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Is Congress Politicizing the IRS and Its Enforcement Process?

To the Editor:

The IRS announced last month that it was examining its position with regard to the application of gift tax on donations to 501(c)(4) Social Welfare organizations. While the decision by the IRS is practical and pragmatic, it also raises serious concerns that Congress is politicizing the IRS by using political pressure to ensure that influential donors are not audited.

For over 40 years, the IRS has asserted that tax-exempt organizations are subject to gift tax absent statutory provisions providing otherwise. Although there has been scant enforcement in this area over the years, the lack of enforcement is as much a sign of a regulatory decision with regard to compliance priorities as it is a decision by the IRS that such contributions are not subject to gift tax.

Over the last four years, we have seen a significant movement by political groups to organize as 501(c)(4) social welfare organizations as a means of escaping the congressionally enacted disclosure provisions in Internal Revenue Code section 527, which requires political organizations to disclose contributors and expenditures. In my view, many of these organizations are improperly organizing as social welfare organizations to skirt the disclosure provisions.

One of the consequences of attempting to organize as 501(c)(4) social welfare organizations to obfuscate the policy in section 527 is that contributions to 501(c)(4)s are subject to gift tax. The key here is that Congress has specifically exempted 501(c)(3) organizations (charities and religious organizations) and section 527 organizations (political organizations) from the gift tax. There is no such congressionally enacted gift tax exemption for 501(c)(4) organizations. In other words, contributions to 501(c)(4) social welfare organizations are statutorily subject to gift tax. The IRS had not taken a strong enforcement position in this area, but it had clearly indicated its view that contributions to (c)(4) organizations are subject to gift tax. What apparently happened is that as part of routine estate and gift tax audits, the IRS raised questions about the applicability of gift tax to donations to 501(c)(4) organizations, and some in Congress have cried

foul. They allege that the IRS is playing politics by enforcing the law. The IRS is not playing politics; it is doing its job.

Recently, some Republican Members of the Senate Finance Committee and the House Ways and Means Committee sent letters to the IRS clearly designed to harass and intimidate the IRS from auditing these powerful and politically connected donors. From my perspective, it is Members of Congress that have engaged in "playing politics" with the IRS by trying to pressure the IRS into ignoring the law as written. The answer here is simple. If Congress does not want the IRS to engage in audits of (c)(4)s, Congress should not impose those responsibilities on the IRS. What is unfair is to impose those responsibilities on the agency and then accuse it of playing politics when it enforces the very provisions passed by Congress. The attacks on the IRS are political moves by Members of Congress to ensure that their friends or interest groups are not audited. This is exactly the kind of politics that we should seek to avoid. Influential Members of Congress should not be intimidating the IRS from enforcing the law.

After the IRS announced that it is re-examining its current policies and that any enforcement efforts would be prospective, Senator Orrin Hatch, R-Utah, issued a statement indicating that "this decision today ensures that the IRS remains free from even the hint of undue political influence." Hatch went on to ask, "why did the IRS choose to enforce this in the first place?" My answer would be, because it is the law. The more difficult question is why would it not enforce it now? My fear is the reason is because of political pressure by Senator Hatch and others.

David Camp, R-Mich., Chairman of the House Ways and Means Committee, expressed similar concerns that "the IRS has failed to clarify that the gift tax will not apply to future political donations." Since the law provides that donations to (c)(4) social welfare organizations are subject to gift tax, it makes sense that the IRS announced only that it was examining this issue and that it would not take enforcement action without further notice. When members of Congress attack the IRS for enforcing the law, it sends the message to the IRS that auditing politically connected individuals will result in accusations, investigations, and harassment. If members of Congress do not like the law, they are in very strong positions to work to change it, but by using their political influence to intimidate and

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attack the IRS, they have attacked the agency for doing what it is supposed to do — enforce the tax law as passed by Congress. It is Congress who has politicized this process, not the IRS.

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