



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-102508-16]

RIN 1545-BN28

Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations that would update information reporting regulations under section 6033 that are generally applicable to organizations exempt from tax under section 501(a) to reflect statutory amendments and certain grants of reporting relief announced through subregulatory guidance that have been made since the current regulations were adopted, particularly with respect to tax-exempt organizations required to file an annual Form 990 or 990-EZ information return.

DATES: Written or electronic comments and requests for a public hearing must be received by **[INSERT DATE 90 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Submit electronic submissions via the Federal eRulemaking Portal at <http://www.regulations.gov/> (indicate IRS REG-102508-16) by following the online instructions for submitting comments. Once submitted to the Federal eRulemaking

Portal, comments cannot be edited or withdrawn. The Department of the Treasury (Treasury Department) and the IRS will publish for public availability any comment submitted to its public docket, whether submitted electronically or in hard copy. Send hard copy submissions to: CC:PA:LPD:PR (REG-102508-16), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (REG-102508-16), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, 20224.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes) at (202) 317-3150; concerning submissions of comments and requests for a public hearing, Regina Johnson at (202) 317-6901 (not toll-free numbers), fdms.database@irsounsel.treas.gov.

SUPPLEMENTARY INFORMATION:

Background

The paragraphs of section 6033 of the Internal Revenue Code (Code) outline various requirements for an annual information return to be filed by organizations that are exempt from tax under section 501(a) or described in section 527, including exceptions to the filing requirement. Section 6033(a)(1) requires certain organizations that are exempt from tax under section 501(a) (“tax-exempt organizations”) to file annual information returns that include gross income, receipts and disbursements, and “such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe.” The annual information returns

required under section 6033 are Forms 990, "Return of Organization Exempt From Income Tax;" 990-EZ, "Short Form Return of Organization Exempt From Income Tax;" 990-PF, "Return of Private Foundation;" and 990-BL, "Information and Initial Excise Tax Return for Black Lung Benefit Trusts and Certain Related Persons." Annual returns filed by tax-exempt organizations, tax-exempt political organizations described in section 527(e) ("section 527 organizations"), and nonexempt private foundations described in section 6033(d) and section 4947(a)(1) trusts (which are both treated as section 501(c)(3) organizations for this purpose) are information returns intended to help ensure that the filing organizations comply with applicable federal tax laws. Additionally, most information on these annual returns under section 6104 of the Code is available for public inspection.

Section 6033(a)(3) provides a list of organizations that are excepted from the filing requirements imposed under section 6033(a)(1). Specifically, section 6033(a)(3)(A)(ii) provides that section 6033(a)(1) shall not apply to any organization (other than a private foundation) that is described in section 6033(a)(3)(C) whose gross receipts are not normally more than \$5,000 annually. The list of organizations provided in section 6033(a)(3)(C) includes certain fraternal beneficiary societies, orders or associations described in section 501(c)(8); certain organizations described in section 501(c)(3) (such as religious organizations and educational organizations described in section 170(b)(1)(A)(ii)); and organizations described in section 501(c)(1) that are corporations wholly owned by the United States or any agency or instrumentality thereof or wholly-owned subsidiaries of such corporations.

Section 6033(a)(3)(B) provides discretionary authority to the Secretary to relieve

any organization required to file under section 6033(a)(1) (other than supporting organizations described in section 509(a)(3)) from filing an information return where he determines that such filing is “not necessary to the efficient administration of the internal revenue laws.”

Section 6033(b) provides a list of items that are required to be furnished annually by organizations described in section 501(c)(3), “at such time and in such manner as the Secretary may by forms or regulations prescribe.” The statutory list of items required to be furnished annually has been amended by Congress from time to time to account for additional requirements of organizations described in section 501(c)(3). Section 6033(b) was updated by the Taxpayer Bill of Rights 2, Public Law 104-168, in 1996 to include items in sections 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in sections 501(c)(3)) and 6033(b)(11) (relating to taxes imposed with respect to an organization, an organization manager, or any disqualified person under section 4958).

Section 6033(g)(2) provides that a political organization (as defined by section 527(e)(1)) that has gross receipts of \$25,000 or more for a taxable year¹ shall file an annual return containing the information required by section 6033(a)(1) for organizations exempt from taxation under section 501(a). The statute authorizes the Secretary to modify the information required to be reported to require only information that is necessary for purposes of carrying out section 527 and such other information as the Secretary deems necessary to carry out the provisions of section 6033(g).

Section 6033(h) provides additional reporting requirements for controlling

¹ In the case of a qualified State or local political organization described in section 527(e)(5), \$25,000 is replaced by \$100,000.

organizations, within the meaning of section 512(b)(13). Section 6033(h) requires controlling organizations to include on their returns any (1) interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13)), (2) any loans made to each such controlled entity, and (3) any transfers of funds between such controlling organization and each such controlled entity.

