

May 31, 2016

Ms. Tamera L. Ripperda  
Director, Exempt Organizations  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

Re: Unauthorized Access to Schedule Bs by  
California and New York

Dear Ms. Ripperda:

My April 22 letter to you raised concerns about the apparent failure of the Internal Revenue Service to act in response to violations by California and New York of the tax code's confidentiality laws respecting Schedule B to Form 990. Using dragnet licensing demands without express authorization in the Internal Revenue Code, the California and New York Attorneys General are acquiring, accessing, disclosing,<sup>1</sup> using, and/or inspecting<sup>2</sup> Schedule Bs of nonprofit organizations that register under the respective state charitable solicitation laws.

The acts of the California and New York Attorneys General are being done by their choice; they are not required under their state charitable solicitation laws. Their acts therefore must constitute violations of IRC 7213 and 7213A because those acts are unauthorized and willful.<sup>3</sup>

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<sup>1</sup> IRC 6103(b)(8) reads, "The term 'disclosure' means the making known **to any person in any manner whatever** a return or return information." (Emphasis added.)

<sup>2</sup> IRC 6103(b)(7) reads, "The terms 'inspected' and 'inspection' mean any examination of a return or return information."

<sup>3</sup> The only expressly authorized access and disclosure of confidential federal tax return information for state licensing purposes found in either IRC 6103 or 6104 applies to tax return preparers. IRC 6103(k)(5) addressing state agencies regulating tax return preparers reads:

This letter requests certain specific information about whether there were any attempts by the Internal Revenue Service to enforce the unauthorized access regulations described in Section 11.3.32 *et seq.* of the Internal Revenue Manual with respect to these violations or evasions of the tax code by California and New York. The strict protocols about unauthorized access are referred to as “UNAX.”<sup>4</sup>

Please identify what efforts the Service took, if any, to enforce the IRM provisions identified in the following requests.

**Request 1.** Please identify whether and when the Attorneys General of California and New York submitted written requests to, and signed any agreements with, the IRS as required in IRM Section 11.3.32.3 before, or any time since, they began to use the dragnet licensing method to acquire, access, disclose, use, and/or inspect Schedule Bs of nonprofit organizations that register under the respective state charitable solicitation laws. The relevant parts of IRM Section 11.3.32.3 for purposes of this request read:

Disclosure may be made only in response to a written request by the head of the agency, body or commission only for the purpose of, and to the extent necessary in, the administration of such tax laws.

An officer or employee of a state tax agency may inspect or receive Federal returns or return information of specifically identified taxpayers if:

1. The type of tax data is disclosable to the agency under an Agreement on Coordination of Tax Administration currently in effect between the agency and the IRS.

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Taxpayer identity information with respect to any tax return preparer, and information as to whether or not any penalty has been assessed against such tax return preparer under section 6694, 6695, or 7216, may be furnished to any agency, body, or commission lawfully charged under any State or local law with the licensing, registration, or regulation of tax return preparers. Such information may be furnished only upon written request by the head of such agency, body, or commission designating the officers or employees to whom such information is to be furnished. Information may be furnished and used under this paragraph only for purposes of the licensing, registration, or regulation of tax return preparers.

<sup>4</sup> The UNAX rules are further described at IRM 10.5.5, “IRS Unauthorized Access, Attempted Access or Inspection of Taxpayer Records (UNAX) Program Policy, Guidance and Requirements,” [https://www.irs.gov/irm/part10/irm\\_10-005-005.html](https://www.irs.gov/irm/part10/irm_10-005-005.html).

2. The officer or employee has been designated in writing by the head of the state tax agency to receive the type of tax data requested.

**Request 2.** Please identify whether and when the IRS satisfied itself that the UNAX requirements were and are met by the California and New York Attorneys General as provided in IRM Section 11.3.32.3, reading in relevant part:

An IRS official receiving a request from a state agency representative to inspect returns or obtain return information, shall satisfy himself/herself as to the identity of the individual, and with the assistance of the Disclosure office, ensure that the above requirements are met.

**Request 3.** Please identify when the IRS became aware of unauthorized access and disclosure by the Attorneys General of California and New York, and whether it notified the AGs of intent to suspend disclosures as provided in IRM Section 11.3.32.14, reading in relevant part:

[W]hen a state agency is known to be allowing unauthorized accesses/disclosure, as opposed to being vulnerable to such prohibited acts, the IRS may immediately suspend disclosures after notifying the state. See Treasury Regulation §301.6103(p)(7)-1(a)(2), and IRM 11.3.36, *Safeguard Review Program*.

**Request 4.** Did the IRS fail to require the Attorneys General of California and New York to comply with any of the following provisions of IRM Section 11.3.32.14? If so, please identify which provisions.

As a condition for their access to Federal returns or return information, state agencies must agree to the following requirements:

Establish and maintain, to the satisfaction of IRS, a permanent system of standardized records with respect to any request made by the agency for inspection or disclosure, the reason for the request and the date of the request, and, in addition, any disclosure made by or to it.

Establish and maintain, to the satisfaction of IRS, a secure area or place in which the returns or return information are stored.

Restrict, to the satisfaction of IRS, access to the returns and return information to persons whose duties or responsibilities require access and to whom disclosure may be made.

Provide such other safeguards as IRS may determine necessary or appropriate to protect the confidentiality of the returns and return information.

Furnish to the IRS the safeguard reports described in IRM 11.3.36.6.3, *Agency Reports*. The Safeguard Procedures Report is submitted no later than 45 days before scheduled receipt of Federal tax information. The Safeguard Activity Report is submitted annually.

Upon completion of use, either return the tax information, along with any copies, to IRS or destroy the returns, return information, and copies, and furnish a written report to IRS describing how the destruction was accomplished. Give written notification to all agency representatives and any other person authorized to access Federal returns or Federal return information of the criminal penalties and civil liability provided by IRC §§7213, 7213A, and 7431 for unauthorized disclosures or inspection of Federal returns or return information.

**Request 5.** Did the IRS require the Attorneys General of California and New York to inform persons having access to Schedule Bs of the criminal penalties and civil liability as required in IRM 11.3.32.18, reading in relevant part as follows?

All persons having access to Federal returns or return information under the terms of this IRM shall be informed, in accordance with the instructions in IRM 11.3.1, *Introduction to Disclosure*, of the criminal penalties and civil liability for unauthorized accesses or disclosure.

**Request 6.** Did anyone at the IRS indicate to the Attorneys General of California or New York, any state charity official(s), or any other person(s) that the licensing method used to acquire and access Schedule Bs is either authorized or lawful, or that the IRS would not take actions if such methods were used? If so, please identify who and when.

I would appreciate your reply and any other information relevant to these requests that may help inform the best solutions and remedies to the acts of the California and New York Attorneys General in accessing Schedule Bs in ways not authorized by the Internal Revenue Code. Also, please inform me whether the IRS has taken any steps to enforce the UNAX requirements and other confidentiality provisions of the tax code with respect to the Attorneys General of California and New York since receipt of my April 22 letter, and what steps those were. Thank you.

Very truly yours,

Mark Fitzgibbons 

Mark J. Fitzgibbons  
President of Corporate Affairs

cc: Chairman Jason Chaffetz  
House Oversight & Government Reform Committee