

[4830-01-u]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

[REG-121946-98]

RIN 1545-AW96

Private Foundation Disclosure Rules

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed amendments to the regulations relating to the public disclosure requirements described in section 6104(d) of the Internal Revenue Code. The proposed regulations implement changes made by the Tax and Trade Relief Extension Act of 1998, which extended fully to private foundations the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. The proposed regulations provide guidance for private foundations required to make copies of applications for tax exemption and annual information returns available for public inspection and to comply with requests for copies of those documents. Final regulations relating to the public disclosure requirements applicable to tax-exempt organizations other than private foundations were issued on April 9, 1999.

DATES: Written or electronic comments and requests for a public hearing must be received by October 12, 1999.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-121946-98), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, DC 20044. Submissions may be

hand delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to:

CC:DOM:CORP:R (REG-121946-98), Courier's Desk, Internal Revenue Service, 1111

Constitution Avenue, NW., Washington, DC. Alternatively, taxpayers may submit comments

electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by

submitting comments directly to the IRS Internet site at <http://www.irs.ustreas.gov/tax>

[regs/reglist.html](http://www.irs.ustreas.gov/tax/regs/reglist.html).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Michael

B. Blumenfeld, (202) 622-6070 (not a toll-free number); concerning submissions of comments,

LaNita Van Dyke (202) 622-7190 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections of information should be sent to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224. Comments on the collections of information should be received by October 12, 1999.

Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the IRS, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of

information (see below);

How the quality, utility, and clarity of the information to be collected may be enhanced;

How the burden of complying with the proposed collections of information may be minimized, including through the application of automated collection techniques or other forms of information technology; and

Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

The collections of information in these proposed regulations are in §§301.6104(d)-1, 301.6104(d)-2, and 301.6104(d)-3. This information is required to enable a private foundation to comply with section 6104(d) of the Internal Revenue Code (Code). Under section 6104(d), a private foundation is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a private foundation is required to comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a private foundation make its application for tax exemption and annual information returns available for public inspection and comply with requests made in person or in writing from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the private foundation. Under section 6104(d), a private foundation is permitted to file an application for relief from the requirement to provide copies if the private foundation reasonably believes it is the subject of a harassment campaign. The information a private foundation provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The

collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are private foundations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 32,565 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 65,065.

Estimated total annual reporting burden: 31 hours.

Estimated average annual reporting burden per respondent: 27 minutes.

Estimated number of respondents: 68.

Estimated annual frequency of responses: on occasion.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by the Office of Management and Budget.

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 tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document proposes to amend §§301.6104(d)-1 through 301.6104(d)-5 of the Procedure and Administration Regulations (26 CFR Part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in section 501(c) or (d) and exempt from taxation under section 501(a)). The proposed amendments

would remove existing §301.6104(d)-1 (relating to public inspection of private foundation annual information returns). The proposed amendments also would revise §§301.6104(d)-2 through 301.6104(d)-5 to apply the provisions to all tax-exempt organizations, including private foundations, and redesignate existing §§301.6104(d)-2 through 301.6104(d)-5 as §§301.6104(d)-0 through 301.6104(d)-3, respectively. This regulation is not subject to the Unfunded Mandates Reform Act of 1995 because the regulation is an interpretive regulation.

Description of Current Law Disclosure Requirements Applicable to Private Foundations

Section 6104(d), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999)(Public Law 105-277, 112 Stat 2681) (with respect to private foundations), requires a private foundation to make its annual information returns available for public inspection at its principal office during regular business hours for a period of 180 days after the foundation publishes notice of the availability of its return. A private foundation must publish such notice not later than the due date of the return (determined with regard to any extension of time for filing) in a newspaper having general circulation in the county in which the principal office of the foundation is located. Section 6104(e), as in effect prior to the effective date of the Tax and Trade Relief Extension Act of 1998 (with respect to private foundations), requires a private foundation to allow public inspection of the foundation's application for recognition of exemption at the foundation's principal office (and certain regional or district offices). Section 6104(e) also requires a private foundation to provide copies of its exemption application upon request. However, the requirement to provide copies of an exemption application upon request becomes effective only after the Secretary of the Treasury

issues regulations applicable to private foundations describing how a private foundation may be relieved of the obligation to provide copies in response to requests by making its exemption application widely available or by obtaining an IRS determination that a particular request is part of a harassment campaign.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Code to subject the annual information returns filed by private foundations to the same rules regarding public disclosure that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). Section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, requires each tax-exempt organization, including one that is a private foundation, to allow public inspection at its principal office (and at certain regional or district offices) and to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of exemption and the organization's three most recent annual information returns. Congress appears to have intended that nonexempt charitable trusts described in section 4947(a)(1) and nonexempt private foundations comply with the expanded public disclosure requirements, just as such entities are subject to the information reporting requirements of section 6033 pursuant to section 6033(d). See Joint Committee on Taxation, General Explanation of Tax Legislation Enacted in 1998 (JCS-6-98), November 24, 1998, at 242, fn. 102.

