

Evolving Constraints on Tax Administration



Leandra Lederman

Indiana University Maurer School of Law

Outline of Remarks

- ▶ The 501(c)(4) “targeting” controversy
- ▶ IRS budget issues
- ▶ APA/administrative law issues (briefly)

The 501(c)(4) Controversy

The 2013 TIGTA Report

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



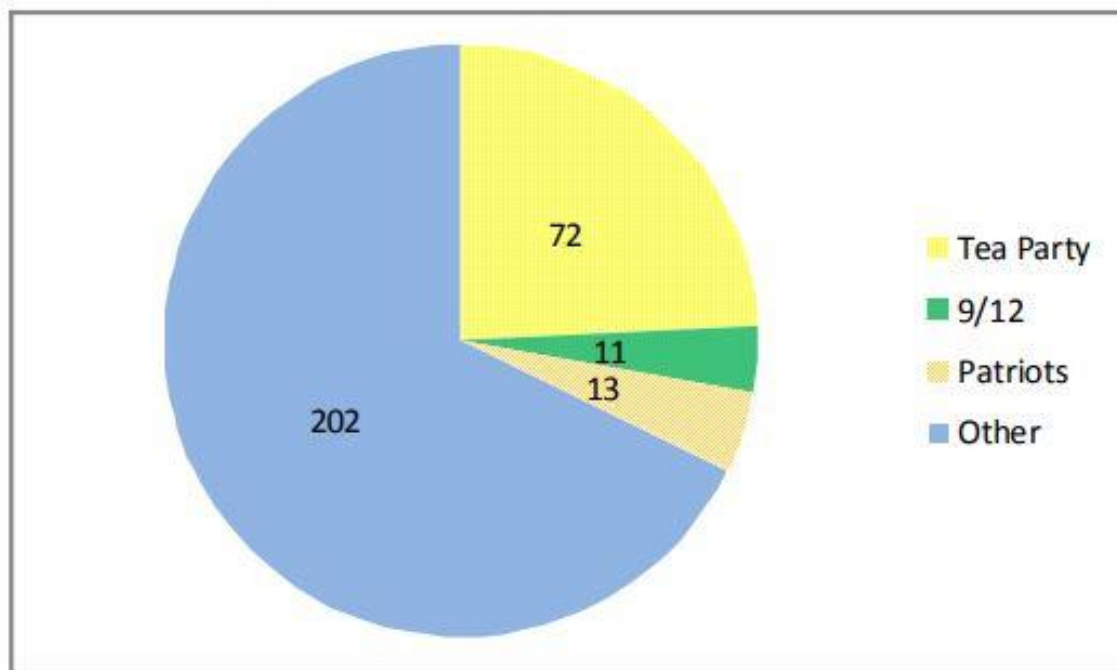
***Inappropriate Criteria Were Used to
Identify Tax-Exempt Applications for Review***

May 14, 2013

Reference Number: 2013-10-053

The 2013 TIGTA Report

Figure 4: Breakdown of Potential Political Cases by Organization Name



Source: EO function Potential Political Case Tracking Sheet as of May 31, 2012.

While the team of specialists reviewed applications from a variety of organizations, we determined during our reviews of statistical samples of I.R.C. § 501(c)(4) tax-exempt applications that all cases with Tea Party, Patriots, or 9/12 in their names were forwarded to the team of specialists.¹⁹

“The IRS Scandal”