Section 6033(k) provides additional reporting requirements for sponsoring organizations described in section 4966(d)(1). Section 6033(k) requires each such organization to report on its annual return (1) the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year, (2) the aggregate value of assets held in such funds at the end of such taxable year, and (3) the aggregate contributions to and grants made from such funds during such taxable year.

Section 6033(l) provides additional reporting requirements for supporting organizations described in section 509(a)(3). Section 6033(l) requires each supporting organization to report on its annual return (1) the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support; (2) whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and (3) a certification that the organization meets the requirements of section 509(a)(3)(C).

The general rule of confidentiality of returns is found in section 6103, which states that returns and return information shall be confidential, and, except as authorized by this title, no person having access to this information shall disclose any return or return information obtained by him in any manner.

One of the exceptions to the general rule of confidentiality can be found in section 6104. In general, under section 6104(b), the Secretary must make the annual returns filed under section 6033 available to the public. However, the Secretary is not authorized to disclose to the public the name or address of any contributor to any tax-exempt organization other than a private foundation (as defined in section 509(a), including trusts described in section 4947(a)(1) that are treated as private foundations) or a section 527 organization. Section 301.6104(b)-1(b)(2) provides that although the names and addresses are not to be disclosed, the amounts of contributions to an organization shall be made available for public inspection unless the disclosure of such information can reasonably be expected to identify any contributor.

In addition to the required disclosure by the Secretary, section 6104(d) and §301.6104(d)-1 require certain tax-exempt organizations to provide their annual information returns upon request by a member of the public. Similar to the restrictions on disclosing contributor information placed on the Secretary by section 6104(b), an organization, other than a private foundation or a section 527 organization, is not required to disclose the names and addresses of its contributors under section 6104(d)(3)(A).

The current Treasury Regulations (“final regulations”) reflect many of the statutory requirements of section 6033. Consistent with section 6033(a)(1), §1.6033-2(a)(1) of the final regulations states that “except as provided in section 6033(a)(3) and paragraph (g) [of §1.6033-2], every organization exempt from taxation under section 501(a) shall file an annual information return specifically setting forth its items of gross income, gross receipts and disbursements, and such other information as may be

prescribed in the instructions, issued with respect to the return.”

Although the information to be reported for any particular year is set forth in the form and instructions, the final regulations under section 6033 provide a list of “information generally required to be furnished by an organization exempt under section 501(a)” on the annual return. The list provided in §1.6033-2(a)(2)(ii) of the final regulations generally tracks the list set forth for section 501(c)(3) organizations in section 6033(b), though not all items in section 6033(b) are currently included in the regulations because the statute has been amended following the original issuance of the regulations, and not all statutory changes were subsequently reflected in the regulations. The list in the regulations includes, but is not limited to, gross income for the year; dues and assessments from members and affiliates for the year; expenses incurred within the year attributable to gross income; disbursements (including prior years' accumulations) made within the year for the purposes for which it is exempt; a balance sheet showing its assets, liabilities, and net worth as of the beginning and end of such year; the total of the contributions, gifts, grants and similar amounts received by it during the taxable year; the names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors or trustees) of the organization; and certain compensation and payment information.

As relevant here, §1.6033-2(a)(2)(ii)(f) provides that organizations required to file an annual information return generally must provide the names and addresses of persons who contribute \$5,000 or more during the taxable year. This provision is more expansive than section 6033(b)(5), which applies specifically to organizations described in section 501(c)(3). In addition, §1.6033-2(a)(2)(iii)(d) provides that organizations

described in section 501(c)(7) (social clubs), section 501(c)(8) (fraternal beneficiary societies), or section 501(c)(10) (domestic fraternal societies) generally must report the name of each person who contributes more than \$1,000 to be used exclusively for religious, charitable, scientific, literary, or educational purposes, or for the prevention of cruelty to children or animals.

Incorporating section 6033(a)(3), §1.6033-2(g)(1) provides a list of organizations that are not required to file an annual return under section 6033(a)(1). Within that list, §1.6033-2(g)(1)(iii) provides that organizations described in section 6033(a)(3)(C) whose gross receipts are generally not more than \$5,000 annually are not required to file the return required under section 6033(a)(1). Further, §1.6033-2(g)(6) provides that the Commissioner may relieve any organization or class of organizations (other than a supporting organization described in section 509(a)(3)) from filing, in whole or in part, the annual return required under section 6033 where the Commissioner “determines that such returns are not necessary for the efficient administration of the internal revenue laws.”

Accordingly, other than with regard to supporting organizations, section 6033 and the final regulations in this part issued under section 6033 provide the Commissioner with broad discretionary authority to determine what information is reported and to grant relief, in whole or in part, from the annual filing requirements of tax-exempt organizations if it is determined that the information is not necessary for the efficient administration of the internal revenue laws.

