

New York and New Jersey Attorneys General File Suit to Compel Disclosure of Information Related to Change in IRS Form 990 Schedule B Reporting Requirements

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On May 6, 2019, the New York and New Jersey Attorneys General filed a lawsuit against the U.S. Department of the Treasury (the "Treasury Department") and its bureau the Internal Revenue Service (the "IRS") for failing to respond records requests made pursuant to the Freedom of Information Act ("FOIA"). The requests sought records and information concerning the development and implementation of 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*.

As discussed in our previous blog post (click [here](#)), the Revenue Procedure eliminated the requirement that tax-exempt entities organized under Internal Revenue Code § 501(c) (other than those described in § 501(c)(3)) must report the names and addresses of their substantial contributors on Schedule B to Form 990 or Form 990-EZ. Organizations relieved of the obligation to report contributors' names and addresses must continue to keep such information in their books and records.

The Revenue Procedure, effective December 31, 2018, was promulgated without a public notice-and-comment period, which would have been required if the change had been made pursuant to a Treasury regulation. In October 2018, the Attorneys General jointly submitted FOIA requests for information regarding the Revenue Procedure's administrative origin and development out of concern that the change to donor disclosure practices "would significantly interfere with their ability to effectively oversee affected organizations operating in New York and New Jersey." The requested categories of records included

- (i) records discussing the donor reporting requirements in effect for 501(c)-exempt entities prior to adoption of the Revenue Procedure;
- (ii) records discussing historical agency review of donor information in Schedule B, including the costs and other burdens imposed by that review;
- (iii) records regarding agency consideration and development of the Revenue Procedure; and
- (iv) records concerning external inquiries or other communications regarding consideration and development of the Revenue Procedure.

According to the lawsuit, both the Treasury Department and the IRS have exceeded the statutorily prescribed time limit for producing the requested documents; the IRS has made a single partial production of documents, and the Treasury Department has not responded to the request at all. The lawsuit asks the court to compel disclosure of all relevant records.

Montana has already 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." That 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. It remains to be seen what additional action states may take in response to the Revenue Procedure.

Read the New York Attorney General press release [here](#).

Read the Complaint [here](#).

-Ahsaki Benion

related professionals

Jeremy S. Steckel / Partner

D 212-238-8786

steckel@clm.com

Pamela A. Mann / Partner

D 212-238-8758

mann@clm.com