- [The IRS Scandal, Day 1730: Department Of Justice Settles Last Targeting Case; IRS Apologizes For Delaying Pro-Israel Group's Application For Tax Exempt Status For Seven Years](#) (Feb. 2, 2018)
- [The IRS Scandal, Day 1722: The IRS Apologizes For Targeting Tea Party Group](#) (Jan. 25, 2018)
- [The IRS Scandal, Day 1709: Victims Of IRS's Tea Party Bias — And Taxpayers — Deserve To See Lois Lerner's Testimony](#) (Jan. 12, 2018)
- [The IRS Scandal, Day 1706: Lois Lerner, Liberty, And Bureaucracy](#) (Jan. 9, 2018)
- [The IRS Scandal, Days 1601-1700](#) (Oct. 5, 2017 - Jan. 3, 2018)
- [The IRS Scandal, Days 1501-1600](#) (June 18, 2017 - Oct. 4, 2017)
- [The IRS Scandal, Days 1401-1500](#) (Mar. 10, 2017 - June 17, 2017)
- [The IRS Scandal, Days 1301-1400](#) (Nov. 30, 2016 - Mar. 9, 2017)
- [The IRS Scandal, Days 1201-1300](#) (Aug. 22, 2016 - Nov. 29, 2016)
- [The IRS Scandal, Days 1101-1200](#) (May 14, 2016 - Aug. 21, 2016)
- [The IRS Scandal, Days 1001-1100](#) (Feb. 4, 2016 - May 13, 2016)
- [The IRS Scandal, Days 901-1000](#) (Oct. 27, 2015 - Feb. 3, 2016)
- [The IRS Scandal, Days 801-900](#) (July 19, 2015 - Oct. 26, 2015)
- [The IRS Scandal, Days 701-800](#) (April 10, 2015 - July 18, 2015)
- [The IRS Scandal, Days 601-700](#) (Dec. 31, 2014 - April 9, 2015)
- [The IRS Scandal, Days 501-600](#) (Sept. 22, 2014-Dec. 30, 2014)
- [The IRS Scandal, Days 401-500](#) (June 14, 2014 - Sept. 21, 2014)
- [The IRS Scandal, Days 301-400](#) (Mar. 6, 2014 - June 13, 2014)
- [The IRS Scandal, Days 201-300](#) (Nov. 26, 2013 - Mar. 5, 2014)
- [The IRS Scandal, Days 101-200](#) (Aug. 18, 2013 - Nov. 25, 2013)
- [The IRS Scandal, Days 1-100](#) (May 10, 2013 - Aug. 17, 2013)

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SYMPOSIUM: REFORMING THE IRS*

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The 2017 TIGTA Report

TREASURY INSPECTOR GENERAL FOR TAX ADMINISTRATION



***Review of Selected Criteria Used to Identify
Tax-Exempt Applications for Review***

September 28, 2017

Reference Number: 2017-10-054



The 2017 TIGTA Report



Review of Selected Criteria Used to Identify Tax-Exempt Applications for Review

Figure 2: The 17 IRS Criteria Addressed in This Report

ACORN¹⁸ Successors

****1*****

Border Patrol

CA Politics

Emerge

Green Energy

Healthcare Legislation

Medical Marijuana

*****1*****

Occupied Territory Advocacy

Occupy

Paying National Debt

Pink Slip Program

Progressive

Rally Patriots

*****1*****

We the People

Source: IRS criteria included on TAG listings, BOLO listings, and screener training documents.

The 2017 TIGTA Report

Figure 4 shows selected case statistics from our review of 146 application case files³⁷ that we confirmed were processed based on the selected criteria or were processed while the selected criteria were in use, but we could not confirm that they were selected based upon the criteria.

Figure 4: Selected Case Review Statistics

Criteria	Number of Cases Reviewed	Number of Cases With Unnecessary Questions	Processing Time Frames		
			Less Than 1 Year	1–2 Years	More Than 2 Years
ACORN Successors	14	6	6	4	4
*****1*****	8	0	7	0	1
Border Patrol	7	0	3	4	0
CA Politics	0	0	0	0	0
Emerge	6	2	1	1	4
Green Energy	1	0	0	1	0
Healthcare Legislation	16	1	5	5	6
Medical Marijuana	12	4	3	5	4
*****1*****	0	0	0	0	0
Occupied Territory Advocacy	4	1	0	2	2
Occupy	5	1	0	3	2
Paying National Debt	2	0	0	1	1
Pink Slip Program	1	1	0	1	0
Progressive	61	7	53	7	1
Rally Patriots	0	0	0	0	0
*****1*****	0	0	0	0	0
We the People	9	0	2	3	4

