

# Public Interest Watch

---

507 Seward Square, S.E.  
Washington, DC 20003  
202-431-1467  
fax 202-543-7126  
publicinterestwatch.org

November 21, 2002

Commissioner Charles O. Rossotti  
Internal Revenue Service  
1111 Constitution Avenue  
Washington, D.C. 20224

Dear Commissioner Rossotti:

We are writing to request that the IRS open an investigation into apparent tax law violations by Ralph Nader's<sup>1</sup> Center for Study of Responsive Law (CSRL), a tax-exempt 501(c)3 organization.

In an apparent scheme to avoid paying taxes on income from an investment portfolio of nearly \$30 and hide from the public information regarding his organization's contributors and investments, Ralph Nader has mischaracterized in IRS filings the CSRL as a "public charity." Our review of information from CSRL's filings and the group's website indicates clearly that Mr. Nader's group is not a publicly-supported organization, but rather a privately supported and run one. As such, it qualifies under the law as a "private foundation," and is therefore subject to the tax on investment income and more stringent financial disclosure requirements that apply to private foundations.

## **I. Mr. Nader's apparent violation is a substantial one.**

Mr. Nader's mischaracterization of a private foundation as a public charity is not a mere technical violation. Under the law, private foundations are subject to a host of tax, public disclosure and other obligations that public charities are not. These obligations include:

- paying an annual tax on investment income;
- publicly disclosing all corporate securities and other investments held;
- publicly disclosing the names of all contributors of \$5,000 or more; and
- annually disbursing at least 5% of the organization's assets.

By characterizing his organization to the IRS as a public charity, Mr. Nader has effectively evaded all of these obligations, depriving the public of both tax revenue and information regarding his operations that it has a right to have.

---

<sup>1</sup> Mr. Nader, who is identified in press accounts as the founder of the CSRL, has signed the CSRL's IRS returns.

As a private citizen, Mr. Nader has every right to speak his mind on public policy issues without having to make any public disclosures or tax payments. Mr. Nader, however, has chosen to establish the CSRL as a tax-exempt organization and fund it with tax-deductible contributions, effectively forcing each and every taxpayer in the country to financially support his efforts. The law allows groups such as Mr. Nader's to tap this type of public subsidy, but not without imposing on such groups certain public disclosure and other obligations. It is critical that those obligations be enforced so that the rights of taxpayers are protected.

## **II. The CSRL looks and feels like a private foundation.**

Under the law, the key distinction between a public charity and a private foundation is that a public charity has a broad base of financial support whereas a private foundation is the undertaking of a small group of people. The law imposes on private foundations greater public disclosure requirements and a tax on investments because the private nature of these entities makes them vulnerable to abuse as tax shelters.

Mr. Nader's organization very clearly falls into the private foundation category under both the letter and spirit of the law. At a glance, the CSRL more closely resembles a tax-exempt charitable fund controlled by a family than it does a publicly supported charitable organization. Unlike typical public charities (including most of the other organizations founded by Mr. Nader), the CSRL has:

- A tightly controlled board. (Mr. Nader and his sister constitute 50% of the board of directors.);
- Investment assets that dwarf its annual operating budget (\$27 million to \$1 million at the end of 2000.);
- No membership, either formal or informal; and
- No program for soliciting financial support from the public.

By all appearances, the CSRL is a privately funded and controlled foundation of nearly \$30 million that Mr. Nader uses to sponsor public policy-related projects to his liking. In every respect, it seems to qualify as exactly the kind of private, tax-exempt fund whose investments the law says should be taxed and whose finances the law mandates be opened up to public scrutiny.

## **III. The letter of law says the CSRL is a private foundation.**

Applying the letter of the law, the conclusion is the same: the CSRL does not qualify as a public charity. The law lays out two tests for determining qualification as a public charity, and specifies that any organization not qualifying as such is a private foundation. The two tests, which are designed to measure public support for an organization, are the "one-third support test" and the "facts and circumstances test."<sup>2</sup>

---

<sup>2</sup> See IRS Publication 557 "Tax-Exempt Status for Your Organization," beginning on page 29, for a detailed description of the two tests.

Under the former, which is applied first, the organization qualifies if it normally receives at least one third of its financial support from the general public and/or governmental sources. If the organization fails this test, it may still qualify under the “facts and circumstances test.” Since the CSRL claims qualification under the secondary test only, that is the relevant one in this case.<sup>3</sup>

In order to qualify as a public charity under the “facts and circumstances test” an organization must meet the “ten-percent-of-support requirement and the attraction-of-public-support requirement.” The IRS is also supposed to consider five additional “public support factors” in determining whether an organization qualifies as a public charity, but since there exists substantial evidence that the CSRL fails to satisfy both of the primary requirements, there is no need to consider the additional public support factors.

#### A. Ten-percent-of-support-requirement.

An organization meets the ten-percent-of-support requirement if at least 10% of its support comes from the general public and/or governmental entities. By its own admission, the CSRL meets this test for 2000 only by categorizing certain grants as “unusual grants”.<sup>4</sup> However, these grants do not appear to qualify as such under the regulations.

