



U.S. Department of Justice

Office of Legislative Affairs

Office of the Assistant Attorney General

Washington, D.C. 20530

September 16, 2015

The Honorable Bob Goodlatte
Chairman
Committee on the Judiciary
U.S. House of Representatives
Washington, D.C. 20510

Dear Mr. Chairman:

Enclosed please find responses to questions for the record arising from the appearance of Caroline D. Ciraolo, Acting Assistant Attorney General of the Tax Division, before the Subcommittee on Regulatory Reform, Commercial and Antitrust Law on May 19, 2015, at a hearing entitled "Ongoing Oversight: Monitoring the Activities of the Justice Department's Civil, Tax and Environment and Natural Resources Divisions and the U.S. Trustee Program." We hope that this information is of assistance to the Committee.

Please do not hesitate to contact this office if we may be of additional assistance regarding this or any other matter. The Office of Management and Budget has advised us that there is no objection to submission of this letter from the perspective of the Administration's program.

Sincerely,

A handwritten signature in blue ink, appearing to read "Peter J. Kadzik".

Peter J. Kadzik
Assistant Attorney General

Enclosure

cc: The Honorable John Conyers, Jr.
Ranking Member

Questions for the Record
Caroline D. Ciralo
Acting Assistant Attorney General, Tax Division
Subcommittee on Regulatory Reform, Commercial and Antitrust Law
Committee on the Judiciary
U.S. House of Representatives
May 19, 2015

Questions posed by Subcommittee Chairman Marino

Lois Lerner/Internal Revenue Service Targeting Issues

- 1. Defense lawyers routinely have to worry about their clients withholding information from them. Similar considerations govern when DOJ lawyers represent agencies. For example, in February 2014, the Internal Revenue Service Chief Counsel to the Commissioner, Kate Duvall, learned that there were significant gaps in Lois Lerner's emails. Yet one month later, instead of preserving the material as relevant to pending litigation, Internal Revenue Service IT officials erased the backup tapes. What mechanisms were in place, prior to the Lois Lerner litigation, to ensure that the information Division lawyers presented to the court in that litigation was accurate? What changes have you made to those mechanisms in response to the lost emails and related problems that arose during the Lois Lerner litigation?**

Response:

The Tax Division represents the United States in civil suits arising under the internal revenue laws. When a suit is filed or the Tax Division's attorneys learn that litigation is reasonably anticipated and they will be representing the United States, the Tax Division's attorneys take the necessary steps to ensure that the Internal Revenue Service (IRS) fulfills its obligation to identify and preserve any material that is relevant to the claim or defense of any party in the litigation. Tax Division attorneys work with the appropriate agency employees to develop a reasonably comprehensive search strategy, and the Division's attorneys are instructed to follow up with the appropriate agency employees to ensure the agency is taking appropriate and reasonable steps to ensure that relevant material is preserved. The Tax Division's attorneys recognize and take seriously their duty to respond to discovery consistent with the applicable rules and existing law.

Tax Division WH Detailees/Access to Sensitive Taxpayer Data

- 2. There is concern about the Tax Division's practice on detailees, particularly to the White House. How many detailees does the Division dispatch to other agencies or departments and for what periods of time? Does the Division have any protocols in place to ensure that sensitive taxpayer information remains protected when Division attorneys are detailed to the White House or elsewhere?**

Response:

The Tax Division's attorneys and staff handle some of the nation's most complex litigation with skill and dedication. Accordingly, the Tax Division receives requests for its attorneys and staff to be detailed to other components of the Department of Justice and federal agencies. The Tax Division considers whether its attorneys and staff hold particular skills or information that would assist another component or agency reach its goals, and whether doing so would comport with the Tax Division's mission. These details generally last from a few months to a year or more depending on the circumstances. For example, in FY14, five Tax Division attorneys were detailed outside of the Department of Justice for all or a portion of the year.

Tax Division attorneys are trained that, in their work with the Tax Division, returns and return information are disclosed to them for purposes of tax administration and that they may disclose the returns and return information only as allowed by 26 U.S.C. § 6103(h) and the applicable regulations. Tax Division attorneys also understand that disclosing returns and return information while working on matters that are not those of tax administration in the Department of Justice is prohibited by § 6103.

Contract Auditing

- 3. The Internal Revenue Service and the Tax Division have long cooperated in staffing complex cases, whether litigating in the U.S. Tax Court, the Court of Federal Claims, or the federal district courts. The Internal Revenue Service recently entered into a multi-million dollar contract with the law firm of Quinn Emanuel.**

a. Does the Internal Revenue Service typically request Tax Division assistance before resorting to contracts with third-parties for help?

