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Ways and Means Committee Redefines Taxpayer Confidentiality - Is Your Information Safe?

TAX

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In the spring of 2013, the Internal Revenue Service (the "IRS") revealed that it had used improper criteria in evaluating the applications for tax-exempt status of certain organizations that it suspected of engaging in political activity. The revelations triggered a series of investigations that has recently culminated with the [House Ways and Means Committee](#) (the "Committee") issuing a formal request to refer Lois Lerner, the former head of the IRS Exempt Organizations division, to the Department of Justice for criminal prosecution. Lerner has been accused of using her position to improperly target conservative groups, impeding official investigations by providing misleading statements, and risking the disclosure of confidential taxpayer information by using her personal email to conduct official business. A conviction could send Lerner to prison for up to 11 years.

The referral was made via a letter from the Committee to Attorney General Eric Holder. Controversy has arisen due to the fact that the Committee chose to post the letter online, including more than eighty pages of exhibits which contain the names of organizations that had applied for tax-exempt status, the status of said applications, and information pertaining to any problems the IRS screeners had identified with their requests. One cannot help notice the irony of the Committee making private taxpayer information available for public consumption in the very letter that referred Lerner for prosecution for allegedly doing the same. Apparently the Committee doesn't hold much stock in the old proverb that two wrongs don't make a right.

[Internal Revenue Code \("IRC"\) Section 6103](#) prohibits the disclosure of tax returns and other tax return information unless such disclosure falls within one of the enumerated exceptions set forth in the statute. The provision codified the principle that citizens reasonably expect that the tax information that they are required to supply to the IRS will be kept confidential. Section 6103 was promulgated as part of the Tax Reform Act of 1976 in response to the perceived inappropriate use of taxpayer information by the Nixon administration.

An exception in the statute provides that the chairmen of certain committees, including the House Ways and Means Committee, may compel the IRS to turn over confidential taxpayer information. However, a taxpayer's information may be accessed only in a closed executive session and may not be released to the public without the written consent of such taxpayer. In publicly disclosing the information without consent, the Committee has taken the position that, under the statute, any taxpayer information obtained pursuant to its authority may be submitted to the Senate, or to the House of Representatives, or to both. Under the Committee's interpretation of the law, upon release to the Senate or the House, the information automatically becomes available for public inspection.

Public dissemination of the status of tax-exempt applications may create tangible damages for the affected organizations. Tax-exempt organizations rely on gifts from donors to fund their operations. These

supporters may be reluctant to donate funds to an organization that is under IRS scrutiny, regardless of whether such scrutiny was improperly deserved.

Legal scholars are divided as to whether information sent to the House or Senate automatically becomes public, and whether recourse will be available to organizations if, in fact, their rights have been violated. IRC Section 7431 provides that, if any officer or employee of the United States knowingly or negligently discloses taxpayer information in violation of Section 6103, the aggrieved taxpayer may bring a civil action for damages against the United States in district court. However, the statute specifically precludes liability in cases where the disclosure resulted from a good faith, but erroneous, interpretation of Section 6103. Organizations that intend to challenge the decision to publicly disclose their information may thus face a difficult path ahead.

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