



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[TD 9581]

RIN 1545-BG60

Public Inspection of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations pertaining to the public inspection of material relating to tax-exempt organizations and final regulations pertaining to the public inspection of written determinations and background file documents. These regulations are necessary to clarify rules relating to information and materials made available by the IRS for public inspection under the Internal Revenue Code (Code). The final regulations affect certain organizations exempt from Federal income tax, organizations that were exempt but are no longer exempt from Federal income tax, and organizations that were denied tax-exempt status.

DATES: Effective Date: These regulations are effective on [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER] .

FOR FURTHER INFORMATION CONTACT: Mary Ellen Keys, (202) 622-4570 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301). Section 6104(a) of the Code relates to information pertaining to tax-exempt organizations made available by the IRS for public inspection. Section 6110 of the Code relates to information pertaining to written determinations made publicly available by the IRS.

These final regulations amend §§301.6104(a)-1(i) and 301.6110-1(a) to eliminate the portions of the previous regulations that the United States Court of Appeals for the District of Columbia Circuit, in Tax Analysts v. IRS, 350 F.3d 100 (D.C. Cir. 2003), held violated section 6110 of the Code. Prior to the Tax Analysts decision, the IRS relied on those regulations to withhold letter rulings denying or revoking tax exempt status from public inspection under section 6110. In accordance with the Tax Analysts decision, the IRS now makes those letter rulings available for public inspection pursuant to

section 6110. These final regulations also update §301.6104(a)-1 to conform to other current laws and administrative practices.

The final regulations affect organizations exempt from Federal income tax under section 501(a) or section 527, organizations that were exempt but are no longer exempt from Federal income tax, and organizations that were denied tax-exempt status.

A notice of proposed rulemaking (REG-116215-07) was published in the **Federal Register** (72 FR 45394-01) on August 14, 2007. One comment was received from the public in response to the notice of proposed rulemaking. This comment was considered and is available for public inspection at www.regulations.gov or upon request. No public hearing was requested or held. In this Treasury decision, the proposed regulations are adopted as revised in this preamble.

Summary of Comment and Explanation of Changes Made to the Proposed Regulation

The comment suggested that the proposed revisions did not accomplish the objective stated in the summary to the notice of proposed rulemaking, because §301.6110-1(a) was not changed. The comment urged that §301.6110-1(a) be revised to delete everything after the sentence that concludes "section 6104," which immediately precedes the portion of the regulation that

the court held violated the statute in Tax Analysts. The comment further suggested that, because no changes were made to the section 6110 regulations, paragraph(f) of §301.6104(a)-1 should be revised to reflect the decision in Tax Analysts. In response to the comment, paragraph (f) of §301.6104(a)-1 is revised to explain that negative determinations issued to organizations that applied for an exemption from Federal income tax are included among the written determinations that are made available under section 6110. No changes were made to §301.6110-1(a) in response to the comment because the language in the notice of proposed rulemaking and these final regulations already is consistent with the substance of the comment.

These final regulations also include minor, nonsubstantive revisions that vary from the text of the proposed regulations. Paragraph (a) of §301.6104(a)-1 of these final regulations is revised to make clear that, in the past, some applications were destroyed and therefore are not available for inspection. Paragraph (c)(4) of §301.6104(a)-1 of these final regulations is revised to include among the information pertaining to an organization's status that is open to public inspection under section 6104(a) any letter or document issued by the IRS

relating to exempt operating foundation status under section 4940(d)(2). Also, because the IRS no longer issues advance and final rulings, the reference to "final determination letter" in §301.6104(a)-1(c)(4) is revised to read "determination letter."

Special Analyses

It has been determined that these final regulations are not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations and, because these regulations do not include a collection of information, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Therefore, a regulatory flexibility analysis is not required. Pursuant to section 7805(f) of the Code, the notice of proposed rulemaking preceding these final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comments on its impact on small businesses.

Drafting Information

The principal author of these final regulations is Mary Ellen Keys, Office of the Associate Chief Counsel (Procedure & Administration).

List of Subjects in 26 CFR Part 301

Employment taxes, Estate taxes, Excise taxes, Gift taxes, Income taxes, Penalties, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301--PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 continues to read as follows:

Authority: 26 U.S.C. 7805***

Par. 2. §301.6104(a)-1 is revised to read as follows:

§301.6104(a)-1 Public inspection of material relating to tax-exempt organizations.

