

Publications

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Harvard's Tax-Exempt Status Dispute with the Trump Administration: Implications for Nonprofits

On April 16, 2025, President Donald Trump signaled a desire for Harvard University (Harvard or the University) to lose its tax-exempt status after the University refused several demands in the Trump Administration's letter to Harvard, dated April 11, 2025, including reforms to governance and leadership, hiring and admission processes, student programs with records of antisemitism or bias and student discipline, as well as a discontinuation of DEI programs. Harvard's refusal resulted in the Department of Education freezing \$2.2 billion in grants and \$60 million in contracts to Harvard. The Trump administration plans to freeze another \$1 billion in federal funding for Harvard's health research.

Harvard University sued the Trump administration on Monday, April 21, 2025, for infringing on the University's free speech rights under the First Amendment. Additionally, Harvard argues that the administration's actions against the University were arbitrary and capricious and outside the scope of its authority. Harvard contends that the federal government cannot impose unrelated conditions for higher-education institutions to access federal funding. The fate of Harvard's federal funding and tax-exempt status may now set a precedent that could impact other nonprofit organizations.

While most nonprofit organizations focus on their missions, even a mission-driven organization can lose its 501(c)(3) status if it violates the Illegality Doctrine.¹ In *Bob Jones University v. United States* (1983), the Supreme Court affirmed that a tax-exempt organization must operate in a manner consistent with public policy and federal law.² The Court upheld the IRS's decision to revoke tax-exempt status based on racially discriminatory practices — even though the institution claimed a religious purpose.³ If a tax-exempt organization engages in illegal activity or operates against public policy, it risks revocation — even if the charitable purpose itself is lawful.

Can the President Direct the IRS To Revoke Harvard's Tax-Exempt Status?

On April 15, 2025, President Trump posted on Truth Social: "Perhaps Harvard should lose its Tax Exempt Status and be Taxed as a Political Entity if it keeps pushing political, ideological, and terrorist inspired/supporting 'Sickness'? Remember, Tax Exempt Status is

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totally contingent on acting in the PUBLIC INTEREST!”

Generally, Section 7217 of the Internal Revenue Code of 1986 (the Code) prohibits the President, and other executive branch employees, from either directly or indirectly requesting that the IRS investigate or audit specific targets. The IRS has declined to comment to date on whether they are considering review or revocation of Harvard’s tax-exempt status. Additionally, a White House spokesman stated, “Any forthcoming actions by the I.R.S. are conducted independently of the President, and investigations into any institution’s violations of their tax status were initiated prior to the President’s TRUTH.” However, if the IRS revokes Harvard’s status, Harvard will almost certainly appeal.

What Rev. Rule 80-278 Says – and Why It Still Matters

With calls to revoke Harvard’s tax-exempt status making headlines again, nonprofit organizations must revisit Rev. Rul. 80-278, one of the IRS’s clearest positions on when 501(c)(3) status can be revoked. In Rev. Rul. 80-278, the IRS held that an organization systematically violating civil rights laws was not entitled to tax-exempt status even if its stated mission was charitable.⁴ Charitable purpose is not enough if the conduct is illegal or contrary to “clearly defined and established” public policy.⁵

Harvard’s legal position was made clear by a spokesperson for the University, who stated that “there is no legal basis for revoking the University’s exemption.” However, the burden of proof would be on Harvard to prove that its activities are not illegal or against public policy, and that it is otherwise entitled to tax exemption. Ultimately, if Harvard exhausts all administrative remedies with the IRS, then it could potentially file for a declaratory judgement remedy under Section 7428 of the Code. Historically, there is no IRS precedent that directly applies to protected speech by students or faculty.

What Should Your Nonprofit Do?

In light of the ongoing dispute with Harvard, and the potential for time and cost associated with defending tax-exempt status, nonprofit organizations should diligently review their internal governing documents, ongoing federal and state grants and contracts, and other materials to ensure compliance with federal and state laws related to tax-exempt status.

Suggested Actions

1. **Audit Advocacy and Activities.** Make sure your lobbying, programming and public-facing content align with your exempt purpose and IRS standards.
2. **Review Governance & Oversight.** Ensure your board understands its fiduciary role in legal compliance — not just mission direction.
3. **Compile Basic Organizational Information for Potential Audits.** Begin compiling materials that commonly would come up in an audit or investigation, such as tax returns, relevant agreements and grant or scholarship program materials.
4. **Develop a Rapid-Response Framework.** Have a plan for if (or when) your tax status, operations or speech get questioned by regulators, donors or the media.

Polsinelli’s Nonprofit Organizations team provides a full range of professional services focused on solving the challenges nonprofits encounter. If you have any additional questions, please feel free to reach out to Lisa Schultes, Michael Kuczynski, Maverick Flowers, Michele Manceaux, Polsinelli’s Executive Action Working Group or your regular Polsinelli attorney.

[1] Rev. Rul. 80-278, 1980-2 C.B. 175 (1980).

[2] *Bob Jones Univ. v. United States*, 461 U.S. 574, 103 S. Ct. 2017, 76 L. Ed. 2d 157 (1983).

[3] *Id.* at 602-604.

[4] Rev. Rul. 80-278, 1980-2 C.B. 175 (1980).

[5] *Id.*