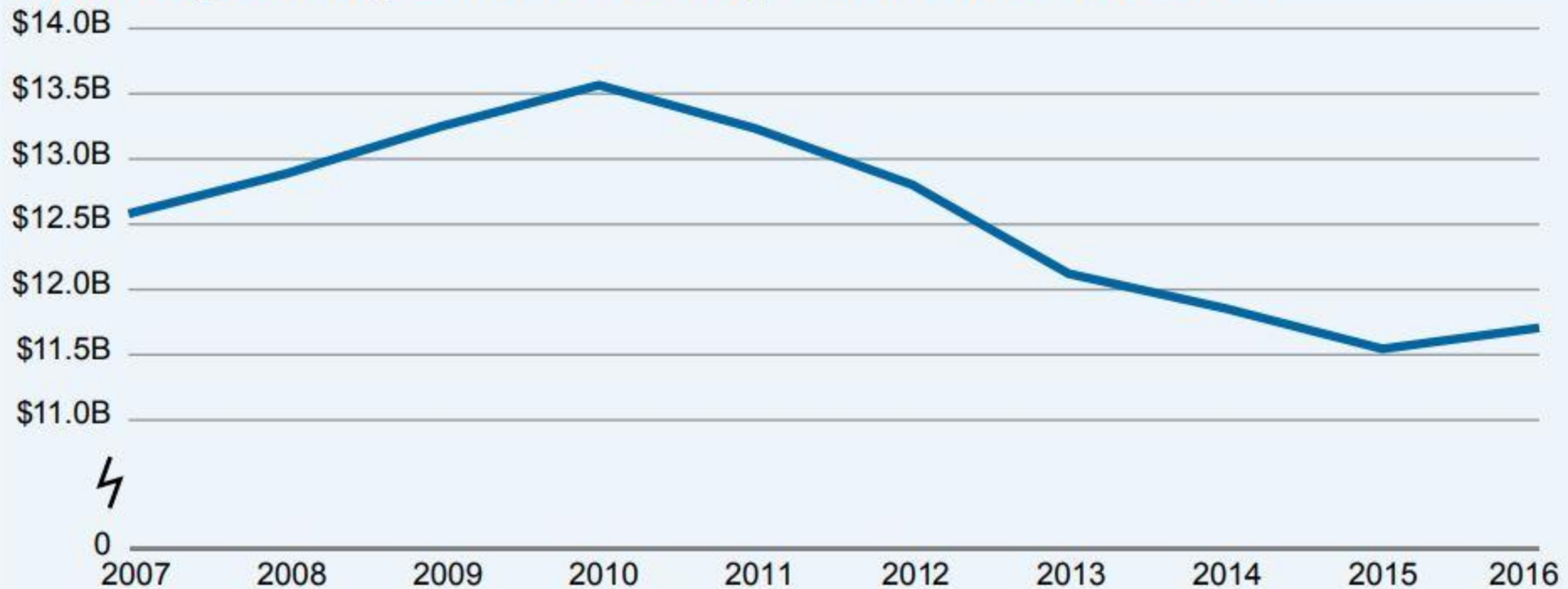
Source: TIGTA case reviews.



IRS Funding Issues

INTERNAL REVENUE SERVICE DATA BOOK, 2016

Operating Costs (Constant Dollars), Fiscal Years 2007–2016



NOTE: Inflation-adjusted amounts were calculated using the U.S. Bureau of Economic Analysis, Nondefense Gross Domestic Product Chain-type Price Index with a 2016 base year.