(a) Applications for exemption from Federal income tax, applications for a group exemption letter, and supporting documents. If the Internal Revenue Service determines that an organization described in section 501(c) or section 501(d) is exempt from Federal income tax for any taxable year, the application upon which the determination is based, together with any supporting documents, shall be open to public inspection. Such applications and supporting documents shall be open for public inspection even after any revocation of the Internal

Revenue Service's determination that the organization is exempt from Federal income tax. In the past, some applications were destroyed and therefore are not available for inspection. For purposes of determining the availability for public inspection, a claim for exemption from Federal income tax filed to re-establish exempt status after denial thereof under the provisions of section 503 or 504 (as in effect on December 31, 1969), or under the corresponding provisions of any prior revenue law, is considered an application for exemption from Federal income tax.

(b) Notices of status filed by political organizations.

If, in accordance with section 527(i), an organization notifies the Internal Revenue Service that it is a political organization as described in section 527, exempt from Federal income tax for any taxable year, the notice of status filed by the political organization shall be open to public inspection.

(c) Letters or documents issued by the Internal Revenue Service with respect to an application for exemption from Federal income tax. If an application for exemption from Federal income tax is filed with the Internal Revenue Service after October 31, 1976, and is open to public inspection under paragraph (a) of this section, then any letter or document issued to the applicant by the Internal Revenue Service that

relates to the application is also open to public inspection. For rules relating to when a letter or document is issued, see §301.6110-2(h). Letters or documents to which this paragraph (c) applies include, but are not limited to--

(1) Favorable rulings and determination letters, including group exemption letters, issued in response to applications for exemption from Federal income tax;

(2) Technical advice memoranda issued with respect to the approval, or subsequent approval, of an application for exemption from Federal income tax;

(3) Letters issued in response to an application for exemption from Federal income tax (including applications for a group exemption letter) that propose a finding that the applicant is not entitled to be exempt from Federal income tax, if the applicant is subsequently determined, on the basis of that application, to be exempt from Federal income tax; and

(4) Any letter or document issued by the Internal Revenue Service relating to an organization's status as an organization described in section 509(a), 4940(d)(2), 4942(j)(3), or 4943(f), including a determination letter that the organization is or is not a private foundation.

(d) Requirement of exempt status. An application for exemption from Federal income tax (including applications for a group exemption letter), supporting documents, and letters or documents issued by the Internal Revenue Service that relate to the application shall not be open to public inspection before the organization is determined, on the basis of that application, to be exempt from Federal income tax for any taxable year. If an organization is determined to be exempt from Federal income tax for any taxable year, these materials shall not be withheld from public inspection on the basis that the organization is subsequently determined not to be exempt for any other taxable year.

(e) Documents included in the term "application for exemption from Federal income tax." For purposes of this section--

(1) Prescribed application form. If a form is prescribed for an organization's application for exemption from Federal income tax, the application includes the form and all documents and statements that the Internal Revenue Service requires to be filed with the form, any amendments or revisions to the original application, or any resubmitted applications where the original application was submitted in draft form or was withdrawn. An application includes an application for reinstatement of tax-

exempt status after an organization's tax exempt status has been revoked pursuant to section 6033(j). An application submitted in draft form or an application submitted and later withdrawn is not considered an application.

(2) No prescribed application form. If no form is prescribed for an organization's application for exemption from Federal income tax, the application includes the submission by letter requesting recognition of tax exemption and any statements or documents as prescribed by Revenue Procedure 2011-9, IRB 2011-2 (January 10, 2011), or any successor guidance describing procedures for application for exempt status pursuant to section 501 and section 521 of the Internal Revenue Code. See §601.601(d)(2)(ii)(b).

(3) Application for a Group Exemption Letter. The application for a group exemption letter includes the letter submitted by or on behalf of subordinate organizations that seek exempt status pursuant to a group exemption letter and any statements or documents as prescribed by Revenue Procedure 80-27, 1980-1 CB 677 (June 20, 1980), and any successor guidance. See §601.601(d)(2)(ii)(b).

(4) Notice of status filed under section 527(i). For purposes of this section, documents included in the term "notice of status filed under section 527(i)" include--

(i) Form 8871, "Political Organization Notice of Section 527 Status";

(ii) Form 8453-X, "Declaration of Electronic Filing of Notice of Section 527 Status"; and

(iii) Any other additional forms or documents that the Internal Revenue Service may prescribe.

