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[4830-01-p]

## DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-138344-13]

RIN 1545-BL94

Substantiation Requirement for Certain Contributions; Withdrawal

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Withdrawal of notice of proposed rulemaking.

SUMMARY: This document withdraws proposed regulations that would implement the statutory exception to the “contemporaneous written acknowledgement” requirement for substantiating charitable contribution deductions of \$250 or more. The withdrawal affects persons that make charitable contributions and organizations that receive charitable contributions.

DATES: As of [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER]

the notice of proposed rulemaking published on September 17, 2015 (80 FR 55802), is withdrawn.

FOR FURTHER INFORMATION CONTACT: Robert Basso at (202) 317-7011 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

### **Background**

Section 170(f)(8)(A) of the Internal Revenue Code provides the statutory requirement that a taxpayer who claims a charitable contribution deduction for any

contribution of \$250 or more obtain substantiation in the form of a contemporaneous written acknowledgment (CWA) from the donee organization. However, in section 170(f)(8)(D), Congress provided an exception to the CWA requirement. Under the exception, a CWA is not required if the donee organization files a return on such form and in accordance with such regulations as the Treasury Department may prescribe (donee reporting).

Section 1.170A-13(f) of the Income Tax Regulations provides the rules issued by the Treasury Department and the IRS for substantiating charitable contributions of \$250 or more. See TD 8690 (1997-1 CB 68). When issuing TD 8690 in 1997, the Treasury Department and the IRS specifically declined to issue regulations to implement donee reporting under section 170(f)(8)(D). The IRS has consistently maintained that the section 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method for donee reporting. Nevertheless, some taxpayers under examination for their claimed charitable contribution deductions have recently argued that a failure to comply with the CWA requirements of section 170(f)(8)(A) may be cured if the donee organization files an amended Form 990, "Return of Organization Exempt From Income Tax," that includes the donor's contribution information. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting under section 170(f)(8)(D), even if the amended Form 990 is submitted to the IRS many years after the purported charitable contribution was made. In response to some donors' requests, some donee organizations have filed amended Forms 990 attempting to effectuate donee reporting. The Treasury Department and the IRS have concluded that the Form 990 is an

unsuitable reporting method for this purpose and may not be used to effectuate donee reporting.

However, in response to the interest by some taxpayers in donee reporting under the statutory exception, the Treasury Department and the IRS proposed regulations to implement a framework addressing the manner and timing for donee reporting under section 170(f)(8)(D). On September 17, 2015, a notice of proposed rulemaking (REG-138344-13) was published in the **Federal Register** (80 FR 55802). The proposed framework for donee reporting was based on a specific-use information return that would include, among other things, the donor's name, address, and taxpayer identification number. Similar to other specific-use information returns filed with the IRS, the donor's taxpayer identification number was required in order to properly associate the donation information with the correct taxpayer. Unlike a CWA, which is not sent to the IRS, the donee reporting information return would be sent to the IRS, which must have a means to store, maintain, and readily retrieve the return information for a specific taxpayer if and when substantiation is required in the course of an examination.

The proposed framework for donee reporting was intended to minimize the reporting burden on donee organizations by making it voluntary, and to protect donor privacy by not using the Form 990 series. In the preamble to the proposed regulations, the Treasury Department and the IRS expressed concern about the potential risk for identity theft with a donee reporting system based on a specific-use information return because donee organizations would be collecting donors' taxpayer identification numbers and maintaining those numbers for some period of time. The Treasury

Department and the IRS requested comments, including specifically on whether additional guidance was necessary regarding the procedures a donee organization should use to mitigate the risk of identity theft of donor information.

The Treasury Department and the IRS received a substantial number of public comments in response to the notice of proposed rulemaking. Many of these public comments questioned the need for donee reporting, and many comments expressed significant concerns about donee organizations collecting and maintaining taxpayer identification numbers for purposes of the specific-use information return. In response to those comments, the Treasury Department and the IRS have decided against implementing the statutory exception to the CWA requirement, and therefore that exception remains unavailable unless and until final regulations are issued prescribing the method for donee reporting. Accordingly, the notice of proposed rulemaking is being withdrawn.

#### **List of Subjects in 26 CFR Part 1**

Income taxes, Reporting and recordkeeping requirements.

#### **Withdrawal of Notice of Proposed Rulemaking**

Under the authority of 26 U.S.C. 7805, the notice of proposed rulemaking (REG-138344-13) that was published in the **Federal Register** on September 17, 2015 (80 FR 55802) is withdrawn.

Karen M. Schiller

Acting Deputy Commissioner for Services and  
Enforcement.

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