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury issues

regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). On April 9, 1999, the IRS published in the **Federal Register** (64 FR 17279) final regulations under section 6104(d) applicable to tax-exempt organizations other than private foundations. Accordingly, section 6104(d), as amended by the Tax and Trade Relief Extension Act of 1998, became effective with respect to tax-exempt organizations other than private foundations on June 8, 1999.

Explanation of Provisions

The proposed amendments extend the recently-published final regulations under section 6104(d) to apply to private foundations. The proposed amendments also modify those regulations in several respects. The proposed amendments state that the term annual information return includes any return that is required to be filed under section 6033. For a private foundation, such returns include Form 990-PF and Form 4720. Consistent with the statute, the proposed amendments provide that, unlike other tax-exempt organizations, a private foundation is required to disclose to the general public the names and addresses of its contributors. The proposed amendments also clarify that, for purposes of section 6104(d), the terms tax-exempt organization and private foundation include nonexempt private foundations and nonexempt charitable trusts described in section 4947(a)(1) that are subject to the information reporting requirements of section 6033. Finally, the proposed amendments remove existing §301.6104(d)-1 and redesignate existing §§301.6104-2 through 301.6104(d)-5, as §§301.6104(d)-0 through 301.6104(d)-3, respectively.

Until 60 days after these proposed amendments are published as final regulations in the **Federal Register**, private foundations continue to be subject to section 6104(d) and section

6104(e), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing §301.6104(d)-1. Thereafter, private foundations will continue to be subject to the public inspection requirements of section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998, and existing §301.6104(d)-1 with respect to any annual information return the due date (determined with regard to any extension of time for filing) for which is prior to the effective date of the final regulations.

Proposed Effective Date

The amendments made by these regulations are proposed to be effective 60 days after the date these regulations are published as final regulations in the **Federal Register**.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each private foundation. This estimate is based on the assumption that, on average, a private foundation will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Approximately 0.1 percent of the private foundations affected by these regulations will be subject to the reporting

requirements contained in the regulations. It is estimated that annually, approximately 65 private foundations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 3 private foundations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a private foundation is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that it will cost a private foundation less than \$10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be 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 written comments (a signed original and eight (8) copies) and electronic comments that are submitted timely to the IRS. The IRS and the Treasury Department specifically request comments on the clarity of the proposed regulations and how they may be made easier to understand. All comments will be available for public inspection and copying.

A public hearing may be scheduled if requested in writing by a person that timely submits

written or electronic 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 author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

List of Subjects in 26 CFR Part 301

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

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

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

Section 301.6104(d)-2 also issued under 26 U.S.C. 6104(d)(3);

Section 301.6104(d)-3 also issued under 26 U.S.C. 6104(d)(3); * * *

§301.6104(d)-1 [Removed]

Par. 2. Section 301.6104(d)-1 is removed.

§301.6104(d)-2 [Redesignated as §301.6104(d)-0]

Par. 3. Section 301.6104(d)-2 is redesignated as §301.6104(d)-0.

Par. 4. Newly designated §301.6104(d)-0 is revised to read as follows:

§301.6104(d)-0 Table of contents.

This section lists the major captions contained in §§301.6104(d)-1 through 301.6104(d)-3 as follows:

§301.6104(d)-1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

- (a) In general.
- (b) Definitions.
 - (1) Tax-exempt organization.
 - (2) Private foundation.
 - (3) Application for tax exemption.
 - (i) In general.
 - (ii) No prescribed application form.
 - (iii) Exceptions.
 - (iv) Local or subordinate organizations.
 - (4) Annual information return.
 - (i) In general.
 - (ii) Exceptions.
 - (iii) Returns more than 3 years old.
 - (iv) Local or subordinate organizations.
 - (5) Regional or district offices.
 - (i) In general.
 - (ii) Site not considered a regional or district office.
- (c) Special rules relating to public inspection.
 - (1) Permissible conditions on public inspection.
 - (2) Organizations that do not maintain permanent offices.
 - (d) Special rules relating to copies.
 - (1) Time and place for providing copies in response to requests made in person.
 - (i) In general.
 - (ii) Unusual circumstances.
 - (iii) Agents for providing copies.
 - (2) Request for copies in writing.
 - (i) In general.
 - (ii) Time and manner of fulfilling written requests.
 - (A) In general.
 - (B) Request for a copy of parts of document.
 - (C) Agents for providing copies.
 - (3) Fees for copies.
 - (i) In general.
 - (ii) Form of payment.

- (A) Request made in person.
 - (B) Request made in writing.
 - (iii) Avoidance of unexpected fees.
 - (iv) Responding to inquiries of fees charged.
 - (e) Documents to be provided by regional and district offices.
 - (f) Documents to be provided by local and subordinate organizations.
 - (1) Applications for tax exemption.
 - (2) Annual information returns.
 - (3) Failure to comply.
 - (g) Failure to comply with public inspection or copying requirements.
 - (h) Effective date.
 - (1) In general.
 - (2) Private foundation annual information returns.
- §301.6104(d)-2 Making applications and returns widely available.

