

New Public Inspection Rules

The Internal Revenue Service has released regulatory guidelines for use by tax exempt organizations when complying with requirements to publicly disclose their annual information returns, including personal and written requests for these documents. The regulations took effect June 8th, 1999. Normally, an organization will be required to comply with requests for copies of the three most recent annual returns (form 990) and the application for tax exemption (form 1023, 1024).

Requests for this information may be made by anyone including potential donors, newspaper reporters and competing non-profit organizations. Thus it's now more important than ever to make certain that your organization's documents are completed correctly. For private foundations, the new regulations will affect returns due after March 13th, 2000.

Since the late '80s, tax - exempt organizations, including private foundations, have been required to allow public inspection of their tax returns and applications for recognition of tax-exempt status. The changes to the disclosure rules are significant. Before the recent changes, nonprofits were not required to provide copies of their tax returns, rather they were required only to show copies of their tax returns to anyone who visited their offices. The regulations provide guidance on how, when and where the organization must make these documents available for public inspection.

An organization which fails to comply with these new disclosure requirements may be subject to a penalty of \$20 per day for as long as the failure continues, up to a maximum of \$10,000 for all failures with respect to any one return.

Documents Available for Public Inspection

An organization must make available, for public inspection, its application for tax-exempt status and its three most recent annual returns. An organization's exemption application includes its Form 1023 or 1-24 and any supporting documents filed by the organization in support of its application, or other documents issued by the IRS concerning the application such as a favorable determination letter. The annual return that must be made available for public inspection for copying is one that is an exact reproduction of what was filed with the IRS including all schedules and attachments.

A public charity is not required to disclose the parts of the returns that identify contributors to the organization, nor is it required to disclose Form 990-T. However, a private foundation must disclose the names and addresses of its contributors. The regulations make a point of specifying that the return must include those parts of the return that show compensation paid to officers, directors, trustees and key employees, including the Executive Director and the five highest paid employees earning greater than \$50,000 annually.

Time and Place for Public Inspection

A tax-exempt organization is required to make its documents available for public inspection and provide copies, upon request, at its principal office and at certain regional or district offices. A regional or district office is any office, other than its principal office, that has paid employees (part-time or full-time) whose aggregate paid hours a week are normally at least 120. Certain sites where services are provided, such as day care or health care, are not treated as regional or district offices for the purpose of the public inspection requirements, provided that such sites do not serve as offices of management staff other than managers involved solely in managing the specific service of that service provider office." The IRS recognizes that many tax-exempt organizations maintain sites where employees or volunteers provide services (including services to the public) for the sole purpose of furthering exemptions and that such sites house neither the management nor administrative staff necessary to respond to requests for disclosure.

Furnishing Copies

If a request for copies is made in person, an organization must generally provide copies on the day of the request. However, in unusual circumstances, an organization may provide the requested copies no later than the next business day following the day the unusual circumstances cease to exist. However, in no event may the period of delay exceed five business days.

Although an organization doesn't have to honor an oral request made by telephone, it does have to accept requests made by "snail" mail, e-mail, fax, or by a private delivery service. When a request for copies is made in writing, a tax-exempt organization is required to mail the copies within 30 days from the date it receives the request. However, if an organization requires advance payment of a reasonable fee for copying and postage, it may provide copies within 30 days from the date it receives payment, rather than from the date of initial request.

Reasonable Fees for Copying

A tax-exempt organization is permitted to charge a reasonable fee for the cost of copying and mailing documents in response to requests for copies. A fee is reasonable only if it does not exceed the fees the IRS charges for copies of tax-exempt organization tax returns and related documents. This fee is currently \$1.00 for the first page and \$.15 for each subsequent page. In addition, the organization is allowed a charge for actual postage costs.

If a request is made in person, an organization is required to accept cash or a money order in payment of any copying fee it requires. If the request is in writing an organization must accept payment by certified check, money order, and either personal check or credit card. An organization is always free to accept more forms of payment than just those required.

Making Information Widely Available

The regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The regulations specify that an organization can make its application for tax exemption and/or its annual information returns widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's World Wide Web page as part of a database of similar materials. An organization that makes its application for tax exemption and/or its annual information returns widely available must provide the individuals who request copies with the World Wide Web address where the documents are available. The documents must be posted in a format that meets certain criteria.

Harassment Campaigns

A tax-exempt organization does not have to fulfill requests for copies if it reasonably believes the requests are part of a harassment campaign. A tax-exempt organization is the subject of harassment campaign if it receives a group of requests, and the relevant facts and circumstances show that the purpose of the group of requests is to disrupt the operations of the exempt organization rather than to obtain information. The regulations provide a procedure for applying for a determination that an organization is the subject of a harassment campaign. The regulations contain examples to evaluate whether particular situations constitute harassment.

While it is likely that most organization will receive few (or no) requests for documents, we believe it is better to do a little planning now in the event you do receive some requests rather than be surprised at the last minute.

If you have any questions, please contact Jim Hillman.

Jim Hillman, CPA provides business, financial planning and tax information to clients and friends. The information is necessarily brief. All material is presented for general information only and should not be acted upon without further review and/or consultation. For additional information, or to be added to our mailing list, please call us.

Published by Jim Hillman, CPA