

Certain Tax-exempt Organizations No Longer Required to Report the Names and Addresses of their Contributors

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On July 16, 2018, the Internal Revenue Service (the "IRS") issued Revenue Procedure 2018-38 (the "Revenue Procedure"), which contains procedures modifying the information to be reported to the IRS on annual Form 990 *Return of Organization Exempt From Income Tax* and Form 990-EZ *Short Form Return of Organization Exempt From Income Tax*.

Under the Revenue Procedure, for taxable years ending on or after December 31, 2018, organizations other than those described in § 501(c)(3) of the Internal Revenue Code (the "Code") are no longer required to report the names and addresses of their contributors on the Schedule B of Form 990 or Form 990-EZ. However, such organizations must continue to collect and keep such contributor information in their books and records and make it available to the IRS upon request.

Background: Section 501(c)(3) tax-exempt organizations that are required to file Form 990 or Form 990-EZ must disclose "the total of the contributions and gifts received by it during the year, and the names and addresses of all substantial contributors" (Code § 6033(b)). Treas. Reg. § 1.6033-2(a)(2)(ii)(f) extends this disclosure requirement to *all* tax-exempt organizations that file Form 990 or Form 990-EZ, and provides that the names and addresses of all persons who contributed \$5,000 or more to such an organization during the taxable year must be disclosed. Treas. Reg. § 1.6033-2(a)(2)(iii)(d) also specifically requires organizations described in § 501(c)(7) (social clubs), (8) (fraternal beneficiary societies), or (10) (domestic fraternal societies) to report the name of each person who contributed more than \$1,000 to be used to be used for exclusively charitable purposes.

Under existing rules, the names and addresses of contributors are reported on Schedule B *Schedule of Contributors* to Forms 990 or Form 990-EZ. The Secretary of the Treasury (the "Secretary") must make each organization's Form 990 and Form 990-EZ available to the public, but may not disclose the name or address of any contributor. The amounts of contributions to an organization may be made available to the public, but only if the disclosure of such information cannot reasonably be expected to identify any contributor. An organization may also redact the names and addresses of its contributors before making its Form 990 or Form 990-EZ available to the public.

Effect: Treas. Reg. § 1.6033-2(g)(6) authorizes the Commissioner of Internal Revenue (the "Commissioner") to relieve certain organizations from filing, in whole or in part, a Form 990 or Form 990-EZ required by the Treasury Regulations where he "determines that such returns are not necessary for the efficient administration of the internal revenue laws." With this Revenue Procedure, the Commissioner has exercised this authority to

- eliminate the requirement that tax-exempt organizations required to file the Form 990 or Form 990-EZ (other than those described in § 501(c)(3)) disclose names and addresses of contributors who contributed \$5,000 or more on Schedules B of Form 990 or Form 990-EZ (or complete the similar portions of Part IV of the Form 990-BL). and

- eliminate the requirement that exempt organizations described in Code § 501(c)(7), (8), or (10) disclose on Forms 990 or Forms 990-EZ disclose the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable purposes.

As stated above, organizations relieved of the obligation to report contributors' names and addresses must continue to keep this information in their books and records in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers.

Note that this Revenue Procedure does not affect the information required to be reported on Forms 990, 990-EZ or 990-PF by organizations described in § 501(c)(3) (e.g., public charities and private foundations) or political organizations described in § 527. Those organizations must continue to disclose the names and addresses of all substantial contributors in accordance with Code § 6033. In addition, because this Revenue Procedure is concerned only with the reporting of names and addresses of contributors – which are not currently disclosed to the public – it will have no effect on the Schedule B information that is open to public inspection.

Impact and Response: Several states, including New York, explicitly require that annual charitable filings attach a copy of IRS Form 990 or 990-EZ and all schedules, including a complete, unredacted Schedule B, for state regulatory enforcement purposes. The change to donor reporting requirements under the Revenue Procedure will therefore directly impact those states' filing requirements for exempt organizations. In response to the Revenue Procedure, one such state – Montana – has filed suit against the IRS for "unlawfully interfer[ing] with Montana's ability to gather data that the state needs in order to administer its tax laws." The suit seeks to set aside the Revenue Procedure on the grounds that it "was promulgated without notice and without giving the public any opportunity to comment," in violation of the Administrative Procedure Act. Most recently, on October 22, 2018, the New York and New Jersey Attorneys General sent a formal request to the IRS for records concerning the development, implementation, consideration or evaluation of the Revenue Procedure in order to better understand its "administrative origin and development." It remains to be seen what additional action those and other states may take in response to the Revenue Procedure.

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