



Robert W. Wood

THE TAX LAWYER

TAXES 3/30/2015

How Obama's IRS And Justice Department Killed The Targeting Scandal

The tip of the IRS targeting iceberg broke the surface on May 10, 2013. During a bar meeting, IRS Exempt Organization Chief Lois Lerner planted a question in the audience. When the plant asked about targeting, Ms. Lerner grandly admitted it, calling it “absolutely incorrect, insensitive, and inappropriate.” She arranged the ruse to defuse the Inspector General’s Report she knew would come out four days later.

We now know the targeting really goes back to January 2010, when the Supreme Court in [Citizens United](#) found it unconstitutional to ban free speech by corporations, unions and other organizations. By August 2010, the IRS [distributed a be on the lookout](#) list for Tea Party organizations applying for tax exempt status.



The IRS applied extra scrutiny because Mr. Obama’s IRS and Justice Department didn’t like the Supreme Court’s decision, presumably fearing that organizations could exercise free speech rights the Supreme Court said they had. Five years later, and two years after the planted bar association

question, we remain partly in the dark. Ms. Lerner won't testify, and we are still told, including by the President of the United States, that there was [not a smidgen of corruption](#) at the IRS.

We are told that the IRS is fixed, the targeting will never happen again, and this was not audit targeting anyhow. Some say these organizations shouldn't be exempt in any event. Now, though, a comprehensive and disturbing report from [Politico](#) enumerates the results the IRS has actually achieved despite platitudes from the Obama administration that the system is fixed.

Far from fixed and never happening again, Politico has exposed the seemingly well designed [IRS action of death by delay](#). It is just one more nail in the coffin Professor Paul Caron catalogs in [the IRS scandal, now in day 689](#). Politico painstakingly describes the tale of woe by at least a half-dozen conservative applicants who, amazingly, are still waiting for an answer. The extent of their hardship varies, and some may still receive relief.

Yet we have by now so often been told by IRS Commissioner John Koskinen that the good works of un-targeting the targeted is done. Maybe, but some people are waiting still five years on. Perhaps few people may feel sympathy for Karl Rove's Crossroads GPS. But Politico catalogs the many mom-and-pop outfits, noting that:

“The years-long delay has gutted these groups' membership, choked their ability to raise funds, forced them to reserve pots of money for possible back taxes and driven them into debt to pay legal bills. 'If you say the targeting issues have been resolved ... how come we still haven't received a determination one way or the other?' asked Rick Harbaugh, leader of the Albuquerque Tea Party, which has been waiting five years for its tax exemption. 'We are still being targeted.'”

Politico cites other appalling examples. The financial and constitutional aspects are worrisome, for justice delayed is justice denied. Politico tells the story of the little Albuquerque Tea Party that applied in 2009. But interminable lists of questions, delays and the proverbial runaround followed. For years, the IRS was given recommendations to fix the problems and to process cases, but even getting straight answers is difficult, even 22 months later. Again from Politico:

“But the way the IRS counts the cases makes it difficult to track the agency's progress. In May 2013, it released a list of 176 political nonprofits it said it had approved already, many of them groups it once labeled 'inflammatory,' 'anti-Obama' and engaging in 'propaganda.' Then, the IRS created a Web page on which it updated monthly its rulings on a collection of 145 'priority' applications from groups that had been waiting for more than 120 days as of May 2013. The IRS has declined to explain why it does not track the progress of all the groups the watchdog identified. In January 2014, after closing 111 of those 'priority' cases, the IRS declared victory and proclaimed to have 'completed' the watchdog's recommendation. Since then the agency has ruled on another 27 cases, bringing the total to 138, but still short of its 145 target. That hasn't prevented IRS chief Koskinen from asserting repeatedly that the agency has satisfied all the watchdog's recommendations.”

Many conservative groups withdrew their applications and gave up. Others changed their names and focus. Some went belly-up while waiting. Of course, in all this recent history, it is worth recalling that in March 2012, [former IRS Commissioner Doug Shulman testified](#) there was “absolutely no targeting” by the IRS of conservative and/or Tea Party organizations. On November 9, 2012, [Mr. Shulman stepped down](#) as Commissioner, replaced by Steven Miller.

On May 14, 2013, four days after Ms. Lerner’s planted question and feigned lament about it, the Inspector General [issued a report](#) confirming targeting. On May 22, 2013, Ms. Lerner professed her innocence, then [took the Fifth](#). Next day, she was placed on [administrative leave](#). On June 20, 2013, the IRS paid \$70 million in bonuses. Ms. Lerner received \$42,000, and former Commissioner Miller received \$100,000.

For alerts to future tax articles, follow me on Forbes. You can reach me at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.