

Extremist and Hate Groups May be Abusing Non-Profit Status



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ADL sent a letter to the IRS, highlighting recent research about the ways in which extremist and hateful groups operating as “charitable” non-profits may be abusing their tax-exempt status to further their violent or hateful objectives, and asked the IRS to investigate those organizations.

INTRODUCTION

A number of extremist and hate groups are currently registered as tax-exempt organizations with the Internal Revenue Service (IRS), allowing them significant financial benefits. To explore how extremist groups are using tax-exempt status, we identified and then reviewed filings of a sample of over 30 groups that are listed as tax-exempt organizations, including groups associated with the Capitol insurrection.

There are many reasons extremist groups that may seek 501(c)(3) or (c)(4) tax-exempt status with the IRS. This status allows groups to raise money or financing while avoiding state and federal income and unemployment taxes. In some cases, 501(c)(3) or (c)(4) organizations can sidestep property taxes, state income taxes, sales taxes, and employment taxes as well.

Perhaps most importantly, contributions to 501(c)(3) organizations are always tax-deductible. Some donors may also view tax-exempt status as government endorsement, leading to increased credibility of 501(c)(3)'s more broadly – even those that operate for the sole purpose of spreading white supremacist or anti-government hate. In some cases, this can have serious consequences. For example, in the days leading up to the January 6th insurrection, Oath Keepers' founder Stewart Rhodes appeared on a podcast to solicit charitable donations to the Oath Keepers Educational Foundation, a registered 501(c)(3) whose stated purpose on filings is to “give veterans an opportunity for continued involvement in community service.” Of course, and as detailed further below, this entity is not in the business of community service for veterans. To the contrary, the Oath Keepers is a far-right anti-government extremist group, known for being heavily armed and actively recruiting from current and former military and law enforcement personnel, that sees itself as a check against a tyrannical U.S. government.

Tax-exempt status can also give extremist groups access to charity fundraising tools like Facebook Donations, Amazon Smiles and Charity Navigator's "giving basket" function. While these are private features, the platforms that host them are understandably reluctant to make unilateral decisions about which IRS approved charities require scrutiny or moderation.

POTENTIAL ABUSES OF TAX-EXEMPT STATUS

A number of extremist groups appear to be abusing their tax-exempt status in one of the following ways: (1) making misrepresentations in their IRS filings in order to secure tax-exempt status; (2) engaging in self-dealing by paying their leaders excessive salaries, in some cases representing more than half of an entity's annual revenue; and (3) diverting funds to enrich friends and family members at the expense of the tax-exempt entity itself.

All of these activities may be grounds for immediate revocation of charitable status. Of course, organizations that lose their 501(c)(3) or (c)(4) designation can still continue to operate as long as their activities are lawful. They would simply no longer receive the benefits of tax-exempt status and would be required to pay federal income tax like other small businesses do. In addition to loss of tax-exempt status, these organizations could be subject to federal excise taxes under section 4958 of the Internal Revenue Code for engaging in benefit transactions. Similar penalties could also exist at the state level, depending on the location of the entity and where they are filing their taxes. Finally, criminal penalties could apply under section 7206 of the Internal Revenue Code, as well as under section 1001 of the U.S. Criminal Code, as a result of the false statements and misrepresentations to the IRS.

1. Misrepresentations

Under IRS rules, a 501(c)(3) organization must be organized and operated exclusively for purposes that fall under one of the following categories: religious, charitable, scientific, testing for public safety, literary or educational, foster

national or international sports competition, or for the prevention of cruelty to animals or children. The IRS appropriately takes a broad view in order to prevent even the appearance of discrimination. An organization is not permitted to engage at all in certain activities (like political campaign intervention) and cannot substantially engage in nonexempt activities. Additionally, assets of the organization must be permanently dedicated to an exempt purpose, and the principal activities of the entity must further the organization's exempt purpose. For example, an organization registered for the purpose of preventing animal cruelty must dedicate the majority of its money, assets, and activities to that stated purpose.

As a result, non-profits that are organized to accomplish an illegal or non-exempt purpose should never qualify for tax-exemption in the first place. For example, if an organization stated that its central purpose was "the armed overthrow of the U.S. government" in its application to the IRS, it would appropriately be denied tax-exempt status.

Perhaps in order to get around this limitation, and as detailed further in the section below, a significant number of extremist groups may be misrepresenting their primary purpose in their IRS tax filings. These misrepresentations may have allowed these groups to reap the benefits of tax-exempt status while continuing to promote hate, and in some cases, violence.

