

ALERT

Federal Judge Overturns IRS Rule On Form 990 Donor Disclosure

July 31, 2019

A federal judge ruled on July 30, 2019, that the Internal Revenue Service (IRS) decision last year to eliminate donor reporting requirements for certain tax-exempt organizations was unlawful. As *Election Law News* has reported, tax-exempt organizations that operate under Section 501(c) of the tax code had to disclose the names and addresses of their donors to the IRS on Schedule B of IRS Form 990.

On July 16, 2018, the IRS eliminated that disclosure requirement for all 501(c) organizations (other than 501(c)(3) organizations). That announcement was seen as a boon to 501(c)(4) advocacy groups who have long sought to keep confidential the identity of their donors. While the IRS is required by law to keep such donor information private, tax-exempt organizations have expressed concern that the information could be misused by governmental officials and cited instances when such information nevertheless had been released to the public. In its 2018 announcement, the IRS agreed and stated that “[t]he IRS does not need personally identifiable information of donors to be reported on Schedule B of Form 990 or Form 990-EZ in order for it to carry out its responsibilities. The requirement to report such information increases compliance costs for some private parties, consumes IRS resources in connection with the redaction of such information, and poses a risk of inadvertent disclosure that is not open to public inspection.”

However, Judge Brian Morris of the U.S. District Court of Montana set aside the IRS’s decision on procedural grounds. Specifically, the court held that the IRS did not adhere to the notice-and-comment requirements of the Administrative Procedure Act (APA) that would allow for public input prior to adopting the new rule. The court did

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not address the substance of the rule or challenge the IRS's authority to determine the information that it needs, stating that "[i]t may be true that the IRS lawfully can determine what information that it requires from exempt organizations The IRS cannot escape, however, the procedural demands of the APA." Thus, as of now, the reinstated regulation requires 501(c)(4) organizations to report on Form 990 the identity of donors who give more than \$5,000 to the organization. There are no published reports yet on whether the IRS will seek to stay or appeal the decision.

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