For decades, the Commissioner has exercised the discretion under section 6033(a)(3)(B) and §1.6033-2(g)(6) to relieve organizations of filing requirements in

section 6033 through subregulatory guidance such as revenue procedures and annual information return instructions (for example, Rev. Proc. 95-48, 1995-2 C.B. 418, and Rev. Proc. 96-10, 1996-1 C.B. 577). Revenue Procedure 83-23, 1983-1 C.B. 687, represents one such exercise of this discretion. In that revenue procedure, the Commissioner increased to \$25,000 the minimum amount of gross receipts normally required to be received in a year by an organization exempt under section 501(a) to trigger a filing requirement under section 6033(a). That revenue procedure also expanded the group of tax-exempt organizations not required to file an annual information return due to a gross receipts threshold beyond those listed in section 6033(a)(3)(C). Revenue Procedure 2011-15, 2011-3 I.R.B. 322, further increased this gross receipts threshold amount to \$50,000 for most organizations exempt under section 501(a).² Revenue Procedure 2011-15 also relieved most foreign organizations and organizations formed in a United States possession from a filing requirement under section 6033(a) if their gross receipts from sources within the United States do not exceed the \$50,000 threshold and if they have no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

Similarly, consistent with past exercises of authority under section 6033 and the implementing regulations, the Treasury Department and the IRS issued Rev. Proc. 2018-38, 2018-31 I.R.B. 280, granting tax-exempt organizations required to file the Form 990 or Form 990-EZ, other than those described in section 501(c)(3), relief from reporting the names and addresses of contributors on Schedules B, “Schedule of

² An organization that is not required to file an annual return by virtue of Rev. Proc. 2011-15 must submit a Form 990-N e-Postcard annually in electronic format as described in section 6033(i)(1). Rev. Proc. 2011-15, section 3.03.

Contributors,” filed with Form 990 or 990-EZ (or completing the similar portions of Part IV of the Form 990–BL). Revenue Procedure 2018-38 also provides that organizations described in sections 501(c)(7), (8), or (10) need not provide, on their annual information returns required under section 6033, the names and addresses of persons who contributed more than \$1,000 during the taxable year to be used for exclusively charitable purposes. Revenue Procedure 2018-38 does not affect the information required to be reported on Forms 990, 990-EZ, or 990-PF by organizations described in section 501(c)(3) (which for purposes of section 6033 include nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations described in section 6033(d)) or section 527 organizations.

On July 30, 2019, the United States District Court for the District of Montana released its decision in the case of Bullock, et al. v. IRS, No. 4:18-cv-00103-BMM (D. Mont. Jul. 30, 2019). The court noted that “the substance of [the Commissioner’s] ultimate decision [on reporting the names and addresses of contributors] remains subject to the Commissioner’s discretion,” but set aside Rev. Proc. 2018-38 and held that the IRS should have followed the notice and comment procedures of the APA in providing the reporting relief set forth in Rev. Proc. 2018-38.

Explanation of Provisions

The proposed regulations contained in this notice of proposed rulemaking modify the final regulations under section 6033 to align them with certain statutory amendments to section 6033 that have not previously been reflected in the regulations and to update the regulations to encompass certain instances in which the Commissioner has previously exercised discretion under the statute and regulations to relieve

organizations, in whole or in part, from the filing requirements set forth in section 6033 or the regulations in this part issued under section 6033. The Code provides discretion to the Secretary, and his or her delegate,³ to determine what information is necessary for the efficient administration of the federal tax laws involving tax-exempt organizations. The Secretary has previously exercised that discretion through various forms or guidance. These proposed regulations would incorporate certain past exercises of discretion into a single location for ease of use. These proposed changes are also intended to update the regulations so that they more fully present the current reporting requirements for most tax-exempt organizations.

Specifically, as further discussed later in this preamble, these changes include the following: (1) adding items listed in section 6033(b)(10) and (11), as applicable, to the list of items generally required to be reported; (2) adding other statutory reporting requirements for controlling organizations, sponsoring organizations, and supporting organizations; (3) amending the gross receipts threshold (with an additional requirement for foreign organizations and United States possession organizations) that triggers a filing requirement under section 6033 for organizations exempt under section 501(a) (other than private foundations and supporting organizations); (4) clarifying that section 527 organizations with gross receipts greater than \$25,000 generally are subject to the reporting requirements under section 6033(a)(1) as if they were exempt from taxes under section 501(a); and (5) specifying that only organizations described in section 501(c)(3) and section 527 organizations generally would continue to be required to provide names and addresses of contributors on their Forms 990, Forms 990-EZ, and

³ Section 7701(a)(11)(B) provides that the term “Secretary” means the Secretary of the Treasury or his delegate, which may include the Commissioner.

Forms 990-PF.