For example, in 2019, the IRS granted tax-exempt status to the Oath Keepers Educational Foundation, which is related to the national right-wing, anti-government militia group, the Oath Keepers. At least 16 members of the Oath Keepers have been indicted on charges related to the insurrection, and the organization has also had armed confrontations with federal authorities. In their Form 1023-EZ filing requesting tax-exempt status, the chapter said that its purpose is to "give veterans an opportunity for continued involvement in community service." While it is true that this organization targets law enforcement and military members and veterans for recruitment, the true purpose of the Oath Keepers is far more pernicious. Similarly, the American Phoenix

Project received tax-exempt status from the IRS in 2020 but used its social media platforms to advocate for violence, and its founder Alan Hostetter, participated in the Capitol insurrection.

In addition to the Oath Keepers Educational Foundation, several other groups related to the Oath Keepers also received tax-exempt status. The Pennsylvania Oath Keepers received a letter in April 2019 granting tax-exempt status back to April 21, 2016. The Indiana Oath Keepers Inc. was granted tax-exempt status in December 2017, while the Virginia Oath Keepers Inc. was given its tax-exempt ruling in March of 2018. Additionally, the Southern Nevada Oath Keepers and Oath Keepers of Josephine County were also registered with the IRS as tax-exempt groups.

Similarly, in 2019, the IRS provided tax-exempt status to American Patriot Vanguard Iii MC, which appears to be inspired by the national, anti-government Three Percenters militia movement. Members of this organization were involved in the Capitol insurrection as well as several bombing plots and attacks around the country. In its filing, the chapter states that its purpose is to “provide assistance to underserved communities and our veterans.”

Another example of this type of misrepresentation can be seen in the case of the organization American Patriot Vanguard Iii Percent – Texas Inc. The organization received tax-exempt status in 2019 and claimed that its mission is to “engage in activities permissible under section 501(c)(3).” They wrote “we will educate and spread awareness to the public and hold fundraising events to provide immediate assistance to those in need regardless of race, ethnicity or religion.” While this stated mission may sound noble, on the principal officer, James Gallegos’, LinkedIn page, he writes the group is “part of the Iii% militia”. As discussed above, the Three Percenters (or Iii%ers, or Threepers, or 3%ers) are an extremist anti-government militia. Additional groups with tax-exempt status who appear linked to the Three Percenters include the Delaware Iii Percent and the American Patriot Vanguard MC.

The Sovereign American Project Inc. is another example of this potential misrepresentation. According to its website, the group's goal is to "revitalize the Constitution of the United States in order to reverse the demographic, cultural, and economic decline of heritage America." This language is rooted in the Great Replacement conspiracy theory that has mobilized terrorists in New Zealand, Germany and Pittsburgh. It is unlikely that this group would have received tax-exempt status from the IRS if it explicitly detailed its hopes to prevent what they call the "browning of America". Additionally, the Sovereign American Project has been flagged as a threat by a private intelligence agency to the Miami FBI Office.

Following the January 6th insurrection, there has been renewed attention to this issue and increased calls to ensure better oversight of tax-exempt organizations by the IRS. This is true in respect to investigating the stated purpose of tax-exempt entities, and with whether entities that encourage or participate in criminal activity should automatically lose their tax-exempt status. Senator Ron Wyden, the ranking member of the Senate Committee on Finance, sent a letter to the IRS, urging the agency to investigate the extent to which tax-exempt organizations were involved in the Capitol insurrection. Legislation is also being contemplated that could allegedly repeal an "existing prohibition on the IRS from promulgating rules to bring clarity to rules governing 501(c) political activity." The prohibition has been contained in appropriations bills since December 2015 and states: "None of the funds made available in this or any other Act may be used ... to issue, revise, or finalize any regulation, revenue ruling, or other guidance ... to determine whether an organization is operated exclusively for the promotion of social welfare." This issue warrants priority attention.

2. Potential enrichment of leaders and/or family members

To maintain tax-exempt status under section 501(c)(3), an organization must be organized and operated so that no part of its net earnings inures to the benefit of any "private shareholder or individual." The persons subject to this inurement prohibition are "insiders," and their relationship to the organization is equivalent

to that of an owner or manager. The tax laws also impose an excise tax on “disqualified persons” who wrongly participate in so-called “excess benefit transactions.” An excess benefit transaction is one in which an economic benefit is provided by a tax-exempt organization to or for the use of a disqualified person (either directly or indirectly) and the value of the economic benefit exceeds the value of the consideration received. Managers of the organization—i.e., officers and directors—who knowingly approve such impermissible transactions may also incur financial penalties.

