



Bob Ferguson

ATTORNEY GENERAL OF WASHINGTON

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March 23, 2016

Andrew Biviano
Founding Member
Northwest Accountability Project

Karen Strickland
President
American Federation of Teachers Washington

Rachel Berkson
Executive Director
NARAL Pro-Choice Washington

Michael Andrew
Secretary-Treasurer
Pride at Work Washington

EJ Juárez
Executive Director
Progressive Majority Washington

Lynne Dodson
Secretary-Treasurer
Washington State Labor Council, AFL-CIO

Kelly Fox
President
Washington State Council of Firefighters

John Searcy
Secretary-Treasurer
Teamsters Local 117

RE: Freedom Foundation

Greetings:

Thank you for writing to request that my office determine whether the Freedom Foundation is disqualified from the benefits of the business and occupation tax exemption provided to qualified nonprofit corporations by Washington law. I read your correspondence with interest and appreciate the seriousness of your assertions.

Under Washington's Consumer Protection Act, the Attorney General may investigate and file civil actions against entities that misrepresent the tax exempt status they have been granted under state or federal law. I hope you understand why I cannot discuss particular investigations this office might be pursuing or even whether we are considering an investigation on any given issue. With that said, however, in the first instance the issue of whether or not an entity rightfully claims – and was granted – a particular tax status falls squarely within the powers and authority of the federal Internal Revenue Service and, at the state level, with the Washington Department of Revenue.

The Department of Revenue (Department) is the state agency responsible for the administration of state taxes and for ensuring that taxpayers pay taxes due as a result of their business activities.

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The Department has authority to examine a taxpayer's records to determine tax liability, require taxpayers to testify and produce information, apply for subpoenas, and issue tax warrants for unpaid taxes. The Department employs several hundred auditors whose duties and responsibilities include investigating taxpayers for compliance with the required conditions for exemptions they claim. In light of the specific investigative and enforcement authority vested in the Department, and the resources available to that agency to implement its authority, that agency is well placed to receive your concerns regarding the tax status of the Freedom Foundation. Because of this, in much the same way that you filed a complaint with the federal Internal Revenue Service, I strongly encourage you to forward your letter and the attached materials to the Department so that agency can review your allegations and determine whether any action should be taken. I have copied the Department Director, Vikki Smith, on this response for her awareness.

For clarity, I want to distinguish the tax-related concerns raised in your letter from the issues underlying a matter that my office is currently pursuing against the Freedom Foundation. In October 2015, my office filed a lawsuit in Thurston County Superior Court alleging that the Freedom Foundation violated certain state campaign finance disclosure laws by failing to properly report independent expenditures made in support of certain local ballot propositions. As a means to promote public confidence in the fairness of elections in Washington, state law authorizes the Attorney General to investigate and file civil actions to enforce violations of the state's campaign finance disclosure laws. As discussed above, the Department of Revenue has primary power and authority to administer Washington's tax laws. The Attorney General's Office, on the other hand, has more limited authority in this area.

I appreciate the significance of the claims in your letter and in your complaint to the Internal Revenue Service. Charitable and nonprofit organizations serve and strengthen Washington communities through their contributions to health, the environment, education, spiritual development, research, the arts, and human services. At the same time, my office is committed to working with our partner agencies and offices to ensure that those organizations operate in compliance with the law and in a manner that protects the public interest.

Thank you for contacting me.

Sincerely,


BOB FERGUSON
Attorney General

RWF/jlg

cc: Vikki Smith, Director, Department of Revenue
Kim Wyman, Secretary of State
Nick Brown, General Counsel, Office of the Governor