CLIENT ALERTS & INSIGHTS

Policing Ideology Through the Tax Code? Executive Power, Nonprofits, State Resistance

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Featured Practices: State Attorneys General Investigations & Enforcement

Key Takeaways

- The White House has threatened to revoke the tax-exempt status of certain liberal nonprofits by designating them as supporting terrorism or political violence, prompting Democratic-led states to enact laws and issue statements to protect these organizations from politically motivated federal action.
- Nonprofits now face heightened legal uncertainty and risk of politically driven IRS scrutiny, especially as federal executive orders and memoranda push the boundaries of traditional tax enforcement. The patchwork of state and federal responses creates compliance and funding challenges for organizations operating nationwide.
- Nonprofits should proactively review their activities and tax filings, consult legal counsel to assess compliance risks and stay informed about evolving federal and state regulations to safeguard their tax-exempt status and eligibility for public funding.

Introduction

In the fall of 2025, the White House threatened to place liberal nonprofit organizations under heightened tax scrutiny, potentially revoking their tax-exempt status. Recently, Democratic-controlled state governments, through both the legislatures and state Attorneys General, have enacted legislation and taken other measures to provide state-level protections to these nonprofits and spoken forcefully against the potential federal measures.

On September 15, 2025, following the September 10 assassination of Charlie Kirk, Vice President JD Vance and deputy White House chief of staff Stephen Miller stated that they intended to use "every resource" across the federal government to "identify, disrupt, eliminate and destroy" organizations they accused of supporting doxxing campaigns, orchestrating riots and amplifying messages that could incite violence.[1]

Then, on September 22, 2025, the White House issued an executive order designating "Antifa" as a domestic terrorist organization and directing "[a]ll relevant executive departments and agencies [to]

utilize all applicable authorities to investigate, disrupt, and dismantle any and all illegal operations . . . conducted by Antifa[.]"[2] On the same day, the White House published an article stating that Antifa's terror is part of the "trend of Radical Left violence" "incited by well-funded leftist organizations, and their allies in the media."[3]

On September 25, the President issued a presidential memorandum ("Memorandum") aimed at countering what the administration characterized as "dramatically increased" levels of "domestic terrorism" and "organized political violence."[4]

The Memorandum directs the National Joint Terrorism Task Force to coordinate and supervise a "comprehensive national strategy to investigate, prosecute, and disrupt entities and individuals engaged in acts of political violence and intimidation designed to suppress lawful political activity or obstruct the rule of law."[5]

As part of that directive, the Memorandum directs the Commissioner of the Internal Revenue Service ("IRS") to "take action to ensure that no tax-exempt entities are directly or indirectly financing political violence or domestic terrorism[,]" and, when applicable, to "[refer] such organizations, and the employees and officers of such organizations, to the Department of Justice for investigation and possible prosecution."[6]

The Memorandum's mandate to investigate nonprofit organizations on ideological grounds represents a departure from longstanding policy at the IRS. Nonprofits now operate in an environment marked by legal uncertainty and the possibility of politically motivated scrutiny. But any analysis of this administration's proclamations in the executive order and presidential memorandum must account for the statutory limitations on executive power in matters related to the Internal Revenue Code.

Statutory Limits on IRS Authority and Emerging Executive Workarounds

1. **Statutory Constraints on Executive Influence Over Tax-Exempt Status**

Under Internal Revenue Code section 501(c)(3), a nonprofit can only qualify for tax-exempt status if it is organized and operated exclusively for exempt purposes and none of its earnings may benefit any private shareholder or individual.[7] The statutory language also prohibits tax-exempt entities from devoting a substantial part of their activities to influencing legislation, or participating in political campaigns for or against any candidate. This requirement is commonly known as the Johnson Amendment.

Section 501(a) provides that any organization meeting these criteria "***shall*** be exempt from taxation," unless an exception applies.[8] This mandatory language substantially restrains executive discretion: once an organization satisfies the statutory requirements, the executive branch must recognize its tax-exempt status. Nor may it revoke 501(c)(3) status unless an applicable exception or non-qualifying characteristic develops.[9] Likewise, the executive has no authority under the Constitution to unilaterally alter the eligibility standards Congress enacted in section 501(c)(3).

From an enforcement perspective, Congress created a statutory safeguard prohibiting executive branch officers from requesting tax enforcement actions against a specific individual or organizations. *See* 26 U.S.C. § 7217. More specifically, all executive branch officers, with the exception of the Attorney General, may not "request . . . any officer or employee of the Internal Revenue Service to conduct or terminate an audit or other investigation of any particular taxpayer with respect to the tax liability of such taxpayer."

2. **Exemptions to Limitations on Executive Branch's Tax-Related Actions**

While there are significant guardrails against executive branch involvement in tax enforcement, the prohibitions are not absolute.

For example, under Internal Revenue Code section 501(p), the Treasury Secretary must suspend tax-exempt status for any organization designated as a terrorist organization either under the Immigration and Nationality Act[10] or through an executive order under the International Emergency Economic Powers Act or United Nations Participation Act.[11] Section 501(p)(2)(C) gives the President broader authority to designate an organization as a terrorist organization through an executive order issued under any federal law when two conditions are met: (i) the organization is specifically identified in the order as supporting or engaging in terrorist activity, as defined in the Immigration and Nationality Act, or supporting terrorism pursuant, to the Foreign Relations Authorization Act; and (ii) the executive order "refers" to section 501(p)(2)(C). Here, the September 22, 2025, executive order designated Antifa as a terrorist organization pursuant to the Immigration and Nationality Act.