SOURCE: IRS Data Book Table 29



IRS Total Obligations Against Appropriated Funds (2015 dollars)

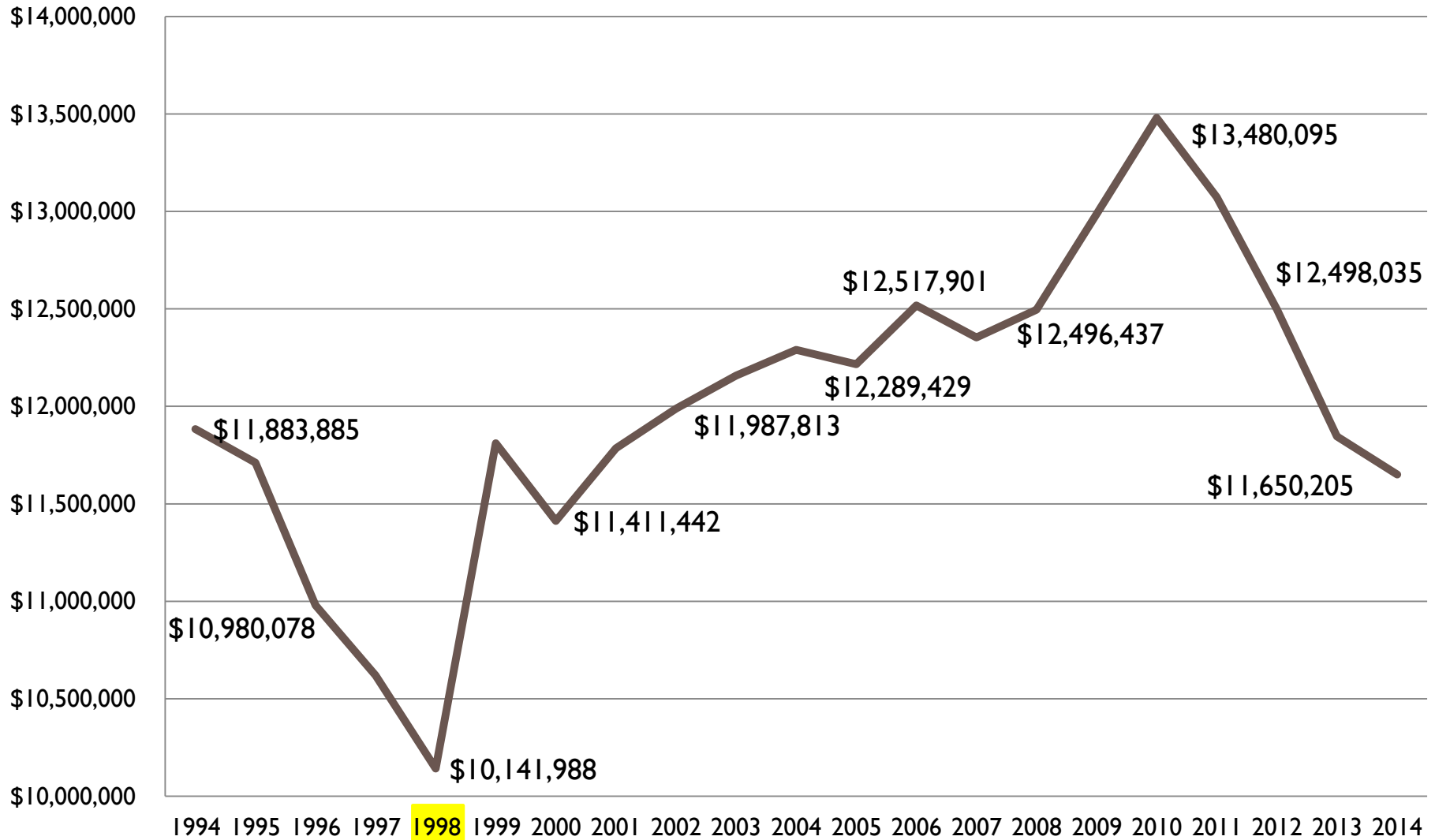
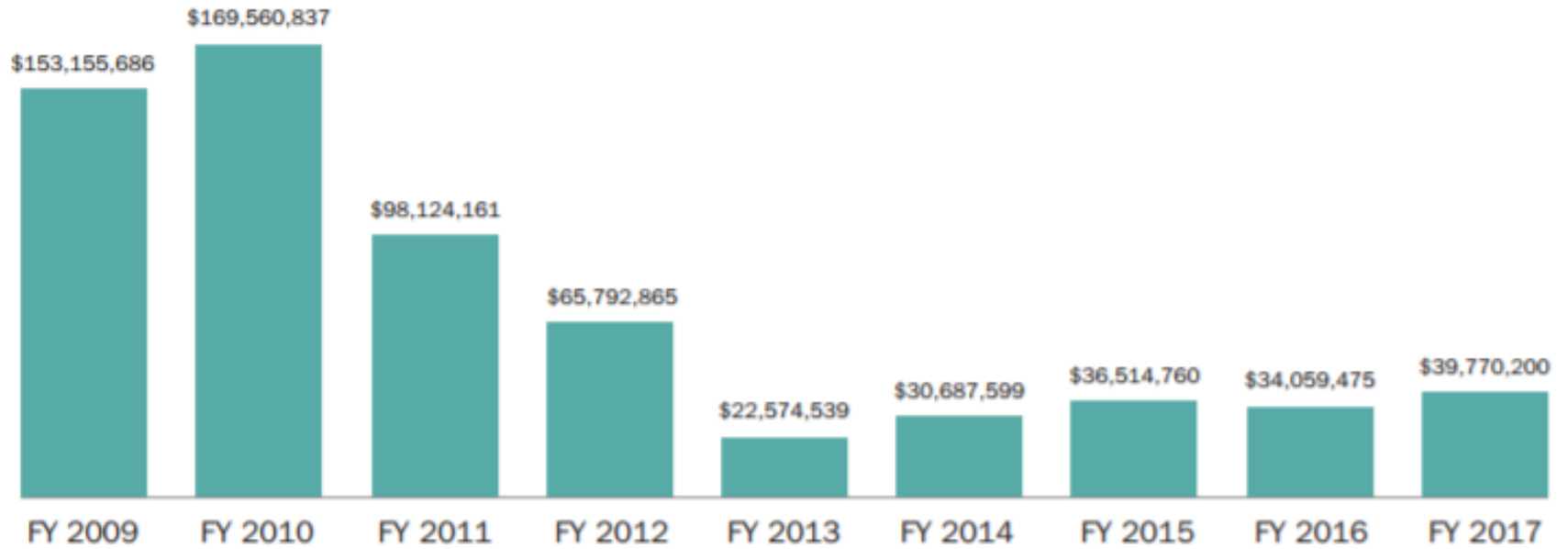