Based on its tax filings, VDARE Foundation (“VDARE”) may be operating in a way that is impermissible under these rules. VDARE is a website that frequently promotes anti-immigrant and white supremacist viewpoints. VDARE’s filings raise concern regarding its compensation structure. Peter Brimelow is listed as both a director and an officer on its Form 990 filings, and his compensation increased dramatically (from \$181,675 in 2018 to \$345,364 in 2019), despite reporting the same amount of work both years. Generally, officers of a corporation are statutorily considered employees of that corporation, rather than independent contractors. Of course, exceptions exist when officers provide minimal services or receive no compensation. However, VDARE has reported both compensation and a substantial number of weekly hours worked for Mr. Brimelow. Despite this, VDARE is incorrectly characterizing Mr. Brimelow as an independent contractor rather than an employee, which could result in underpayment of employment taxes at both the state and federal level. In addition, the amount of the compensation and its variability raise questions as to whether VDARE is appropriately determining and setting reasonable compensation amounts for Mr. Brimelow.

Similar problems may exist with American Freedom Defense Initiative, an anti-Muslim group headed by Pamela Geller and Robert Spencer. In 2019, the organization reported revenue of \$124,080 and a net loss of \$220,009. And yet, during that time, President Pamela Geller reported \$257,760 in compensation from the organization, in addition to \$7,143 in other compensation from the organization and related organizations. The compensation amount reported for

Pamela Geller raises questions as to whether the American Freedom Defense Initiative is appropriately determining and setting reasonable compensation amounts for officers. On its Form 990, the organization does not list any methods for establishing the appropriateness of the compensation amounts for Ms. Geller or other officers and employees.

3. Potential self-dealing

Some state laws regulating 501(c)(3) and (c)(4) organizations prohibit charitable organizations from making direct loans to officers or directors in light of conflicts of interest and the potential for abuse. Unfortunately, extremist groups with tax-exempt status may be doing just that.

This pattern can be seen clearly in the case of the American Freedom Law Center Inc., which received tax exempt status from the IRS in September 2011. According to the Form 990 filing from 2019, the organization has two co-Presidents, David Yerushalmi and Robert Muisse, who were paid \$262,500 and \$256,125, respectively, that year. The American Freedom Law Center also provided loans to both of its copresidents, one for \$100,000 which came with a written agreement, and the other for \$5,666 with no written agreement. While the American Freedom Law Center is an Arizona corporation, it files its 990 tax forms in several jurisdictions, including New York. The state of New York has barred such loans under Not-for-Profit Corporation Law (N-PCL) Section 716.

Another example of this is Proclaiming Justice to the Nations, Inc., an organization that received its tax-exempt status in January of 2007. Not only does it appear that the president, Laurie Cardoza-Moore, may have received a loan without approval from the board, but her family members also appear to have potentially received payments from the organization. While the organization is based in Tennessee, Proclaiming Justice to the Nations reports activities in Texas and Florida. It is illegal under Texas Business Organization Code Section 22.225 for a corporation to make a loan to a director.

4. Potential misreporting

All 501(c)(3) and (c)(4) organizations must submit annual filings with the IRS and state agency equivalents. In these filings, organizations must attest to the veracity of statements made therein. Filings by extremist groups, however, are often filled with inconsistencies, misstatements, and omissions.

For example, in its New York state filings, VDARE appears to have misrepresented whether it is incorporated or formed in New York State. Moreover, it inconsistently reported the names of its officers and failed to file certain forms altogether in 2017 and 2018, even though it reported in its Form 990 that such filings were required.

RECOMMENDATIONS

More must be done to ensure that extremist groups do not benefit from an undeserved tax-exemption. To that end, we recommend the following steps:

1. Review tax-exempt status of extremist groups. We urge the government to conduct a thorough review of the tax-exempt status of organizations that participated in the Capitol insurrection and support or engage in other violent extremist activities. The Exempt Organizations Division should immediately review these organizations and revoke the tax-exempt status of those that have used their protections to support violent extremism. The Department of the Treasury should create guidance to financial institutions to help recognize signs of fraud and abuse by such organizations.
2. Create a strategy to counter fundraising for violent activities in the United States. The Biden Administration must create a comprehensive interagency strategy to address financing of domestic violent extremism. The intelligence and law enforcement communities should examine illicit financial connections to U.S. 501(c)(3) and (c)(4) organizations supporting violent extremist groups, map any such connections, and the interagency taskforce must create a multilateral architecture to address transnational financial flows that support illegal

activities.

3. Better oversight by Facebook and Amazon over groups using “Facebook Donations” and “Amazon Smiles” features. Facebook, Amazon, and other online platforms must strengthen their terms and conditions for charitable organizations that seek to use their platforms to solicit donations for hate, much like these platforms already do with standards and guidelines covering other forms of content on their platforms. To the extent adequate terms of service already exist, these platforms must prioritize and invest in better enforcement.

4. Changes to employee matching by the business community. Companies that match employee contributions to these organizations should explore exempting known violent extremist groups. Since private entities are not subject to the same First Amendment requirements as the government, private industry should consider implementing this practice to limit contributions to extremist organizations