DC 20515

Dear Chairman Brady and Chairman Roskam:

This responds to your letter to the Attorney General dated April 12, 2017, requesting that the Department of Justice (the Department) reexamine the April 9, 2014, letter from the House Committee on Ways and Means (the Committee) referring former IRS Exempt Organizations Division Director Lois G. Lerner for criminal prosecution. We apologize for our delay in responding to your letter.

It remains longstanding Department policy not to confirm, deny, or otherwise comment upon matters that may or may not be under investigation by the Department. However, in light of the Department's prior public remarks about this matter, including the Department's October 23, 2015 letter to this Committee (the 2015 Letter), we are pleased to provide you with this response.

As you know, the Department's 2015 Letter informed the Committee that the Department and the FBI conducted a criminal investigation into whether any IRS employees committed crimes in connection with the IRS's handling of applications for tax-exempt status under Internal Revenue Code sections 501(c)(3) and 501(c)(4). Those statutes provide tax-exempt status to qualifying charitable organizations, civic leagues, and social welfare groups and limit the amount of "political campaign" activity these tax-exempt groups may perform. 26 U.S.C. §§ 501(c)(3), (4).

The Department opened its criminal investigation after the Treasury Inspector General for Tax Administration (Treasury Inspector General) issued an audit report which found that, between 2010 and 2012, the IRS used "inappropriate criteria" to select applications for 501(c)(3) and 501(c)(4) status for additional reviews. Treasury Inspector General, *Inappropriate Criteria Were Used to Identify Tax-Exempt Applications for Review*, Ref. No. 2013-10-053 (May 14, 2013). In particular, the Treasury Inspector General determined that IRS employees identified certain

applications for additional scrutiny based on the applicants' "names" or the "policy positions" the applicants advocated, rather than by focusing on whether the applicants were engaged in the types of "political campaign" activities that sections 501(c)(3) or 501(c)(4) do not allow. *Id.* The Treasury Inspector General further reported that groups selected for these additional reviews experienced "substantial delays" in the processing of their applications and were subjected to "unnecessary information requests." *Id.*

Consistent with the Treasury Inspector General's findings, the Department's 2015 Letter informed the Committee that the Department's investigation uncovered substantial evidence of mismanagement at the IRS. Further, the Department concluded that the IRS's mishandling of tax-exempt applications disproportionately impacted applicants affiliated with Tea Party groups and similar organizations. However, the Department reported that its investigation had not uncovered evidence of criminal intent by any IRS official. The Department therefore stated that it was closing the investigation and would not pursue criminal charges.

The First Amendment prohibits the government from discriminating against citizens or groups based on their viewpoints or the policy positions they advocate. *Citizens United v. Federal Election Comm'n*, 558 U.S.C. 310, 340 (2010). To protect this constitutional guarantee, Congress has enacted laws making it a crime for government officials to intentionally discriminate against citizens or groups in this manner. *See, e.g.*, 18 U.S.C. §§ 241, 242; 26 U.S.C. §§ 7214(a)(1), 7214(a)(3). The Department is entrusted with enforcing these laws and is committed to fully and faithfully executing this highly important responsibility.

As a consequence, the Department carefully reviewed the investigation findings that were reported to the Committee in the 2015 Letter. Earlier this year, the Office of the Attorney General and the Office of the Deputy Attorney General met with leaders in the Department's Criminal Division responsible for supervising this matter for a detailed review and extensive discussions regarding the investigation; the evidence, including the information the Committee provided to the Department; and the prosecutorial decisions that were made. In addition, attorneys who recently joined the Department in leadership positions, and who had no prior involvement with this case, independently reviewed the investigation and the facts and law at issue. After this process, the Department determined that reopening the criminal investigation would not be appropriate based on the available evidence.

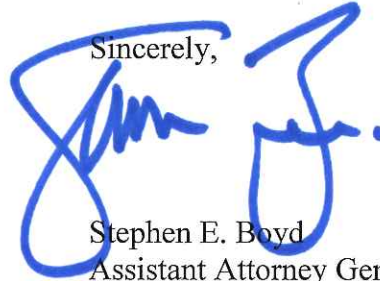
In providing this information, we note that, in this context, the applicable criminal statutes require proof beyond a reasonable doubt that a government employee intentionally discriminated against an applicant for tax-exempt status based upon viewpoint. *See* 18 U.S.C. §§ 241, 242; 26 U.S.C. §§ 7214(a)(1), 7214(a)(3).

I assure you that the Department has carefully studied the law, given the evidence the utmost consideration, and thoroughly reviewed the prior investigation from an objective perspective. As in every case, if new information emerges that is relevant to this matter, the Department will consider it in an appropriate and timely manner.

The Honorable Kevin Brady
The Honorable Peter J. Roskam
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We hope this information is helpful. Please do not hesitate to contact this office if we may be of assistance regarding this or any other matter.

Sincerely,

A handwritten signature in blue ink, appearing to read "S. Boyd", is written over the word "Sincerely,".

Stephen E. Boyd
Assistant Attorney General

cc: The Honorable Richard E. Neal
Ranking Member

The Honorable Lloyd Doggett
Ranking Member
Subcommittee on Tax Policy