

IRS Tries Again, Seeks Input on Donor Disclosure Rule Change

by Fred Stokeld

The public will have a chance to weigh in on a significant change to IRS rules governing tax-exempt organization donor disclosure requirements following a court ruling against the agency.

By issuing proposed regulations (REG-102508-16) that invite public comment on the matter, “the Treasury Department is finally admitting its previous effort to jam through these changes was unlawful,” said Senate Finance Committee ranking member Ron Wyden, D-Ore.

The state of Montana said that it relies on the donor information provided to the federal government.

The proposed regs released September 6 incorporate a change previously articulated in Rev. Proc. 2018-38, 2018-31 IRB 280. The revenue procedure was set aside in July when a Montana district court held that the IRS hadn’t followed established notice and comment procedures when it published the document.

The state of Montana, which brought the suit against the IRS, has argued that it relies on the donor information provided to the federal government.

“We appreciate that the agency reversed from its prior course that excluded public comment,” Ralph Graybill, chief legal counsel in the Montana governor’s office, said in a statement. “The State of Montana looks forward to giving the IRS a better picture of the devastating impacts its rules could have on state tax agencies as well as efforts to prevent foreign influence in our elections.”

The proposed regs say exempt organizations other than section 501(c)(3) entities and section 527 political groups don’t have to tell the IRS the names, addresses, or donation amounts of their substantial contributors on Schedule B, “Schedule of Contributors.”

The IRS doesn’t need that information to carry out the internal revenue laws, the preamble says, adding that the requirement increases costs for affected organizations and consumes IRS resources.

There is also a risk of inadvertent disclosure of information not open to public inspection, according to the proposed regs. The guidance also points out that all EOs still must retain the donor information and provide it to the IRS on request.

Penalty relief is being provided for organizations relying on Rev. Proc. 2018-38 that don't report the names and addresses of contributors for tax years ending on or after December 31, 2018, but on or before July 30, 2019.

Wyden has been one of the most vocal critics of Rev. Proc. 2018-38.

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"I continue to strongly oppose the Trump administration's attempts to weaken protections against illicit and foreign money in our elections," Wyden continued in a statement. "Advocates for election security and good governance of tax-exempt organizations must voice their concerns during this comment period."

Wyden has demanded explanations from the IRS and Treasury regarding Rev. Proc. 2018-38. And in December 2018 the Senate narrowly approved a resolution introduced by Wyden and Sen. Jon Tester, D-Mont., to overturn the rule change. The resolution failed in the House.

Prevents Targeting

Various conservative groups have supported the rule change. The Institute for Free Speech has praised the revenue procedure for recognizing the importance of donor privacy and confidentiality and has argued that donor information isn't necessary for enforcing the tax laws.

Shortly after the IRS released Rev. Proc. 2018-38, the Center for Individual Freedom called it "a welcome step toward preventing future targeting of private citizens by the IRS on the basis of political belief, and protecting the justifiable privacy expectations of donors to nonprofit organizations."

The proposed regs do a good job of explaining the IRS position justifying Rev. Proc. 2018-38, said Alexander L. Reid of Morgan Lewis & Bockius LLP, who also thinks Schedule B should be eliminated.

"Donor information is too dangerous to have floating around the offices of elected officials—the temptation to use it for partisan advantage too tantalizing," Reid told *Tax Notes*.

"The IRS is not here to enforce campaign finance laws, and it is unfair to put it in that position," Reid added. "Congress can easily change the campaign finance laws without undermining civil society by subjecting donors to violence for their unpopular beliefs." ■