

# Bill Expanding Gift Tax Exemption Heads to Ways and Means Markup

By Casey Wooten

March 24 — Legislation meant to clarify which classes of tax-exempt organizations get their donations exempted from the gift tax is one of eight bills set for markup March 25 in the House Ways and Means Committee.

The Fair Treatment for All Donations Act (H.R. 1104), introduced by Rep. Peter Roskam (R-Ill.), would explicitly state in the tax code that donations to 501(c)(4), 501(c)(5) and 501(c)(6) organizations are deductible when computing taxable gifts that year.

Currently, the code states that donations to 501(c)(3) groups aren't affected by the gift tax, leaving a muddy legal area for donations to other tax-exempt groups, according to Ofer Lion, a partner at Seyfarth Shaw LLP in Los Angeles who works in the tax-exempt area.

"For political organizations, the gift tax is specifically not applicable, 501(c)(4)s, (c)5s, and (c)6s was sort of in the unknown zone," Lion said.

The Internal Revenue Service takes the position that donations to such groups are subject to the gift tax, though enforcement has been lax for years, a 2012 Congressional Research Service report said.

Under current law, the gift tax has a top rate of 40 percent and is applied to taxpayers who exceed an annual cap of \$14,000 or a lifetime cap of \$5.25 million.

The Joint Committee on Taxation released a report March 24 saying that H.R. 1104 would have no impact on the deficit.

## 'Citizens United.'

The push to clarify which donations are subject to the gift tax stems from the rise in 501(c)(4) political groups following the 2010 U.S. Supreme Court decision in the Citizens United case, Lion said. Practitioners, activists and academics took notice of the large and anonymous donations flowing into the groups. In 2011, the IRS sent letters to five major 501(c)(4) donors notifying them that their contributions may be subject to the gift tax (116 DTR G-2, 6/16/11).

The 2012 CRS report stated that the IRS had good legal standing, as the code didn't address the gift tax for donations to 501(c)(4) groups, citing a 1982 revenue ruling (107 DTR G-1, 6/4/13).

Republican members objected to the IRS audit threats and the agency eventually backed down, issuing another letter stating that 501(c)(4) groups were in the clear.

But that kept 501(c)(5) and 501(c)(6) groups in the grey area, Ofer said.

## Markup

The bill is part of a group of eight set for markup in the Ways and Means Committee March 25. Most bills are related to IRS oversight issues, such as the operations of agency employees and a "taxpayers' bill of rights."

Also included in the markup is legislation repealing the estate tax. That bill, H.R. 1105, would cost the federal government \$269 billion over a decade, a March 24 JCT report said.

JCT descriptions of the bills set for markup include:

H.R. 1295: legislation to revamp the process for determining 501(c)(4) eligibility;

H.R. 709: the Prevent Targeting at the IRS Act;

H.R. 1058: the Taxpayer Bill of Rights;

H.R. 1105: the Death Tax Repeal Act;

H.R. 1026: the Taxpayer Knowledge of IRS Investigations Act;

H.R. 1152: legislation prohibiting IRS employees from using personal e-mail for official business;

H.R. 1104: the Fair Treatment for All Donations Act; and

H.R. 1314: legislation to provide the right for an administrative appeal for groups denied tax-exempt status.

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For More Information

The JCT descriptions and estimates for the bills are available at <https://www.jct.gov/>.