Another potential tool-one not clearly invoked by the administration to date-is the Johnson Amendment. Again, that amendment bars tax-exempt organizations from participating in partisan political campaigns. Although the administration previously explored weakening the Johnson Amendment to allow greater political activity by religious nonprofits,[12] the law could also be deployed offensively: arguing that disfavored nonprofits are "electioneering" or influencing legislation, and using that claim to revoke their tax-exempt status. Determining whether an organization has crossed the line into prohibited political activity is a fact-intensive inquiry, which leaves ample room for interpretations that track political priorities rather than neutral enforcement.

Diverging State-Level Response

Since the September executive order and presidential memorandum, state governments have responded in different ways, aligning with each state's political landscape.

For instance, several Democratic-controlled state governments have moved to shield nonprofit organizations from perceived political targeting. California, for example, enacted California Government Code section 7230 to protect nonprofits from politically motivated exclusion and to allow access to state funding.[13] The law broadens eligibility for state grants and contracts by recognizing either federal or state tax-exempt status, ensuring that nonprofits with California exemption do not automatically lose state standing if their federal 501(c)(3) status is revoked. Also, a coalition of attorneys general from California, Colorado, Connecticut, Delaware, Illinois, Maine, Maryland, Michigan, Minnesota, New Jersey and Washington issued a joint statement condemning federal actions they view as threatening nonprofit free speech and independence.[14] In their statement, the attorneys general emphasized that targeting nonprofits threatens core First Amendment rights and undermines the role charitable organizations play in supporting civic participation and diverse viewpoints.

Thus far, Republican-controlled state governments have generally declined to adopt comparable protective measures for nonprofits. This creates a challenging landscape for nonprofits trying to

preserve their eligibility for public grant funds in a patchwork of differing state and federal regulatory environments.

What Can You Do?

In this uncertain environment, nonprofit organizations should stay informed and proactively assess their exposure. Engage counsel early to evaluate compliance risks, conduct a focused self-audit and identify any activities that could be misconstrued under newly expanded definitions of prohibited conduct. Nonprofit organizations should work with professionals to ensure that they are current with their tax filings and that all previous tax filings are entirely correct.

[1] Charlie Kirk, *Vice President JD Vance Remembers Charlie Kirk | Miller, Tucker, RFK Jr., Wiles, Leavitt | 9.15.25*, YouTube (Sep. 15, 2025) at 21:40 https://www.youtube.com/watch?v=ngofqx9EfcM.

[2] Executive Order Designating Antifa as a Domestic Terrorist Organization, (Sep. 22, 2025), 90 Fed. Reg 46317, https://www.federalregister.gov/documents/2025/09/25/2025-18709/designating-antifa-as-a-domestic-terro

[3] White House, President Trump is not Backing Down from Crushing Radical Left Violence (Sep. 22, 2025), https://www.whitehouse.gov/articles/2025/09/president-trump-isnt-backing-down-from-crushing-radical-le

[4] Memorandum on Countering Domestic Terrorism and Organized Political Violence, 90 Fed. Reg. 47225 (Sep. 25, 2025), https://www.federalregister.gov/documents/2025/09/30/2025-19141/countering-domestic-terrorism-and-or

[5] *Id.* § 2.

[6] *Id.* § 2(j).

[7] 26 U.S.C. § 501(c)(3).

[8] *See*, *e.g.*, 26 U.S.C. § 502 ("An organization operated for the primary purpose of carrying on a trade or business for profit shall not be exempt from taxation under section 501 on the ground that all of its profits are payable to one or more organizations exempt from taxation under section 501."); 503 (when engaging in prohibited transactions).

[9] *See, e.g.*, 26 U.S.C. § 504 (noting that 501(c)(3) organizations stripped of their status for, among other things, influencing legislation or participating in a political campaign on behalf of a candidate may not be treated as tax exempt under 501(c)(4)).

[10] 8 U.S.C. § 1182(a)(3)(B)(vi)(II) ("terrorist organization means an organization otherwise designated, upon publication in the Federal Register, by the Secretary of State in consultation with or upon the request of the Attorney General or the Secretary of Homeland Security, as a terrorist organization, after finding that the organization engages in the activities described in subclauses (I) through (VI) of clause (iv)").

[11] 26 U.S.C. § 501(p).

[12] Peter Smith, *Trump energizes conservative Christians with religious policies and assaults on cultural targets*

, PBS News (Aug. 7, 2025) https://www.pbs.org/newshour/politics/trump-energizes-conservative-christians-with-religious-policies-and

[13] Cal. Gov. Code § 7230 (2025).

[14] *See, e.g.*, *Attorney General Raoul Condemns Trump Attacks on Nonprofits' Freedom of Speech*, (Oct. 10, 2025) https://illinoisattorneygeneral.gov/news/story/attorney-general-raoul-condemns-trump-attacks-on-nonprofit