

United States Senate

November 2, 2022

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, NW
Washington, DC 20220

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

The Honorable Douglas O'Donnell
Deputy Commissioner
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Dear Secretary Yellen, Commissioner Rettig, and Deputy Commissioner O'Donnell:

I write with concern regarding the apparent targeting of churches by the IRS for tax inquiries and examinations at the behest of anti-religion activist groups. This matter is particularly troubling given that the IRS will be receiving an \$80 billion windfall in new funding, with over half of that dedicated to new tax enforcement, in addition to the \$13 billion annual appropriation the IRS received for the 2022 fiscal year. The Tax Exempt Organizations Division of the IRS is seemingly circumventing the purposes of the *Church Audit Procedures Act*¹ through the issuance of third-party administrative summons, including to financial institutions.

In one recent example, a few months after an anti-religion group sent a letter to the Exempt Organizations Examinations Division alleging "electioneering violations," a revenue agent initiated a church tax inquiry based on "a general web search" and "newspaper articles at the time" to determine whether the church qualified as a church. Despite the church voluntarily providing comprehensive lists of historical worship activities and relevant financial records to allay concerns, the IRS refused an invitation to attend a worship service or meet with the church board, and proceeded to issue an administrative summons to the church's bank requesting all financial transactions over a multi-year period – including signature cards and access to any safe deposit boxes.

The *Church Audit Procedures Act* clearly requires that when conducting a church tax examination, the IRS may examine church records only "to the extent necessary" to determine tax liability. Not only are such intrusions outlined above unsettling, it undermines the public's faith in the ability of the IRS to be an independent arbiter of the law.

¹ Codified at 26 U.S.C. § 7611.

I respectfully request responses to the following by November 30, 2022:

1. How many church audits has the IRS conducted over the past 2 years?
2. How many letters has the IRS received from the Freedom from Religion Foundation (FFRF)?
3. In 2014, the IRS entered into a settlement agreement with FFRF under which FFRF agreed to dismiss a lawsuit based on assertions that the IRS had marked 99 churches for “high priority examination.”² How many church audits were opened after receiving a letter or any other communication from FFRF or any other anti-religion group prior to 2014 and after the 2014 settlement agreement between the IRS and FFRF?
4. Please provide any written correspondence between IRS employees and FFRF or any other anti-religion group over the last ten years.
5. What protocols are in place to ensure the IRS is not weaponized by political opponents or anti-religion groups?
6. Under 26 U.S.C. § 7611(a)(2), a church tax inquiry may not begin until “an appropriate high-level Treasury official” reasonably believes that the church may not be entitled to tax-exempt status and/or may be subject to a tax liability. The Code defines an “appropriate high-level Treasury official” as “the Secretary of the Treasury or any delegate of the Secretary whose rank is no lower than that of a principal Internal Revenue officer for an internal revenue region.”³ The Treasury Regulations clarify that a “high-level Treasury official” includes a “Regional Commissioner (or higher Treasury official).”⁴

Between 1998 and 2000, the IRS reorganized its operations and eliminated the position of Regional Commissioner, which was a broad position covering tax matters well beyond the Tax Exempt Organizations Division. This reorganization required the IRS, by and through the notice-and-comment rulemaking process, to update this Treasury Regulation to identify a replacement for the Regional Commissioner. The Regulations have not been updated to reflect the IRS’s current organizational structure and to clarify this important definitional question.

Updating the Treasury Regulations for § 7611 has been one of eight to ten action items on the IRS’s Annual Priority Guidance Plan for over a decade. Yet, for reasons unknown, the IRS has intentionally declined to move forward. Thus, churches have been in the dark

² Freedom From Religion <https://ffrf.org/legal/challenges/highlighted-court-successes/item/16261-ffrf-sues-irs-over-non-enforcement-of-church-electioneering-restrictions>, 1 August 2014.

³ 26 U.S.C. § 7611(h)(7).

⁴ Treas. Reg. § 301.7611-1, Q&A 1

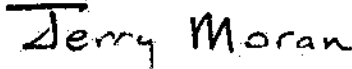
as to whether the IRS's commencement of a church examination complies with the heightened examination procedures enacted by Congress in § 7611.

Why has the IRS elected to forego updating Treas. Reg. 301.7611-1?

7. Recently, the IRS in its Delegation Order 7-3 delegated the authority to begin a church tax inquiry and examination to the Commissioner of the Tax Exempt and Government Entities Division. Unlike a proposed regulation, this Delegation Order was not open to public review or comment.
 - a. Were any studies, analyses, or evaluations undertaken by the IRS to determine whether the TEGE Commissioner affords the same objective and procedural safeguards as the Regional Commissioner of a geographic division of the IRS?
 - b. Were any concerns identified that the TEGE Commissioner, being the commissioner in charge of exempt organizations, may be too close to provide a sufficiently fair assessment as to when an examination of a church is inappropriate?
 - c. Does the IRS still intend to proceed with updating Treas. Reg. 301.7611-1 through the public notice and comment process?

Thank you for your attention to this matter.

Sincerely,



Jerry Moran