

Charities May Report Donor Gifts

REG-138344-13; 80 F.R. 55802-55805

Substantiation Requirement for Certain Contributions

[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[REG-138344-13]

RIN 1545-BL94

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: This document contains proposed regulations to implement the exception to the "contemporaneous written acknowledgement" requirement for substantiating charitable contribution deductions of \$250 or more. These proposed regulations provide rules concerning the time and manner for donee organizations to file information returns that report the required information about contributions (donee reporting).

DATES: Written or electronic comments must be received by December 17, 2015.

ADDRESSES: Send submissions to CC:PA:LPD:PR (REG-138344-13), room 5203, 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 4 p.m. to: CC:PA:LPD:PR (REG-138344-13), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC, or sent electronically via the Federal eRulemaking Portal at www.regulations.gov (IRS REG-138344-13).

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Robert Basso at (202) 317-7011 (not a toll-free number); concerning comments or a request for a public hearing, Oluwafunmilayo Taylor at (202) 317-6901 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collection of information contained in this notice of proposed rulemaking will be submitted to the Office of Management and Budget in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collection 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, SE:W:CAR:MP:T:T:SP, Washington, DC 20224. Comments on the collection of information should be received by November 17, 2015. Comments are specifically requested concerning:

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

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

How the burden of complying with the proposed collection of information may be minimized, including 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 collection of information in these proposed regulations is in § 1.170A-13(f)(18) of the Income Tax Regulations. The collection of information is necessary to properly substantiate charitable contribution deductions under the exception to the general requirements for substantiating charitable contribution deductions of \$250 or more. The collection of information is required to comply with the provisions of section 170(f)(8)(D) of the Internal Revenue Code (Code). The respondents are entities that receive charitable contributions and donors to such entities. The burden for the collection of information contained in proposed regulation § 1.170A-13(f)(18) will be reflected in the burden estimate for a form that the IRS intends to create to request the information specified in the proposed regulation. Once a draft form is available, comments will be invited via a notice in the Federal Register and on the IRS website.

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.

Background

This document contains amendments to the Income Tax Regulations (26 CFR part 1) under Code section 170(f)(8) governing the substantiation of charitable contributions of \$250 or more. Section 170(f)(8) was enacted by Section 13172(a) of the Omnibus Budget Reconciliation Act of 1993, Public Law 103-66 (107 Stat. 312, 455 (1993)), effective for contributions made on or after January 1, 1994. Section 1.170A-13(f) provides rules on substantiation of charitable contributions of \$250 or more. See TD 8690 (1997-1 CB 68).

Section 170(f)(8)(A) requires a taxpayer who claims a charitable contribution deduction for any contribution of \$250 or more to obtain substantiation in the form of a contemporaneous written acknowledgment (CWA) from the donee organization. Under section 170(f)(8)(B), while the

CWA need not be in any particular form, it must contain the following information: (1) the amount of cash and a description of any property other than cash contributed; (2) whether any goods and services were provided by the donee organization in consideration for the contribution; and (3) a description and good faith estimate of the value of any goods and services provided by the donee organization or a statement that such goods and services consist solely of intangible religious benefits.

The CWA must also be contemporaneous. Under sections 170(f)(8)(C) and 1.170A-13(f)(3), a CWA is contemporaneous if it is obtained by the taxpayer on or before the earlier of the date the taxpayer files an original return for the taxable year in which the contribution was made or the due date (including extensions) for filing the taxpayer's original return for that year. In the preamble to TD 8690, the Treasury Department and the IRS further emphasized this requirement, noting that "[a] written acknowledgment obtained after a taxpayer files the original return for the year of the contribution is not contemporaneous within the meaning of the statute." TD 8690 (1997-1 CB 68).

Section 170(f)(8)(D) provides 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 Secretary may prescribe, that includes the information described in section 170(f)(8)(B). When issuing TD 8690 in 1997, the Treasury Department and the IRS specifically declined to issue regulations under section 170(f)(8)(D) to effectuate donee reporting. The present CWA system works effectively, with minimal burden on donors and donees, and the Treasury Department and the IRS have received few requests since the issuance of TD 8690 to implement a donee reporting system.