FIGURE 0.0.1, Locations With Specified Employees in the Last Pay Period of the Fiscal Year

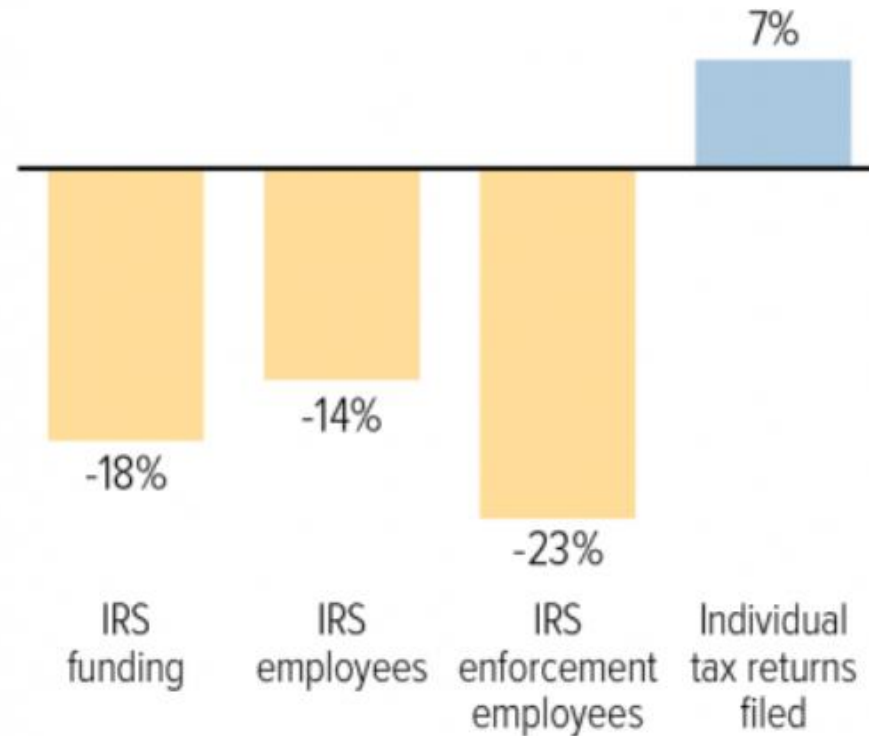
Number of Locations, Employees, or Visitors	2011	2012	2013	2014	2015	2016	2017
IRS Offices (Cities)	541	523	510	499	479	470	454
Appeals Officers (AOs)	1,129	1,058	958	881	795	739	737
Revenue Officers (ROs)	4,402	4,035	3,703	3,441	3,191	3,072	2,962
Revenue Agents (RAs)	8,652	8,638	8,520	8,418	8,329	8,557	8,502
Stakeholder Liaison Outreach Employees (Communication Liaison Outreach Employees in FY 2017)	137	123	119	110	105	98	105
Stakeholder Partnerships, Education and Communication Outreach Employees (SPEC)	522	475	444	405	386	365	311
Taxpayer Assistance Centers (TACs)	401	401	398	382	378	376	371
TAC Service Reps	1,639	1,515	1,484	1,520	1,423	1,267	1,121
Taxpayer Advocate Service, Case Advocates	996	945	919	862	784	726	683

IRS Training Budget by Fiscal Year



IRS Funding Cut As Workload Grows

Percent change since 2010



Source: CBPP calculations based on IRS, Office of Management and Budget, Congressional Budget Office, and Bureau of Labor Statistics data

April 2016

CENTER ON BUDGET AND POLICY PRIORITIES | CBPP.ORG

Administrative Law Issues

***Mayo Foundation* (U.S. S. Ct. 2011)**

- ▶ Cleared up confusion regarding final regulations:
 - ▶ *Chevron* deference, not *National Muffler*, applies to Treasury regulations.
- ▶ Rejected “tax exceptionalism” in this context:

“Aside from our past citation of *National Muffler*, Mayo has not advanced any justification for applying a less deferential standard of review to Treasury Department regulations than we apply to the rules of any other agency. *In the absence of such justification, we are not inclined to carve out an approach to administrative review good for tax law only.*”



**UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

ALTERA CORPORATION AND SUBSIDIARIES,

Petitioner-Appellee

v.

COMMISSIONER OF INTERNAL REVENUE,

Respondent-Appellant

**ON APPEAL FROM DECISIONS OF
THE UNITED STATES TAX COURT**

**BRIEF OF AMICI CURIAE
J. RICHARD HARVEY, LEANDRA LEDERMAN, RUTH MASON,
SUSAN MORSE, STEPHEN SHAY AND BRET WELLS,
IN SUPPORT OF RESPONDENT-APPELLANT**

Susan C. Morse
University of Texas School of Law
727 E. Dean Keeton Street
Austin, TX 78703
(512) 232-9346
smorse@law.utexas.edu

Stephen E. Shay
Harvard Law School
1585 Massachusetts Avenue
Cambridge, MA 02138
(617) 384-5311
sshay@law.harvard.edu