- (a) In general.
- (b) Widely available.
- (1) In general.
- (2) Internet posting.
- (i) In general.
- (ii) Transition rule.
- (iii) Reliability and accuracy.
- (c) Discretion to prescribe other methods for making documents widely available.
- (d) Notice requirement.
- (e) Effective date.

§301.6104(d)-3 Tax-exempt organization subject to harassment campaign.

- (a) In general.
- (b) Harassment.
- (c) Special rule for multiple requests from a single individual or address.
- (d) Harassment determination procedure.
- (e) Effect of a harassment determination.
- (f) Examples.
- (g) Effective date.

§301.6104(d)-3 [Redesignated as §301.6104(d)-1]

Par. 5. Section 301.6104(d)-3 is redesignated as §301.6104(d)-1.

Par. 6. Newly designated §301.6104(d)-1 is amended as follows:

1. Revise the section heading.

- 1a. Paragraph (a) is amended as follows:
 - a. Remove the language “, other than a private foundation (as defined in paragraph (b)(2) of this section),” from the first sentence.
 - b. Remove the language “, other than a private foundation,” from the second sentence.
 - c. Remove the language “§§301.6104(d)-4 and 301.6104(d)-5” from the fourth sentence and add “§§301.6104(d)-2 and 301.6104(d)-3” in its place.
2. In paragraph (b) introductory text, remove the language “§§301.6104(d)-4 and 301.6104(d)-5” and add “§§301.6104(d)-2 and 301.6104(d)-3” in its place.
3. In paragraph (b)(1), add a sentence at the end of the paragraph.
4. In paragraph (b)(2), add the language “or a nonexempt charitable trust described in section 4947(a)(1) or a nonexempt private foundation subject to the information reporting requirements of section 6033 pursuant to section 6033(d)” at the end of the sentence.
5. In paragraph (b)(3)(iii)(B), remove the word “or” at the end of the paragraph.
6. Redesignate paragraph (b)(3)(iii)(C) as paragraph (b)(3)(iii)(D) and add a new paragraph (b)(3)(iii)(C).
7. In paragraph (b)(4)(i), remove the last two sentences and add three sentences in their place.
8. Paragraph (b)(4)(ii) is amended as follows:
 - a. Remove the language “, and the return of a private foundation” from the first sentence.
 - b. Revise the last sentence.
9. Revise paragraph (h).

The revisions and additions read as follows:

§301.6104(d)-1 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations.

* * * * *

(b) * * *

(1) * * * The term tax-exempt organization also includes any nonexempt charitable trust described in section 4947(a)(1) or nonexempt private foundation that is subject to the reporting requirements of section 6033 pursuant to section 6033(d).

* * * * *

(3) * * *

(iii) * * *

(C) In the case of a tax-exempt organization other than a private foundation, the name and address of any contributor to the organization; or

* * * * *

(4) * * * (i) * * * Returns filed pursuant to section 6033 include Form 990, Return of Organization Exempt From Income Tax, Form 990-PF, Return of Private Foundation, or any other version of Form 990 (such as Forms 990-EZ or 990-BL, except Form 990-T) and Form 1065. Each copy of a return must include all information furnished to the Internal Revenue Service on the return, as well as all schedules, attachments and supporting documents. For example, in the case of a Form 990, the copy must include Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) * * * In the case of a tax-exempt organization other than a private foundation, the term annual information return does not include the name and address of any contributor to the organization.

* * * * *

(h) Effective date—(1) In general. For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. Except as provided in paragraph (h)(2) of this section, for a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

(2) Private foundation annual information returns. This section applies to any private foundation return the due date for which (determined with regard to any extension of time for filing) is after the applicable date for private foundations specified in paragraph (h)(1) of this section.

§301.6104(d)-4 [Redesignated as §301.6104(d)-2]

Par. 7. Section 301.6104(d)-4 is redesignated as §301.6104(d)-2.

Par. 8. Newly designated §301.6104(d)-2 is amended as follows:

1. In paragraph (a), remove the language “§301.6104(d)-3(a)” from each place it appears and add “§301.6104(d)-1(a)” in each place, respectively.

2. Revise paragraph (e).

The revision reads as follows:

§301.6104(d)-2 Making applications and returns widely available.

* * * * *

(e) Effective date. For a tax-exempt organization, other than a private foundation, this section

is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

§301.6104(d)-5 [Redesignated as §301.6104(d)-3]

Par. 9. Section 301.6104(d)-5 is redesignated as §301.6104(d)-3.

Par. 10. Newly designated §301.6104(d)-3 is amended as follows:

1. In paragraph (a), remove the language “§301.6104(d)-3(a)” and add “§301.6104(d)-1(a)” in its place.

2. Revise paragraph (g).

The revision reads as follows:

§301.6104(d)-3 Tax-exempt organization subject to harassment campaign.

* * * * *

(g) Effective date. For a tax-exempt organization, other than a private foundation, this section is applicable June 8, 1999. For a private foundation, this section is applicable beginning 60 days after these regulations are published as final regulations in the **Federal Register**.

Robert E. Wenzel

Deputy Commissioner of Internal Revenue