The Treasury Department and the IRS request comments on any other grants of section 6033 related reporting relief announced pursuant to past exercises of the Commissioner's discretion that should be incorporated into the regulations or any other clarifications to reflect statutory changes. For example, these proposed regulations do not incorporate Rev. Proc. 96-10, 1996-1 C.B. 138, which relieves from a filing requirement under section 6033(a) certain organizations that are operated, controlled, or supervised by one or more churches, integrated auxiliaries, or conventions or associations of churches because it is unclear whether Rev. Proc. 96-10 currently has practical application. The relevant language provided indicates that these types of organizations are likely supporting organizations under section 509(a)(3). Section 509(a)(3) provides public charity status to organizations, known as supporting organizations, that are operated, supervised, or controlled by, or in connection with, one or more specified organizations described in section 509(a)(1) or (2), which includes churches, conventions or associations of churches, and some integrated auxiliaries of churches.

The Pension Protection Act of 2006, Public Law 109-280, modified the Secretary's general discretion under section 6033(a)(3)(B) so that the Secretary is no longer permitted to relieve a supporting organization of its filing requirements. The Treasury Department and the IRS expect that few, if any, organizations meeting the requirements of Rev. Proc. 96-10 may still rely on this revenue procedure given the 2006 statutory change; thus, incorporating the provisions of Rev. Proc. 96-10 into regulations is unnecessary. However, the Treasury Department and the IRS request

comments on the continued usefulness of Rev. Proc. 96-10.

In addition, Rev. Proc. 95-48 grants reporting relief for governmental units and affiliates of governmental units. The Treasury Department and the IRS are considering whether the reporting relief in this revenue procedure should be updated and whether such relief should be incorporated into the regulations under section 6033 and request comments on the relief provided in this revenue procedure, as well as whether any other reporting relief should be specified or added.

ITEMS REQUIRED IN ANNUAL INFORMATION RETURNS

Section 6033(a)(1) provides that the Secretary, or his or her delegate, may by forms or regulations prescribe “other information for the purpose of carrying out the internal revenue laws” to be reported on an annual return required under section 6033. This authority is reflected in §1.6033-2(a)(1). Consistent with these grants of discretion, §1.6033-2(a)(2)(ii) provides a general list of items that a tax-exempt organization may expect to provide on its annual information return required by section 6033.

As previously stated in this preamble, the Treasury Department and the IRS have determined that the regulations should be updated to reflect certain additional items listed in section 6033(b) for organizations described in section 501(c)(3).

Therefore, these proposed regulations would amend §1.6033-2(a)(2)(ii) by adding two new provisions to reflect items that have been added to section 6033(b) but that have not yet been added to the list in the regulations of items generally required to be reported on an organization’s annual information return. These items are those found in section 6033(b)(10) (relating to taxes imposed on certain lobbying and political expenditures by organizations described in section 501(c)(3)) and 6033(b)(11) (relating

to taxes imposed with respect to an organization, an organization manager, or any disqualified person on any excess benefit transaction under section 4958). In addition, a cross-reference to §1.6033-2(a)(1) has been added to the introductory sentence of §1.6033-2(a)(2)(ii).

In an effort to further increase the ability of a taxpayer generally to find its reporting requirements in one place, the Treasury Department and the IRS are also incorporating into the regulations the statutory reporting requirements found in section 6033(h) for controlling organizations (as defined in section 512(b)(13)), section 6033(k) for sponsoring organizations (as defined in section 4966(d)(1)), and section 6033(l) for supporting organizations (as defined in section 509(a)(3)).

While these amendments to the regulations are part of an effort to further increase the ability of a taxpayer generally to find its reporting requirements in one place, tax-exempt organizations will continue to find their current annual return reporting requirements in the forms and instructions found at irs.gov. The Treasury Department and the IRS request comments on any other requirements in section 6033 that should be incorporated into §1.6033-2.

GROSS RECEIPTS FILING THRESHOLD

Section 6033(a)(1)(B) grants the Secretary, or his or her delegate, discretion to relieve any organization (except an organization described in section 509(a)(3)) from the requirement to file a return if the Secretary determines that the filing is not necessary to the efficient administration of the internal revenue laws and §1.6033-2(g)(6) specifies that this relief from filing may be granted in whole or in part.

The Treasury Department and the IRS have previously determined that the

efficient administration of the tax laws does not require the filing of returns by organizations that are exempt under section 501(a) (other than private foundations and supporting organizations) that normally have less than \$50,000 in gross receipts annually, except for foreign organizations and organizations formed in a United States possession that have significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States. Rev. Proc. 2011-15. This threshold seeks to balance the efficient use of resources for both tax-exempt organizations and the IRS with ensuring compliance with the tax laws by tax-exempt organizations, particularly since such organizations must continue to file Form 990-N under section 6033(i). This notice of proposed rulemaking proposes to amend §1.6033-2(g)(1)(iii) to reflect the \$50,000 gross receipts filing threshold currently in effect, rather than the \$5,000 gross receipts threshold found in section 6033(a)(3)(A)(ii), and the application of the \$50,000 threshold to organizations other than those listed in section 6033(a)(3)(C). Thus, the proposed regulations would provide that the gross receipts threshold for all organizations (other than private foundations and supporting organizations) formed in the United States would be \$50,000. The notice of proposed rulemaking also proposes simply to incorporate the previously granted relief from the filing requirement under section 6033(a) for foreign organizations and organizations formed in a United States possession (other than private foundations and supporting organizations) that is currently found in Rev. Proc. 2011-15.

