

IRS Issues Proposed Regulations and Notice in the Wake of *Bullock v. IRS*

September 13, 2019

On September 10, 2019, the Internal Revenue Service issued proposed updates to the information reporting regulations applicable to tax-exempt organizations. The [proposed regulations](#) generally incorporate existing statutory amendments and IRS guidance provided since the current regulations were adopted.

Among the proposals is a regulation that would put into effect the changes previously announced in [Revenue Procedure 2018-38](#). That Revenue Procedure, and the new proposed regulations, provide that, for tax years ending on or after December 31, 2018, tax-exempt organizations—except those exempt under Internal Revenue Code § 501(c)(3) and § 527 political organizations—are no longer required to report the names and addresses of substantial contributors (generally those donating \$5,000 or more) on Schedule B to their series 990 annual information returns. Organizations exempted from the reporting requirement are still required to maintain the contributor information and make it available to the IRS upon request.

As discussed in our previous [blog post](#), the court in *Bullock v. IRS*, 2019 WL 3423485 (D. Mont. Jul. 30, 2019) set aside Rev. Proc. 2018-38 on the grounds that it was issued without the public notice and comment period required by law. The IRS is now correcting that defect by implementing the rule change announced in the Rev. Proc. as a regulation and providing the requisite notice and comment period. Comments on the proposed rules or requests for a public hearing must be received by December 9, 2019. Electronic submissions may be sent [here](#). If the proposed regulations are adopted, organizations may choose to apply them to series 990 returns filed after September 6, 2019.

In the wake of the *Bullock* decision, the IRS has also issued [Notice 2019-17](#), which provides penalty relief to series 990 filers that failed to report contributor information in reliance on Rev. Proc. 2018-38 before it was invalidated by *Bullock*. According to the Notice, organizations granted relief from the Schedule B reporting requirement under the Rev. Proc. will not be penalized for filing an incomplete return if they failed to report substantial contributor information for a taxable year ending on or after December 31, 2018, and on or prior to July 30, 2019—the date of the *Bullock* decision. Note that, even if the proposed regulations take effect, exempt organizations that failed to report substantial contributor information on Schedule B between the date of the *Bullock* decision and September 6, 2019 may not be entitled to penalty abatement.

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