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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 301

TD 9070

RIN 1545-BB22

Authority to charge fees for furnishing copies of exempt organizations' material open to public inspection under IRC §6104.

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: These temporary regulations amend the existing regulations regarding fees for copies of exempt organizations' material the IRS must make available to the public under section 6104 of the Internal Revenue Code (Code), to provide that copying fees shall be no more than under the fee schedule promulgated pursuant to the Freedom of Information Act (FOIA) by the Commissioner of Internal Revenue (Commissioner) (the "IRS' FOIA fee schedule"). The existing regulations authorize the IRS to charge fees for such copies, but do not stipulate the amount of the fees. These temporary regulations also make a conforming amendment to the existing regulation concerning the fees that an exempt organization may charge for furnishing copies of such material when required to do so, to provide that these fees shall be no more than the per-page copying fee – without regard to any otherwise applicable fee exclusion for the first 100 pages – under the IRS' FOIA fee schedule. The text of these temporary regulations also serves as the text of the

proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

DATES: These temporary regulations are effective July 9, 2003.

FOR FURTHER INFORMATION CONTACT: Sarah Tate, 202-622-4590 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The IRS' obligation under section 6104 of the Code to make certain information open to public inspection is satisfied by making the information available to the public at such times and places as the IRS shall reasonably prescribe. The existing regulations provide that copies of the information that the IRS must make open to public inspection shall be available to members of the public upon written request. Currently, §301.6104(a)-6(d) provides that the IRS will charge a "fee" for copies of material available to the public under section 6104(a)(1) of the Code, including approved applications for recognition of tax-exempt status and supporting papers. Currently, §301.6104(b)-1(d)(4) provides that the Commissioner may prescribe a "reasonable fee" for copies of material available to the public under section 6104(b) of the Code, including certain information furnished on exempt organization annual information returns.

These temporary regulations amend the existing regulations to clarify that any fee assessed by the IRS in the exercise of its discretion, whether in the case of requests for photocopies, or for special media (e.g., computer printouts, transcripts, CD-ROM reproductions), shall be no more than the fee under the IRS' FOIA fee schedule. For paper

copies, the IRS' FOIA fee schedule, at 26 CFR §601.702(f)(3)(iv), grants the first 100 pages free of charge to requesters other than commercial use requesters, but otherwise sets a per-page copying fee applicable to all requesters. The IRS' FOIA fee schedule, at 26 CFR §601.702(f)(5)(iii)(B), also authorizes fees based on the actual costs of non-paper products, such as computer disks.

Currently, §301.6104(d)-1(d)(3)(i) provides that an exempt organization required to furnish copies to a requester may charge a copying fee corresponding to that which the IRS may charge. These temporary regulations amend existing regulation §301.6104(d)-1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee – for any number of pages – under the IRS' FOIA fee schedule. An exempt organization need not provide the first 100 pages of copies free of charge to requesters other than commercial use requesters as the IRS does.

Through December 18, 2002, the IRS' FOIA fee schedule set fees of \$1.00 for the first page and \$.15 for each subsequent page of exempt organization returns and related documents. 26 CFR §601.702(f)(5)(iv)(B). Effective December 19, 2002, the fees are to be established by the Commissioner from time to time. 26 CFR §601.702(f) as updated at 67 FR 69673, 69682. Currently, the Commissioner has established fees of \$.20 per page, up to 8 ½ by 14 inches, made by photocopy or similar process, and actual cost for other types of duplication. 31 CFR §1.7(g)(1)(i), (ii) and (iii).

Explanation of Provisions

These temporary regulations amend §301.6104(a)-6(d) and §301.6104(b)-1(d)(4) to provide that the fees the IRS charges for furnishing copies of materials available to the

public under §301.6104(a)-6(d) and §301.6104(b)-1(d)(4) shall be no more than under the IRS' FOIA fee schedule.

These temporary regulations also amend §301.6104(d)-1(d)(3)(i) to make clear that an exempt organization may charge the applicable per-page copying fee under the IRS' FOIA fee schedule – without regard to any otherwise applicable fee exclusion for the first 100 pages.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. 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 temporary regulations. For applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6) please refer to the cross-reference notice of proposed rulemaking published elsewhere in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these temporary regulations will be submitted to the Chief Counsel of the Small Business Administration for comment on their impact on small businesses.

Drafting Information

The principal author of these temporary regulations is Sarah Tate, Office of Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 301 is amended as follows:

PART 301 - PROCEDURE AND ADMINISTRATION

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

Authority: 26 U.S.C. § 7805 * * *

Section 301.6104(a)-6(d) is also issued under 5 U.S.C. §552

Section 301.6104(b)-1(d)(4) is also issued under 5 U.S.C. §552

Section 301.6104(d)-1(d)(3)(i) is also issued under 5 U.S.C. §552 * * *

Par. 2. In §301.6104(a)-6(d), the fourth sentence is amended as follows:

§301.6104(a)-6 Procedural rules for inspection.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. §552, by the Commissioner from time to time.

Par. 3. In §301.6104(b)-1(d)(4), the last sentence is amended as follows:

§301.6104(b)-1 Publicity of information on certain information returns.

* * * * *

(d) * * * Any fees the Internal Revenue Service may charge for furnishing copies under this section shall be no more than under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. §552, by the Commissioner from time to time.

Par. 4. In §301.6104(d)-1(d)(3)(i), the second sentence is amended as follows:

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

* * * * *

(d) * * * A fee is reasonable only if it is no more than the total of the applicable per-page copying charge prescribed by the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act, 5 U.S.C. §552, by the Commissioner from time to time, and the actual postage costs incurred by the organization to send the copies. The applicable per-page copying charge shall be

determined without regard to any applicable fee exclusion provided in the fee schedule for an initial or de minimis number of pages (e.g. the first 100 pages).

Deputy Commissioner of Internal Revenue
Robert E. Wenzel

Approved: July 1, 2003

Deputy Assistant Secretary of the Treasury
Gregory Jenner