The proposed regulations will also specify that the Commissioner retains discretion to provide possible further increases in this amount pursuant to §1.6033-

2(g)(6). Therefore, the Treasury Department and the IRS also propose amending §1.6033-2(g)(6) to clarify that the Commissioner has authority to further provide relief through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

CLARIFYING THE TREATMENT OF SECTION 527 ORGANIZATIONS

Section 6033(g)(2) provides that section 527 organizations shall file an annual return containing the information required by section 6033(a)(1) for tax-exempt organizations. As noted previously in this preamble, the Treasury Department and the IRS have determined that the regulations should more fully reflect the requirements of section 6033 for tax-exempt organizations. The Treasury Department and the IRS propose to add §1.6033-2(a)(5) to state the current requirement that section 527 organizations, subject to the filing exceptions provided by section 6033(g)(3) or as permitted under section 6033(g)(4), follow the reporting requirements under section 6033(a)(1) in the same manner as tax-exempt organizations, except when the Commissioner revises those requirements as appropriate to carry out the purposes of section 527. The proposed §1.6033-2(a)(5) would also state the current requirement that section 527 organizations, like organizations described in section 501(c)(3), must continue to report the names and addresses of contributors on the section 527 organizations' annual Forms 990 or Forms 990-EZ. The addition of §1.6033-2(a)(5) does not affect the current reporting requirements of section 527 organizations.

The Treasury Department and the IRS request comments on the proposed clarification of the treatment of section 527 organizations found in §1.6033-2(a)(5).

REPORTING OF NAMES AND ADDRESSES OF CONTRIBUTORS

Section 6033 does not specify that the names and addresses of contributors to tax-exempt organizations, other than those described in section 501(c)(3), be reported on annual information returns. Consistent with the Secretary's broad discretion under section 6033(a) to set forth information reporting requirements "for the purpose of carrying out the internal revenue laws ... by forms or regulations," §1.6033-2(a)(2)(ii) of the final regulations provides a list of items that are generally required to be included in the annual filings of organizations exempt under section 501(a). The proposed regulations would amend the final regulations to clarify that the need to provide the names and addresses of substantial contributors will generally apply only to tax-exempt organizations described in section 501(c)(3). This clarification is consistent with the limited application of the requirement in section 6033(b)(5). As discussed in the prior section of this preamble, section 527 organizations must also continue to report the names and addresses of substantial contributors.

In exercising this discretion, the Treasury Department and the IRS seek to balance the IRS's need for the information against the costs and risks associated with reporting of the information. The IRS does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually on Schedule B of Form 990 or Form 990-EZ in order to carry out the internal revenue laws, including provisions dealing with transfer taxes. A requirement to annually report such information—rather than providing it to the IRS as required upon examination—increases compliance costs for affected tax-exempt organizations and consumes IRS resources in connection with the redaction of such information as required in section 6104(b). Some have expressed concern regarding

the potential use of the names and addresses of substantial contributors when evaluating possible private benefit or inurement. Tax-exempt organizations continue to be required to file Schedule L of Form 990 or Form 990-EZ identifying transactions between the exempt organization and interested persons (including substantial contributors), which may indicate possible risks of private benefit or inurement. The primary utility of the names and addresses of substantial contributors, however, arises during examination of a tax-exempt organization, at which point such information may be collected from the relevant tax-exempt organization. Under the proposed rule, tax-exempt organizations are still required to report the amounts of contributions from each substantial contributor as required by the Schedule B of the Form 990 and 990-EZ as well as maintain the names and addresses of substantial contributors should the IRS need this information on a case-by-case basis, which the Treasury Department and the IRS have concluded is sufficient for the efficient administration of the Code.

The Treasury Department and the IRS are also concerned that the requirement to report the names and addresses of substantial contributors poses a risk of inadvertent disclosure of information that is not open to public inspection because this information on Schedule B generally must be redacted from an otherwise disclosable information return. The IRS has experienced incidents of inadvertent disclosure and has taken other steps to reduce future occurrences of such disclosures. By reducing the number of organizations providing the names and addresses of contributors on Schedule B, the potential for inadvertent disclosure of names and addresses can be decreased further.