On Schedule of 5 of its 2000 Form 990, the CSRL lists these grants and makes several required assertions to support their qualification as unusual grants.<sup>5</sup> Two of these assertions appear untruthful. They are:

- “The Center has carried on an effective program of public solicitation and exempt activities attracting significant amounts of public support.”

In fact, the CSRL, which reports zero expenditures for fundraising, appears to have conducted virtually no real program of public solicitation.<sup>6</sup> Moreover, the number of contributions received appears extremely small. In 2000, the organization received a total of \$90,944 in contributions, \$88,413 of which came from just four contributors.<sup>7</sup>

---

<sup>3</sup> Center for Study of Responsive Law, Form 990 (2000), Schedule 5.

<sup>4</sup> For purposes of determining what percentage of an organization’s support is public, the regulations provide that the amount of any contribution in excess of a threshold amount (2% of total contributions over the past 4 years) be counted as nonpublic support. As a result, large contributions can serve to reduce an organization’s public support percentage. However, the regulations also provide that if a grant is “unusual” it can be excluded from the public support percentage calculation.

<sup>5</sup> While there are six grants listed, the statements regarding qualification as unusual grants make reference to “contribution” in the singular. Whether the supporting statements address just one grant or several grants, the flaws in those statements note here are the same.

<sup>6</sup> CSRL’s public solicitation activities, or lack thereof, is detailed here in the discussion of the attraction-of-public-support requirement.

<sup>7</sup> See CSRL 2000 Form 990, Schedule B.

- “The Center has a representative governing body.”

Can a board of directors that consists of just four people, one of whom does not live in the United States and two of whom are Mr. Nader and his sister, Laura Milleron, truly be considered “representative”?

#### B. Attraction-of-public-support requirement

As for the second part of the test, the attraction-of-public-support requirement, an organization satisfies it “if it maintains a continuous and bona fide program for solicitation of funds from the general public, community, or membership group involved, or if it carries on activities designed to attract support from governmental units or other charitable organizations described in section 509(a)(1).”<sup>8</sup>

It is clear based on CSRL’s own activities and reporting to the IRS that it does not maintain a public fundraising program of any real substance at all. The evidence of this includes:

- In both 1999 and 2000, the CSRL reported on its Form 990 total fundraising expenditures of zero dollars.
- The CSRL’s website contains only one solicitation, and it is buried within the web pages about one of its projects, the Consumer Project on Technology. More significantly, this lone solicitation asks that donors make their checks out to *another* organization connected to Mr. Nader, Essential Information: “Tax deductible contributions (under 501(c)(3) of the IRS code) can be sent to CPT at the address given above, made out to Essential Information, with a note that the money is to be spent on CPTech.”<sup>9</sup>

Whatever contributions were solicited in this manner, however, were not passed on to the CSRL, according to the IRS returns filed by Essential Information for 1999 and 2000, which report no grants to the CSRL.

- Foundation grants supposedly intended to fund work carried out by the CSRL have also been steered into Mr. Nader’s other group, Essential Information, and then not forwarded to the CSRL. One such grant specifically mentioned the Consumer Project on Technology, but was made to Essential Information, not the CSRL. This grant was a \$98,000 grant in 2000 from the Rockefeller Foundation to Essential Information “toward costs of its Consumer Project on Technology’s research and accountability in intellectual property system.”<sup>10</sup>

---

<sup>8</sup> IRS Publication 557 “Tax-Exempt Status for Your Organization,” p. 29, under “Attraction of public support requirement” heading.

<sup>9</sup> See CSRL web site page: <http://www.cptech.org/about.html>.

<sup>10</sup> See the Foundation Directory database or the Rockefeller Foundation’s 2000 Form 990.

As the Consumer Project on Technology is identified as a project solely of the CSRL, and as Essential Information makes no mention of the project in its annual report to the IRS, the routing of public contributions and foundation grants for this project to Essential Information raises serious questions about possible misuse of charitable funds. For purposes of determining whether the CSRL maintains a “bona fide program for solicitation of funds from the general public,” this diversion of contributions and grants *away* from the CSRL suggests that CSRL has sought to avoid maintaining such a program.

In summary, it seems quite clear that Mr. Nader himself does not regard the CSRL as a public charity, but rather as his own private foundation. As one of Mr. Nader’s own supporters wrote of his approach to funding public interest projects:

Nader’s appetite for new causes is insatiable, leading, some say, to his stretching and bending the rules to allow him to generate enough money to support this hunger and the daily operations of the Center for Study of Responsive Law. Unwilling to accept corporate sponsorship (as if any self-respecting CEO would finance Nader’s corporate accountability war), Nader has set himself a lofty goal; to support the Center’s research and consumer education efforts through his own speaking fees and personally controlled funds, period.<sup>11</sup>

Respectfully,

Michael J. Hardiman  
Executive Director

---

<sup>11</sup> Linda Martin, “Driving Mr. Nader: The Greens Grow Up,” [www.drivingmnrnader.org/chapter7.htm](http://www.drivingmnrnader.org/chapter7.htm)