

IRS to Eliminate Donor Reporting for Certain 501(c) Organizations

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The U.S. Treasury Department and Internal Revenue Service (IRS) announced on July 16 that the IRS will be eliminating most of the donor reporting requirements for certain tax-exempt organizations that operate under Section 501(c) of the tax code. The move is a major policy shift that addresses concerns raised by Section 501(c)(4) advocacy groups and other tax-exempt organizations over the requirements to report their donors to the IRS.

As part of their annual tax returns known as the IRS Form 990, 501(c) organizations have been required to report on Schedule B of the Form 990 the names and addresses of each of their donors who gave \$5,000 or more to the organization during the tax year, as well as the amounts of such donations. The IRS is required to keep the names and addresses of donors confidential (other than for private foundations), but makes available for public inspection the donation amounts set forth on an organization's Schedule B. In addition, 501(c) organizations are required to provide a copy of their Form 990s – including Schedule B – to anyone upon request, but are permitted to redact their donors' names and addresses.

Under the new IRS policy, tax-exempt organizations (other than 501(c)(3) charitable and educational organizations and 527 political organizations) will no longer be required to report their donors' names and addresses to the IRS.

Since donors to 501(c)(3) entities generally are permitted to deduct their donations from their taxes, the IRS maintains that it needs their donor information to verify that taxpayers are not claiming improper deductions. However, as the IRS noted in its announcement, donors to other 501(c) entities, such as 501(c)(4) advocacy groups, generally

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are not permitted to deduct their donations. Moreover, per the IRS's announcement, and as *Election Law News* previously has reported, Congress in 2015 prohibited the agency from applying the "gift tax" to donors to 501(c)(4) organizations. Therefore, the agency has no reason to routinely collect information about donors to 501(c) organizations that are not 501(c)(3) entities.

Importantly, 501(c) organizations that are no longer required to report donor names and addresses on Schedule B of Form 990 are still required to:

- Maintain this information in their own records and make it available to the IRS if required for tax administration purposes;
- Report *the amounts* of each donation of \$5,000 or more on Schedule B.

The new IRS policy goes into effect beginning with Form 990 returns for the 2018 tax year. Therefore, all 501(c) organizations filing Form 990 returns that are due this year (for the 2017 tax year) will still be required to report their donors' names and addresses on Schedule B.

As *Election Law News* reported earlier this year, certain states such as California and New York have imposed their own requirements for 501(c) organizations registered in those states to file *unredacted* copies of their Form 990 Schedule Bs. Because this donor information could be misused by government officials and inadvertently (or willfully) released to the public, these state requirements have been challenged in litigation. To the extent those states purport to have a legitimate law enforcement interest in collecting 501(c) organizations' donor information, it remains to be seen what effect the new IRS policy will have in those states.

Wiley Rein's Election Law practice group advises tax-exempt organizations on all aspects of the nonprofit laws, including their federal and state Form 990 filing obligations.

The new IRS policy can be found at: <https://www.irs.gov/pub/irs-drop/rp-18-38.pdf>.