Finally, the Treasury Department and the IRS note that the change in annual

reporting to the IRS of the names and addresses of substantial contributors will have no effect on information currently available to the public. Sections 6103 and 6104 prohibit the IRS from publicly disclosing the names and addresses of contributors to tax-exempt organizations (other than private foundations). With respect to such tax-exempt organizations, any names and addresses of substantial contributors on Schedule B are not made public and disclosure restrictions prohibit making such information available for use by other agencies for enforcement purposes, unless a specific exception applies.⁴ The Treasury Department and the IRS are aware of concerns raised regarding campaign finance laws; however, Congress has not tasked the IRS with the enforcement of campaign finance laws. Furthermore, the Code generally prohibits the IRS from disclosing any names and addresses of such organizations' substantial contributors to federal agencies for non-tax investigations, including campaign finance matters, except in narrowly prescribed circumstances.⁵

Accordingly, the Treasury Department and the IRS are proposing to modify the regulations to no longer specify that tax-exempt organizations (other than organizations described in section 501(c)(3)) are generally required to report the names and

⁴ The confidentiality and disclosure of tax returns and return information in both tax and non-tax investigations is governed by section 6103. Section 6103 contains several provisions authorizing the disclosure of returns and return information to Federal law enforcement agencies under prescribed circumstances after meeting specified procedural requirements. For example, these include disclosures to the Department of Justice (DOJ) for the investigation and prosecution of non-tax Federal crimes via an ex parte court order or via a request from the highest ranking official of a Federal agency or the highest officials within DOJ and in the course of an investigation after referral to and approval by DOJ as a Grand Jury Tax Investigation.

In the context of states, sections 6103 and 6104 authorize disclosure of certain returns and return information to the states for specified purposes. Generally, section 6103(d) authorizes disclosure to state tax agencies for state tax administration, while section 6104(c) permits disclosure of return information, in the case of organizations other than those described in section 501(c)(1) or (3), to an appropriate state officer to the extent necessary in administering state laws relating to the solicitation or administration of charitable funds or charitable assets of such organizations. Some states may also independently obtain donor information from the organizations.

⁵ See note 4.

addresses of their substantial contributors on their annual information returns.

However, as noted previously in this preamble, tax-exempt organizations must continue to report the amounts of contributions from each substantial contributor as well as maintain the names and addresses of their substantial contributors in their books and records in accordance with section 6001 and §1.6001-1(a) and (c) in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers. The records retained will enable organizations to substantiate upon examination the number of certain contributors and the amounts of their contributions and to facilitate the reporting of information on certain financial transactions between organizations and certain contributors. The Treasury Department and the IRS request comments on concerns regarding the efficient administration of the Code without the annual reporting of the names and addresses of substantial contributors for tax-exempt organizations other than those described in section 501(c)(3) and section 527 organizations.

The Treasury Department and the IRS propose to revise §1.6033-2(a)(2)(ii)(f) to provide that organizations described in section 501(c)(3) generally would be required to continue to provide names and addresses of contributors of more than \$5,000 on their Forms 990, 990-EZ, and 990-PF. Similarly, §1.6033-2(a)(2)(iii)(d) would be revised to remove reference to the provision of names of contributors who contribute over \$1,000 for a specific charitable purpose to organizations described in sections 501(c)(7), (8), and (10).

Proposed Effective/Applicability Date

These regulations are proposed to be effective as of the date of publication of the

Treasury decision adopting these rules as final regulations in the **Federal Register**. While these regulations are not effective until these rules are adopted as final in the **Federal Register**, under section 7805(b)(7), a tax-exempt organization may choose to apply the final regulations to returns filed after **[INSERT DATE OF FILING OF THIS DOCUMENT WITH THE FEDERAL REGISTER]**. After issuing the final regulations, the Treasury Department and the IRS will withdraw any revenue procedures superseded by the final regulations.

Special Analyses

This regulation is not subject to review under section 6(b) of Executive Order 12866 pursuant to the Memorandum of Agreement (April 11, 2018) between the Department of the Treasury and the Office of Management and Budget regarding review of tax regulations.

PAPERWORK REDUCTION ACT

The collection of information contained in this notice is reflected in the collection of information for Forms 990 and 990-EZ that have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507(c)) under control numbers 1545-0047 and 1545-1150, respectively. To the extent there is a decrease in burden as a result of this change, the decrease in burden will be reflected in the updated burden estimates for the Forms 990 and 990-EZ. The requirement to maintain records to substantiate information on the Form 990 or 990-EZ is already contained in the burden associated with the control numbers for those forms and remains unchanged.

An agency may not conduct or sponsor, and a person is not required to respond

to, a collection of information unless the collection of information displays a valid OMB control number.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and return information are confidential, as required by 26 U.S.C. 6103.