In recent years, some taxpayers under examination for their claimed charitable contribution deductions have 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 information described in section 170(f)(8)(B) for the contribution at issue. These taxpayers argue that an amended Form 990 constitutes permissible donee reporting within the meaning of 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. 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 by which donee reporting may be accomplished. Moreover, the Treasury Department and the IRS have concluded that the Form 990 is unsuitable for donee reporting.

Explanation of Provisions

The framework established by these proposed regulations for donee reporting under the section 170(f)(8)(D) exception is intended to provide for timely reporting, while also minimizing reporting burdens on donees and protecting donor privacy.

Manner of Donee Reporting

The present CWA process requires that the acknowledgement provided to the donor contain information useful in preparing the donor's tax return for the year of the contribution. To effectively substitute for the CWA, any donee reporting process would require not only that an information return be filed with the IRS, but also that a copy be provided to the donor for use in preparing the donor's federal income tax return for the year of the contribution.

In order to better protect donor privacy, the Treasury Department and the IRS have concluded that the Form 990 series should not be used for donee reporting. Instead, before finalization of these proposed regulations, the IRS intends to develop a specific-use information return for donee reporting. Donees are not required to adopt donee reporting. Donees who opt to use donee reporting will be required to provide a copy of the information return to the donor at the address the donor provides for this purpose, and the information return will contain only the information related to that donor. The proposed regulations are reserved on the particular form that will be prescribed for this purpose.

Section 170(f)(8)(D) provides that a donee organization must include the information described in section 170(f)(8)(B) on its return for the donor to qualify for the donee reporting exception. Accordingly, the proposed regulations require that donees who opt to use donee reporting must report that information as well as the donor's name, address, and taxpayer identification number. The donor's taxpayer identification number is necessary in order to properly associate the donation information with the correct donor. Unlike a CWA, which is not sent to the IRS, the donee reporting information return will 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 Treasury Department and the IRS request comments on the scope of the information necessary to verify substantiation of charitable contribution deductions under donee reporting.

The Treasury Department and the IRS are concerned about the potential risk for identity theft involved with donee reporting given that donees will be collecting donors' taxpayer identification numbers and maintaining those numbers for some period of time. The Treasury Department and the IRS request comments on whether additional guidance is necessary regarding the procedures a donee should use in soliciting and maintaining a donor's taxpayer identification number and address to mitigate the risk.

In order to minimize the burden on donees, the proposed regulations provide that donee reporting is not required, but may be done at the option of a donee organization. If a contribution is not reported using donee reporting, then the donor must obtain a CWA. The Treasury Department and the IRS request comments on these provisions and whether additional guidance is necessary to clarify the requirements for donors and donees if the donee chooses to use donee reporting for some or all of the contributions it receives. Also, because of the potential burden on donee organizations, the Treasury Department and the IRS request comments on how the donee reporting process might be better designed to minimize donee burden, and how it may interact

with the requirement under section 6115 to provide donors information regarding quid pro quo contributions.

Time of Donee Reporting

Section 170(f)(8) is premised on donors receiving timely substantiation of their donations of \$250 or more. The CWA assists a donor preparing a return (as well as the IRS examining the return) in determining whether, and in what amount, a donor may claim a charitable contribution deduction. H.R. Rept. No. 103-111, at 783, 785 (1993), 1993-3 CB 167, 359, 361; *Viralam v. Commissioner*, 136 T.C. 151, 171 (2011); *Addis v. Commissioner*, 118 T.C. 528, 536 (2002), *aff'd*, 374 F.3d 881 (9th Cir. 2004); *DiDonato v. Commissioner*, T.C. Memo. 2011-153. It would be inconsistent with the purpose of section 170(f)(8) to allow an exception to the CWA requirement of section 170(f)(8)(A) based on information that might be reported by a donee on a return that is filed many years after the purported charitable contribution was made. Rather, any alternative method to using a CWA for substantiating charitable contributions through donee reporting must provide timely information to both the IRS and the donor in order to satisfy the purpose of section 170(f)(8).

Accordingly, the proposed regulations provide that any information return under section 170(f)(8)(D) must be filed by the donee no later than February 28th of the year following the year in which the contribution is made, and the donee organization must provide a copy of the information return to the donor by the same date. An information return that is not filed timely with the IRS, with a copy provided to the donor, will not qualify under section 170(f)(8)(D).

