

**Kieran Coe**

414.287.6453

kcoe@gklaw.com

**Mike B. Wittenwyler**

608.284.2616

mwittenwyler@gklaw.com

## IRS moves to eliminate reporting of donor information for certain tax-exempt entities

On Monday, July 16, 2018, the Treasury Department announced that the Internal Revenue Service (IRS) will no longer require most types of tax-exempt organizations, other than charities and political organizations, to file personally-identifiable information about their donors as part of their annual information return on Form 990 or Form 990-EZ. Given that this information is already not subject to public disclosure under current law, the practical effect of the change is limited. However, for those who support the cause of donor privacy and have concerns about the government even possessing nonpublic information, this is a major philosophical victory.

Until this announcement, Treasury Regulations required all types of tax-exempt organizations to report donor names and addresses on Schedule B to Form 990 or Form 990-EZ for contributions totaling \$5,000 or more from any one contributor. Schedule B, however, was only available for review by the IRS and certain state regulators. The information on Schedule B was not subject to public disclosure.

With this change, the IRS has exercised its discretionary authority to relieve all tax-exempt organizations, other than those exempt under Section 501(c)(3) (private foundations and public charities) and Section 527 (political organizations), from the requirement to provide names and addresses of contributors. This means that most types of tax-exempt organizations, including Section 501(c)(4) (social welfare or issue advocacy organizations) and Section 501(c)(6) (trade associations or business leagues), among other exempt organizations, will no longer have to file and report sensitive, personally-identifiable information about their donors.

Although tax-exempt entities, other than charities and political organizations, have been relieved of a reporting requirement, they are obligated to continue to collect and retain donor information in their internal books and records. Furthermore, tax-exempt organizations remain obligated to report contribution information, other donor names and addresses, such as the amount of contributions. Additionally, tax-exempt organizations remain obligated to provide donor information to the IRS, upon request, in case of an audit. To reiterate, the annual reporting obligation has been lifted, but not the requirement to retain donor information records and disclose them to the IRS when there is a specific examination of a particular organization.

The IRS' changes to donor reporting requirements eliminate two critical tax-exempt organization concerns. First, the IRS has inadvertently disclosed confidential, personally-identifiable donor information in the past. Although Forms 990 and 990-EZ are generally publicly available, confidential donor information reported is not supposed to be. Accidental disclosure or misuse of confidential donor information at the IRS is now less likely for many tax-exempt entities because the IRS will not normally have the information. Second, state agencies responsible for regulating charities and/

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or charitable solicitation in several states, including California and New York, have started requiring exempt entities to file their entire Form 990 or 990-EZ with confidential donor information intact. Furthermore, many states apply their solicitation registration requirements to non-charitable exempt entities, including 501(c)(4)s, and require registration from anyone who solicits in-state residents, including out-of-state entities. Therefore, there has been concern that states obtaining confidential donor information could accidentally disclose it or use it to support enforcement actions. The IRS' most recent step should assuage these state-level concerns for tax-exempt entities, other than 501(c)(3)s and 527s.

As already noted, this change to annual reporting requirements is a major development for tax-exempt organizations concerned with donor data privacy. However, organizations should remain aware that this is a discretionary, procedural change that has been made without a formal rulemaking or change to the Tax Code or Treasury Regulations. Therefore, under a future administration, the IRS could easily and quickly reverse it, returning the tax-exempt landscape to the era of donor name and address disclosure on Schedule B for all exempt organizations.