Response:

The Tax Division discusses with the Office of Chief Counsel, IRS, how complex litigation should be handled. We are not, however, aware of all of the situations in which the IRS has contracted with third-parties.

b. Does the Internal Revenue Service request the Tax Division's view on the propriety of contracts with third-parties? If so, what views were expressed on the Quinn Emanuel contract?

Response:

The IRS generally does not consult the Tax Division on contract matters, and did not request the Division's views before entering into the Quinn Emanuel contract.

c. Was the Tax Division consulted prior to the issuance of temporary (T.D. 9669) regulations in June 2014 authorizing contractual third-parties, such as Quinn Emanuel, to take testimony by summons?

Response:

The Office of Chief Counsel often solicits the Tax Division's views on guidance the Office of Chief Counsel is considering. In particular, the Tax Division provides its comments on how the draft guidance might affect issues that have been in litigation. The Tax Division provided its views on draft regulations under 26 U.S.C. § 7602.

- 4. To your knowledge, did the Internal Revenue Service ever seek advice from the Tax Division or any other Department of Justice component, such as the Office of Legal Counsel, concerning the propriety of engaging a private law firm in connection with an Internal Revenue Service audit?**

Response:

The Tax Division provided its views on draft regulations under 26 U.S.C. § 7602. The Tax Division is not aware of advice that the Office of Chief Counsel, IRS, sought from other components of the Department of Justice.

Question posed by Representative Doug Collins

1. **Ms. Ciraolo, I have a long-standing interest in “Sue and Settle” cases, and have introduced a bill to shed light on these practices and ensure that the Administration is not engaged in back-door regulating. The Freedom from Religion Foundation, an atheist advocacy group, sued the IRS claiming it routinely ignored their complaints about partisan activities at churches. The Tax Division represented the IRS in a settlement with the Freedom from Religion Foundation. In 2014, the IRS concluded the settlement, which required it to monitor churches and other houses of worship for compliance with non-electioneering rules. I have serious concerns that the IRS could be using this settlement—negotiated by your division—to improperly target houses of worship.**

I would like to know the details of the deal cut by your division and the Foundation. What was the level of coordination between your division, the IRS, and the activist atheist group?

Response:

No settlement occurred between the IRS and the Foundation in *Freedom From Religion Foundation Inc. v. Koskinen*, No. 12-CV-818 (W.D. Wis.), a case in which the Tax Division represented the United States. Rather, the Foundation determined to dismiss its own lawsuit, and the IRS, as a matter of procedure, joined the dismissal.

In its lawsuit, the Foundation alleged that the IRS has a policy of non-enforcement of the political activity restrictions contained in 26 U.S.C. § 501(c)(3) with respect to churches and religious organizations, but not as to all other entities that are tax-exempt under that section. Early in pre-trial discovery, the Foundation decided to dismiss the action without prejudice, and the IRS agreed that the case should be dismissed. The Foundation and the IRS filed a Joint Motion for Dismissal on July 17, 2014, under Fed R. Civ. P. 41. In that joint motion, the IRS and the Foundation stated that “[the Foundation] is satisfied that the IRS does not have a policy at this time of non-enforcement specific to churches and religious organizations.” By order dated August 1, 2014, the Court granted the Motion.

**Questions posed by Subcommittee Ranking Member Henry C. "Hank" Johnson, Jr.
and Ranking Member John Conyers, Jr**

- 1. In his written testimony, Daniel Epstein asserts that the White House has a practice of detailing attorneys from the Tax Division to the White House and that "there is no evidence that any ethical or legal safeguards were in place to ensure that private information was not disclosed — even inadvertently — to the White House," raising "legal and ethical concerns." What is your response?**

Response:

Section 6103 of Title 26 of the United States Code and the applicable regulations define when returns and return information may be disclosed. The Tax Division's attorneys are trained that returns and return information are disclosed to them for purposes of tax administration and that they may in turn disclose the returns and return information only as allowed by 26 U.S.C. § 6103(h) and the applicable regulations.

- 2. What criteria are utilized by the Justice Department to select from among its attorneys to serve as detailees to the White House?**

Response:

When the Tax Division is asked to make an employee available for a detail, to the extent possible if circumstances allow, all qualified employees are notified of the opportunity and the means by which they can apply for the position. Based on the information received, the Division determines which applicants are qualified and could be out of the Division without hindering the Division's mission.

- 3. What safeguards are in place to ensure that the privacy of taxpayers' confidential tax information is not violated with respect to Tax Division attorneys who are detailed to the White House?**

Response:

Section 6103 in Title 26 of the United States Code and the applicable regulations define when returns and return information may be disclosed. Tax Division's attorneys are trained that returns and return information are disclosed to them for purposes of tax administration and that they may in turn disclose the returns and return information only as allowed by 26 U.S.C. § 6103(h) and the applicable regulations.