Cooley

Trump's Initiative to Revoke Harvard's Tax-Exempt Status: Implications for Higher Education

May 30, 2025

President Donald Trump has repeatedly threatened to strip the tax-exempt status from colleges and universities. Most recently, on May 2, Trump announced in a social media post, "We are going to be taking away Harvard's Tax Exempt Status. It's what they deserve!" The post comes as part of a wider initiative by the administration focused on institutions of higher education and echoes similar comments the president made on April 15.

There are a number of questions that other colleges and universities should be considering related to their tax-exempt status and the possibility of action by the president.

Can the president unilaterally revoke tax-exempt status?

Historically, whether an organization qualifies for a tax exemption under § 501(c)(3) of the Internal Revenue Code of 1986 (IRC), as amended, has been determined by the IRS through administrative procedures.

In fact, federal law prohibits the president from "directly or indirectly" requesting that the IRS conduct an audit "or other investigation" of a taxpayer or tax-exempt organization (IRC § 7217(a)). That statute may prevent the president from instructing the IRS to open an examination into an organization's 501(c)(3) status. However, universities should be aware that, at present, there is limited case law applying § 7217.

If the president were to issue an executive order purporting to unilaterally revoke a university's tax-exempt status, that university could challenge the order as – among other possible infirmities – outside of the president's authority and a violation of due process. Such unilateral action by the president to remove tax-exempt status would be unprecedented and has not been addressed by the courts.

IRS examination of 501(c)(3) status

The IRS regularly conducts audits of tax-exempt organizations to verify their compliance with the requirements of IRC § 501(c)(3) status. According to the IRS, organizations are selected for review for a variety of reasons, such as providing inconsistent or incomplete information on the organization's tax return, complaints from regulatory agencies about potential noncompliance, or questionable activities by the organization.

In the normal process, the organization will first receive a letter stating that the IRS is opening an examination. The IRS conducts two types of audits, field examinations and correspondence examinations, as well as compliance checks, which are less burdensome and limited in scope. The IRS has broad powers to seek information from an organization as part of an examination. Field examinations are the most extensive type of audit and involve an IRS agent visiting the organization's premises.

After conducting the examination, the examiner will then proceed with one of several options, the most extreme of which is a proposed revocation of tax-exempt status. Alternatively, the examiner may issue a "no change" letter, which informs the organization that no issues were found – though it might include recommendations or advisories. Other options include negotiation of a "closing agreement," which permits the organization to conditionally maintain its tax-exempt status, or imposition of intermediate sanctions, such as penalties or excise taxes if certain prohibited transactions occurred.

A change in tax-exempt status is not effective until the end of the administrative appeals process, so tax would not be payable right away. However, a final revocation decision can be made retroactive in certain

circumstances. For example, if there has been a material change in the character, purpose or method of operation of the organization that is inconsistent with its exempt purpose, the revocation will be effective as of the date of the material change.

How can a university challenge an IRS determination in court?

In most cases, an organization must exhaust its administrative appeal options within the IRS before taking its case to court. Administrative appeals can be time-consuming, but universities have some protection against a slow or delayed decision by the IRS. Under IRC § 7428, a tax-exempt organization can seek declaratory relief in court if the organization takes all necessary administrative steps, and the IRS fails to act within 270 days. This provision may be helpful if IRS processes are significantly slowed by recent staffing cuts.

There are other circumstances in which the existing case law may allow a university to challenge an unconstitutional IRS policy or executive action, without seeking to reinstate the organization's tax-exempt status. For example, in *Z St., Inc. v. Koskinen*, the plaintiff alleged that the IRS violated the First Amendment by implementing an internal review policy that subjected Israel-related organizations to a more rigorous review. Then-District Court Judge Ketanji Brown Jackson allowed Z St. to proceed without first pursuing administrative remedies, because the suit challenged the alleged policy and not whether Z St. owed taxes.

What can colleges and universities do now?

Universities and other nonprofit organizations should be prepared to field questions from donors and other stakeholders about possible challenges to their tax-exempt status. They also should monitor further developments and be prepared to move quickly if their tax status is directly threatened. Cooley is here to advise universities on their legal options and help them prepare for executive action.

This content is provided for general informational purposes only, and your access or use of the content does not create an attorney-client relationship between you or your organization and Cooley LLP, Cooley (UK) LLP, or any other affiliated practice or entity (collectively referred to as "Cooley"). By accessing this content, you agree that the information provided does not constitute legal or other professional advice. This content is not a substitute for obtaining legal advice from a qualified attorney licensed in your jurisdiction, and you should not act or refrain from acting based on this content. This content may be changed without notice. It is not guaranteed to be complete, correct or up to date, and it may not reflect the most current legal developments. Prior results do not guarantee a similar outcome. Do not send any confidential information to Cooley, as we do not have any duty to keep any information you provide to us confidential. When advising companies, our attorney-client relationship is with the company, not with any individual. This content may have been generated with the assistance of artificial intelligence (AI) in accordance with our AI Principles, may be considered Attorney Advertising and is subject to our legal notices.

Key Contacts

Matthew Kutcher **Chicago**	**mkutcher@cooley.com** **+1 312 881 6645**
Matthew Oliver Boston	moliver@cooley.com +1 617 937 1337

This information is a general description of the law; it is not intended to provide specific legal advice nor is it intended to create an attorney-client relationship with Cooley LLP. Before taking any action on this information you should seek professional counsel.

Copyright © 2023 Cooley LLP, 3175 Hanover Street, Palo Alto, CA 94304; Cooley (UK) LLP, 22 Bishopsgate, London, UK EC2N 4BQ. Permission is granted to make and redistribute, without charge, copies of this entire document provided that such copies are complete and unaltered and identify Cooley LLP as the author. All other rights reserved.