(f) Material open to public inspection under section 6110. Under section 6110, certain written determinations, including negative determinations issued to organizations that applied for an exemption from Federal income tax, issued by the Internal Revenue Service are made available for public inspection. Section 6110 does not apply, however, to material that is open to public inspection under section 6104. See sections 6104(a)(1) and 6110(1)(1).

(g) Supporting documents defined. For purposes of this section, "supporting documents," with respect to an application for exemption from Federal income tax, means any statement or document not described in paragraph (e) of this section that is submitted by the organization or group in support of its application prior to a determination described in paragraph (a) of this section. Items submitted in connection with an application in draft form, or with an application submitted and later withdrawn, are not supporting documents. There are no

supporting documents with respect to Notices of Status filed by political organizations.

(h) Statement of exempt status. For efficient tax administration, the Internal Revenue Service may publish, in paper or electronic format, the names of organizations currently recognized as exempt from Federal income tax, including organizations recognized as exempt from Federal income tax under particular paragraphs of section 501(c) or section 501(d). In addition to having the opportunity to inspect material relating to an organization exempt from Federal income tax, a person may request a statement, or the Internal Revenue Service may disclose, in response to or in anticipation of a request, the following information--

(1) The subsection and paragraph of section 501 (or the corresponding provision of any prior revenue law) under which the organization or group has been determined, on the basis of an application open to public inspection, to qualify for exemption from Federal income tax; and

(2) Whether an organization or group is currently recognized as exempt from Federal income tax.

(i) Publication of non-exempt status. (1) For publication of the notice of the revocation of a determination that an

organization is described in section 501(c)(3), see section 7428(c).

(2) For publication of a list including any organization the tax exemption of which is revoked for failure to file required returns or notices for three consecutive years, see section 6033(j).

(3) For publication of notice of suspension of tax exemption of terrorist organizations, see section 501(p).

(j) Withholding of certain information from public inspection. For rules relating to certain information contained in an application for exemption from Federal income tax and supporting documents that will be withheld from public inspection, see §301.6104(a)-5(a).

(k) Procedures for inspection. For rules relating to procedures for public inspection of applications for exemption from Federal income tax and supporting documents, see §301.6104(a)-6.

(l) Effective/applicability date. The rules of this section apply **[INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER]**.

Par. 3. §301.6110-1 is amended by revising paragraph (a) and adding paragraph (d) to read as follows:

§301.6110-1 Public inspection of written determinations and background file documents.

(a) General rule. Except as provided in §301.6110-3, relating to deletion of certain information, §301.6110-5(b), relating to actions to restrain disclosure, paragraph (b)(2) of this section, relating to technical advice memoranda involving civil fraud and criminal investigations, and jeopardy and termination assessments, and paragraph (b)(3) of this section, relating to general written determinations relating to accounting or funding periods and methods, the text of any written determination (as defined in §301.6110-2(a)) issued pursuant to a request postmarked or hand delivered after October 31, 1976, shall be open to public inspection in the places provided in paragraph (c)(1) of this section. The text of any written determination issued pursuant to a request postmarked or hand delivered before November 1, 1976, shall be open to public inspection pursuant to section 6110(h) and §301.6110-6, when funds are appropriated by Congress for such purpose. The procedures and rules set forth in §§301.6110-1 through 301.6110-5 and §301.6110-7 do not apply to written determinations issued pursuant to requests postmarked or hand delivered before

November 1, 1976, unless §301.6110-6 states otherwise. There shall also be open to public inspection in each place of public inspection an index to the written determinations subject to inspection at such place. Each such index shall be arranged by section of the Internal Revenue Code, related statute or tax treaty and by subject matter description within such section in such manner as the Commissioner may from time to time provide. The Commissioner shall not be required to make any written determination or background file document open to public inspection pursuant to section 6110 or refrain from disclosure of any such documents or any information therein, except as provided by section 6110 or with respect to a discovery order made in connection with a judicial proceeding. The provisions of section 6110 shall not apply to material that is open to public inspection under section 6104. See section 6110(l)(1).

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(d) Effective/applicability date. The rules of paragraph (a) apply [INSERT DATE OF PUBLICATION OF THIS DOCUMENT IN THE FEDERAL REGISTER].

Steven T. Miller

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2012

Emily S. McMahon

Acting Assistant Secretary of the Treasury (Tax Policy).

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