REGULATORY FLEXIBILITY ACT

It is hereby certified that these final regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that these regulations reflect statutory requirements and reporting relief previously announced through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. The collection of information contained in these proposed regulations instead maintains a current recordkeeping obligation while removing a filing burden. Accordingly, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f), this regulation has been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any comments that are submitted timely to the IRS as prescribed in this preamble under the **Addresses** heading. The Treasury Department and the IRS request comments on all aspects of the proposed regulations. All comments will be available for public inspection and copying. A public hearing may be

scheduled if requested in writing by any person that timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal authors of these regulations are personnel from the Office of the Associate Chief Counsel (Employee Benefits, Exempt Organizations, and Employment Taxes). However, other personnel from the Treasury Department and the IRS participated in their development.

Statement of Availability of IRS Documents

IRS Revenue Procedures, Revenue Rulings, Notices, and other guidance cited in this document are published in the Internal Revenue Bulletin (or Cumulative Bulletin) and are available from the Superintendent of Documents, U.S. Government Publishing Office, Washington, DC 20402, or by visiting the IRS website at <http://www.irs.gov>.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 1 is proposed to be amended as follows:

PART 1--INCOME TAXES

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

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

Par. 2. Section 1.6033-2 is amended by:

1. Revising the section heading;

2. In paragraph (a)(2)(ii) introductory text, removing “The” and adding “Subject to paragraph (a)(1) of this section, the” in its place;
3. In paragraph (a)(2)(ii)(f), revising the first sentence and removing “subdivision (iii) of this subparagraph” and adding “paragraph (a)(2)(iii) of this section” in its place;
4. Redesignating paragraphs (a)(2)(ii)(k) and (l) as paragraphs (a)(2)(ii)(m) and (n);
5. Adding new paragraphs (a)(2)(ii)(k) and (l);
6. Revising the first sentence of paragraph (a)(2)(iii)(d)(1);
7. Adding paragraphs (a)(5), (6), (7), and (8);
8. Revising paragraph (g)(1)(iii);
9. Removing the “or” at the end of paragraph (g)(1)(vi);
10. Removing the period at the end of paragraph (g)(1)(vii) and adding “; or” in its place;
11. Adding paragraph (g)(1)(viii);
12. Revising paragraph (g)(3);
13. Adding paragraph (g)(5) and a sentence at the end of paragraph (g)(6);
14. Redesignating paragraph (k) as paragraph (l);
15. Adding a new paragraph (k); and
16. Adding paragraph (l)(5).

The revisions and additions read as follows:

§1.6033-2 Returns by exempt organizations and returns by certain nonexempt organizations.

(a) * * *

(2) * * *

(ii) * * *

(f) The total of the contributions, gifts, grants and similar amounts received by it during the taxable year, and, in the case of an organization described in section 501(c)(3), the names and addresses of all persons that contributed, bequeathed, or devised \$5,000 or more (in money or other property) during the taxable year. * * *

* * * * *

(k) In the case of organizations described in section 501(c)(3), the respective amounts (if any) of the taxes imposed on the organization, or any organization manager of the organization, during the taxable year under any of the following provisions (and the respective amounts (if any) of reimbursements paid by the organization during the taxable year with respect to taxes imposed on any such organization manager under any of such provisions):

(1) Section 4911 (relating to tax on excess expenditures to influence legislation);

(2) Section 4912 (relating to tax on disqualifying lobbying expenditures of certain organizations); and

(3) Section 4955 (relating to taxes on political expenditures of section 501(c)(3) organizations), except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

(l) In the case of organizations described in section 501(c)(3), (4), or (29), the respective amounts (if any) of--

(1) The taxes imposed with respect to the organization on any organization manager, or any disqualified person, during the taxable year under section 4958 (relating to taxes on excess benefit transactions); and

(2) Reimbursements paid by the organization during the taxable year with respect to taxes imposed under such section, except to the extent that, by reason of section 4962, the taxes imposed under such section are not required to be paid or are credited or refunded.

* * * * *

(iii) * * *

(d)(1) Organizations described in section 501(c)(7), (8), or (10) that receive contributions or bequests to be used exclusively for purposes described in section 170(c)(4), 2055(a)(3), or 2522(a)(3), must attach a schedule with respect to all gifts that aggregate more than \$1,000 from any one person showing the total amount of the contributions or bequests from each such person, the specific purpose or purposes for which such amount was received, and the specific use or uses to which such amount was put. * * *

* * * * *

(5) Political organizations, as defined by section 527(e)(1), that have gross receipts of \$25,000 or more for the taxable year (or in the case of a qualified State or local political organization, as defined in section 527(e)(5), that has gross receipts of \$100,000 or more for the taxable year) generally must comply with the requirements of section 6033 and this section in the same manner as organizations exempt from tax under section 501(a), except to the extent that the Commissioner may modify such

requirements through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin as appropriate for carrying out the purposes of section 527. For the purposes of this section, all references to organizations exempt from tax under section 501(a) shall include political organizations referred to in section 6033(g), other than those referred to in section 6033(g)(3) and except to the extent the Commissioner exercises discretion under section 6033(g)(4). This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin. In addition to the reporting requirements applicable to organizations exempt under section 501(a), such political organizations generally must report the names and addresses of all persons that contributed, bequeathed, or devised \$5,000 or more (in money or other property) during the taxable year.

