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MEMORANDUM

To: American Principles Project Donors

From: Heidi K. Abegg

Date: March 15, 2013

Re: Tax-Exempt Status and Deductibility of Contributions to APP

At the request of APP, this memo explains the present situation concerning tax-exempt status of APP, and the deductibility of contributions you have made to APP to support it.

Return filing requirement

Section 6033(a) of the Internal Revenue Code (“the Code”) requires all tax-exempt organizations (“EOs”) to file an information return, IRS Form 990, 990-EZ, or 990-N, each year. EOs that fail to timely file a complete and accurate return are subject to monetary penalties. In addition, effective in 2008, §6033(j) of the Code deems an EO’s exemption to be automatically revoked if it fails to file Form 990 at least once every three consecutive years. The purposes of the automatic revocation sanction are to “weed out” those organizations that are defunct (probably a majority of those that fail to file), and to ensure that the remaining organizations are complying with the annual filing requirements.

Unfortunately, because APP had not filed a Form 990 for three consecutive years, the IRS revoked APP’s exemption, effective October 15, 2012, and posted notice of the revocation on its website on February 11, 2013.¹

APP response

First, the automatic revocation of exemption does not reflect any impropriety (other than not filing Form 990) on the part of APP. It is not disqualified for exemption for any other reason, and to the best of my knowledge, it continues to faithfully advance its mission.

¹ The exemptions of about 275,000 organizations were automatically revoked when the IRS made its first announcement, in July, 2011. Additional automatic revocations are announced monthly.

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Second, when APP's Board of Directors learned that it had not filed Form 990 for three consecutive years, it correctly anticipated the IRS' automatic revocation of APP's exemption, and promptly filed an application for reinstatement with the IRS on October 22, 2012, long before the IRS posted the automatic revocation on its website on February 11, 2013. I believe the IRS will issue a favorable determination letter in response to the application.

In its application, APP has asked the IRS to reinstate its exemption retroactively to October 15, 2012. If this request is granted, and I believe it will be granted, the effect will be that there is no "gap" in APP's tax-exempt status.

Third, even if APP's exemption is not reinstated retroactively to October 15, 2012, under the ordinary rules applicable to the effective date of applications for recognition of exemption, the favorable determination letter will be effective as of October 22, 2012, the date the new application was filed.

Deductibility of contributions

On the basis of the facts set forth above, in my opinion, contributions to APP are deductible for the following reasons:

Contributions made before February 11, 2013: Under the Internal Revenue Code, all contributions made to an organization that has been recognized as tax-exempt under §501(c)(3) are deductible if they are made before the date the IRS publishes notice of the revocation of exemption in the Internal Revenue Bulletin or on the IRS' website, even though the effective date of the revocation is earlier. For APP, the publication date was February 11, 2013. Thus, contributions made before February 11, 2013 are deductible.

Contributions made on or after October 22, 2012: APP filed its application for reinstatement of its exemption on October 22, 2012. If granted, the exemption will be effective not later than the date the application was filed, and contributions made on or after that date are deductible. Although we cannot be 100% certain, we have no reason to believe that the IRS will not reinstate APP's tax-exempt status.

Conclusion

Thus, assuming as we do that the IRS will reinstate APP's tax-exempt status, the periods during which tax-deductible contributions may be made to APP overlap, and there is no period during which a contribution is not tax-deductible, and all contributions made to APP are deductible charitable contributions to the extent permitted by §170 of the Internal Revenue Code.

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I trust this information is helpful. Should you have any questions, please contact me directly by calling (202) 785-9500.

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