February 28th is the date when numerous other information returns concerning transactions with other persons must be filed. See, for example, § 1.6041-6 (information at source), § 1.6045-1(j) (returns of brokers), and § 1.6049-4(g) (returns regarding payment of interest). The requirement that a donee organization provide a copy of the information return to the donor no later than February 28th of the year following the year in which the contribution is made is intended to provide donors with timely information needed to claim appropriate charitable contribution deductions on their returns, as well as to ensure sound tax administration -- objectives that will not be met if donee reporting is allowed to occur long after the contribution was made. In addition, for donors to be relieved of the obligation to obtain a CWA, the donee must file the donee reporting information return, and communicate that it has done so to the donor, before the due date for the donor's return. The Treasury Department and the IRS request comments on the use of February 28th as the due date for filing a return and furnishing a copy to a donor.

Proposed Effective Date

The regulations are proposed to apply to contributions made on or after the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register.

Special Analyses

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations.

It is hereby certified that these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that, to the extent a donee reporting system is implemented under section 170(f)(8)(D), the statute itself specifies the bulk of the information that needs to be collected for purposes of these regulations. The proposed regulations require that, in order for a donor to be relieved of the current CWA requirement, a donee organization that uses donee reporting must file a return with the IRS reporting certain information and must furnish a copy of the return to the donor whose contribution is reported on such return. These regulations provide the content of the return under section 170(f)(8)(D), the time for filing the return, and the requirement to furnish a copy to the donor. Moreover, any burden associated with the collection of information under the proposed regulations is minimized by the fact that donee reporting under the proposed regulations is optional on the part of any donee, including small entities. Donees need not use this donee reporting process and donors can continue to use the current CWA process. Given the effectiveness and minimal burden of the CWA process, it is expected that donee reporting will be used in an extremely low percentage of cases.

Based on these facts, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required.

Pursuant to section 7805(f) of the 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 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 rules. All comments will be available at <http://www.regulations.gov> or upon request.

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

Drafting Information

The principal authors of these regulations are Martin L. Osborne and Robert Basso of the Office of the Associate Chief Counsel (Income Tax and Accounting). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Proposed Amendment 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 170A-13 is amended by revising paragraph (f)(18) and adding paragraph (f)(19) to read as follows:

§ 1.170A-13. Recordkeeping and return requirements for deductions for charitable contributions.

* * * * *

(f) * * *

(18) Donee organization reporting -- (i) Prescribed form. [Reserved]

(ii) Content of return. A document will not qualify as a return for purposes of section 170(f)(8)(D) unless it contains all of the following information:

(A) The name and address of the donee;

(B) The name and address of the donor;

(C) The taxpayer identification number of the donor;

(D) The amount of cash and a description (but not necessarily the value) of any property other than cash contributed by the donor to the donee;

(E) Whether any goods and services were provided by the donee organization in consideration, in whole or in part, for the contribution by the donor; and

(F) A description and good faith estimate of the value of any goods and services provided by the donee organization or a statement that such goods and services consist solely of intangible religious benefits.

(iii) Time for filing return. Every donee organization filing a return described in section 170(f)(8)(D) shall file such return on or before February 28 of the year following the calendar year in which the contribution was made. If the return is not filed timely, the return does not qualify under section 170(f)(8)(D), and section 170(f)(8)(A) through (C) applies to the contribution.

(iv) Furnishing a copy to donor. Every donee organization filing a return described in section 170(f)(8)(D) shall furnish a copy of the return to the donor whose contribution is reported on such return on or before February 28 of the year following the calendar year in which the contribution was made. The copy of the return shall be provided to the donor at the address the donor provides for this purpose.

(v) Donee organization reporting at option of donee. Donee organization reporting is not required. Donee reporting is available solely at the option of a donee organization, and, the requirements of section 170(f)(8)(A) through (C) apply to all contributions that are not reported using donee reporting.

(19) Effective/applicability date. Paragraphs (f)(1) through (17) of this section apply to contributions made on or after December 16, 1996. However, taxpayers may rely on the rules of paragraphs (f)(1) through (17) for contributions made on or after January 1, 1994. Paragraph (f)(18) of this section applies to contributions made on or after the date of publication of a Treasury decision adopting these rules as final regulations in the Federal Register.

John Dalrymple,
Deputy Commissioner for Services
and Enforcement.

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