(6) Each controlling organization (within the meaning of section 512(b)(13)) that is subject to the requirements of section 6033(a) shall include on its annual return such information required by that return regarding –

(i) Any interest, annuities, royalties, or rents received from each controlled entity (within the meaning of section 512(b)(13));

(ii) Any loans made to each such controlled entity; and

(iii) Any transfers of funds between such controlling organization and each such controlled entity.

(7) Every organization described in section 4966(d)(1) shall, on its annual return for the taxable year—

(i) List the total number of donor advised funds (as defined in section 4966(d)(2)) it owns at the end of such taxable year;

(ii) Report the aggregate value of assets held in such funds at the end of such taxable year; and

(iii) Report the aggregate contributions to and grants made from such funds during such taxable year.

(8) Every organization described in section 509(a)(3) shall, on its annual return—

(i) List the supported organizations (as defined in section 509(f)(3)) with respect to which such organization provides support;

(ii) Specify whether the organization meets the requirements of clause (i), (ii), or (iii) of section 509(a)(3)(B); and

(iii) Certify that the organization meets the requirements of section 509(a)(3)(C).

* * * * *

(g) * * *

(1) * * *

(iii) Except as provided in paragraph (g)(1)(viii) of this section, an organization described in section 501(c) (other than a private foundation or a supporting organization described in section 509(a)(3)) the gross receipts of which in each taxable year are normally not more than \$50,000 (as described in paragraph (g)(3) of this section);

* * * * *

(viii) A foreign organization (described in paragraph (k)(1) of this section) or a United States possession organization (described in paragraph (k)(2) of this section) (other than a private foundation or a supporting organization described in section 509(a)(3)) –

(A) The gross receipts of which in each taxable year from sources within the United States (as determined under paragraph (k)(3) of this section) are normally not more than \$50,000 (as described in paragraph (g)(3) of this section); and

(B) That has no significant activity (including lobbying and political activity and the operation of a trade or business, but excluding investment activity) in the United States.

* * * * *

(3) For purposes of paragraphs (g)(1)(iii) and (viii) of this section, the gross receipts (as defined in paragraph (g)(4) of this section) of an organization are normally not more than \$50,000 if:

(i) In the case of an organization that has been in existence for 1 year or less, the organization has received, or donors have pledged to give, gross receipts of \$75,000 or less during the first taxable year of the organization;

(ii) In the case of an organization which has been in existence for more than one but less than 3 years, the average of the gross receipts received by the organization in its first 2 taxable years is \$60,000 or less; and

(iii) In the case of an organization which has been in existence for 3 years or more, the average of the gross receipts received by the organization in the immediately preceding 3 taxable years, including the year for which the return would be required to be filed, is \$50,000 or less.

* * * * *

(5) An organization that is not required to file an annual return by virtue of paragraphs (g)(1)(iii) and (viii) of this section must submit an annual electronic notification as described in section 6033(i). See §1.6033-6.

(6) * * * This discretion may be exercised through forms, instructions to forms, or guidance published in the Internal Revenue Bulletin.

* * * * *

(k) Foreign organizations and United States possession organizations--(1) Foreign organization. For purposes of this section, a “foreign organization” is any organization not described in section 170(c)(2)(A).

(2) United States possession organization. For purposes of this section, a “United States possession organization” is any organization created or organized in a possession of the United States.

(3) Source of funds. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts from gifts, grants, contributions or membership fees is determined by applying the rules found in §53.4948-1(b) of this chapter. For purposes of paragraph (g)(1)(viii) of this section, the source of an organization's gross receipts other than gifts, grants, contributions, and membership fees is determined by applying the rules in sections 861 through 865 and the regulations in this part issued under section 861 through 865. For purposes of applying this paragraph (k)(3) regarding United States possession organizations, a United States person does not include individuals who are *bona fide* residents of a United States possession.

(l) * * *

(5) Paragraphs (a)(2)(ii)(f), (a)(2)(iii)(d)(1), (g)(1)(iii) and (viii), and (g)(3) of this section apply to annual information returns filed after [DATE OF PUBLICATION OF FINAL REGULATIONS IN THE **FEDERAL REGISTER**]. Under section 7805(b)(7) an organization may choose to apply the paragraphs listed in this paragraph (l)(5) to returns filed after **[INSERT DATE OF FILING OF THIS DOCUMENT WITH THE FEDERAL REGISTER]**.

Kirsten Wielobob

Deputy Commissioner for Services and Enforcement.

[FR Doc. 2019-19501 Filed: 9/6/2019 11:15 am; Publication Date: 9/10/2019]