



July 12, 2013

Ms. Emily McMahon  
Deputy Assistant Secretary (Tax Policy)  
Department of the Treasury  
1500 Pennsylvania Avenue, N.W.  
3112 MT  
Washington, D.C. 20220

Re: Clarification of Public Disclosure Requirements for Exempt Organization Returns

Dear Ms. McMahon:

The American Institute of Certified Public Accountants (AICPA) appreciates the opportunity to provide comments regarding clarification of the public disclosure requirements for returns filed by exempt organizations. These comments were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel, and approved by the AICPA Tax Executive Committee.

The AICPA is the world's largest membership association representing the accounting profession, with nearly 386,000 members in 128 countries and a 125-year heritage of serving the public interest. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

We commend the Internal Revenue Service (IRS) and the Department of Treasury ("Treasury") for annually updating forms and instructions of exempt organization returns. However, the AICPA recommends that the IRS and Treasury modify the requirements and add additional instruction guidance for information to be publicly disclosed on exempt organization returns. Implementation of this recommendation would protect sensitive tax information of the taxpayer and related parties from tax identity theft and tax fraud.

### **Background**

Under Internal Revenue Code (IRC) section 6104(d),<sup>1</sup> exempt organizations are required to publicly disclose tax returns filed under sections 6033 and 6011 (in the case of IRC section 501(c)(3) organizations). Section 6033 requires exempt organizations to file the Form 990,

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<sup>1</sup> All references in this letter to the Internal Revenue Code are to the Internal Revenue Code of 1986, as amended.

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*Return of Organization Exempt from Income Tax*, Form 990EZ, *Short Form Return of Organization Exempt From Income Tax*, Form 990-N, *e-Postcard*, or the Form 990PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*. The Form 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*, is required to be filed under section 6011 for certain qualifying exempt organizations. Certain exceptions from public disclosure are provided in section 6104(d)(3), such as the identity of donors.

Exempt organizations are frequently required to file additional tax returns and forms not required by sections 6033 and 6011, and these filings are often transmitted to the IRS when attached to a Form 990 series return or Form 990-T. Examples include the Form 5471, *Information Return of U.S. Persons with Respect to Certain Foreign Corporations* (required under IRC section 6038) and Form 8865, *Information Return of U.S. Persons with Respect to Certain Partnerships* (required under section 6038B). These additional forms and returns often have sensitive information that is not intended to be included in the public disclosure of the exempt organization tax return filings.

Congress, Treasury, the IRS, and the Treasury Inspector General for Tax Administration have increased their focus on the potential concern for tax identity theft. However, requiring exempt organizations to publicly disclose sensitive information in their additional tax return attachments (e.g., Form 5471 and Form 8865), that are not required by sections 6033 and 6011, creates the potential for tax identity theft and tax fraud as well as potentially placing the employees, officers, and volunteers of an exempt organization at physical risk. We have recommendations, discussed below, to mitigate this risk.

### **Recommendations**

The AICPA recommends that Treasury issue guidance in the form of a Notice or Regulation clarifying the public inspection requirements applicable to *Form 990, Return of Organization Exempt from Income Tax, Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation, and Form 990-T, Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*. Specifically, guidance should be issued clarifying that the public inspection requirements only apply to items required to be filed under Sections 6033 and 6011. This change would reduce the likelihood of incidental release of sensitive information that is included on other additional forms and returns and is not intended to be viewed by the public or potentially abused and misused by third parties.

Additionally, a list of forms that are excluded from the public inspection requirement can be included as part of the instructions to the Form 990 series of returns and Form 990-T. However, merely listing the forms in the instructions (without the Notice or Regulation) is not our preference. We believe the issue is of great importance and a list in the instructions may not be timely updated.

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Schedules, attachments, and supporting documents filed with the Form 990-T that are not associated with unrelated business taxable income (UBTI) should not be available for public inspection. The provisions of Notice 2008-49 – Public Inspection of Form 990-T, Exempt Organization Business Income Tax Return – should be retained, e.g., the requirement to publicly disclose Form 990-T and include any schedules, attachments, and supporting documents that relate to the imposition of tax on the UBTI of the charitable organization.

Both of these recommendations would remediate the risk of tax identity theft, tax fraud, and physical risk to the employees, officers, and volunteers of exempt organizations and other parties, by limiting the disclosure of sensitive information not intended to be publicly disclosed.

### **Conclusion**

We appreciate your consideration of our comments. The AICPA believes that the above recommended revisions limit the disclosure of forms not intended for the public and reduce the risk of misusing sensitive tax information of taxpayers and related parties. If you have any questions regarding this submission, please feel free to contact me at (304) 522-2553 or [jporter@portercpa.com](mailto:jporter@portercpa.com); Jeffrey D. Frank, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (317) 656-6921, or [jdfrank@deloitte.com](mailto:jdfrank@deloitte.com); or Amy Wang, AICPA Technical Manager – Taxation, at (202) 434-9264, or [awang@aicpa.org](mailto:awang@aicpa.org).

Respectfully submitted,



Jeffrey A. Porter, CPA  
Chair, AICPA Tax Executive Committee

Attachment: Notice 2008-49

cc: Ms. Ruth Madrigal, Attorney-Advisor, Department of the Treasury, Office of Tax  
Legislative Counsel  
Mr. Ken Corbin, Acting Director of Exempt Organizations, Internal Revenue Service



**Internal Revenue Bulletin: 2008-20**

**May 19, 2008**

**Notice 2008-49**

**Public Inspection of Form 990-T, Exempt Organization Business Income Tax Return**

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**Section 1. Purpose**

This notice modifies Notice 2007-45, 2007-22 I.R.B. 1320, and provides additional interim guidance with respect to the requirement under section 6104 of the Internal Revenue Code (the Code) that section 501(c)(3) organizations make available for public inspection Forms 990-T, *Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))*. This notice reflects the amendments to sections 6104(b) and 6104(d) of the Code contained in section 3(g) of the Tax Technical Corrections Act of 2007, Pub. L. 110-172 (H.R. 4839) (the Act). The amendments are effective for Forms 990-T filed with the Internal Revenue Service (IRS) after August 17, 2006.

**Section 2. Background**

Prior to the enactment of the Pension Protection Act of 2006, Pub. L. 109-280 (the PPA), organizations exempt from Federal income tax under section 501(a) as described in section 501(c) of the Code were required to make available for public inspection and copying only the annual information returns filed by such organizations under section 6033 (Forms 990, 990-EZ, and 990-PF). The public inspection and copying requirement with respect to these returns applies for the three-year period beginning on the last day prescribed for the filing of the returns.

The PPA amended section 6104(d)(1)(A)(ii) to require organizations to make available for public inspection and copying "any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3)." Thus, for section 501(c)(3) organizations (charities), the PPA extended the public inspection and copying requirement to Forms 990-T. The PPA was silent regarding whether the public inspection and copying requirement for Forms 990-T applied only for the three-year period beginning on the last day prescribed for the filing of the returns.

The IRS issued Notice 2007-45 on May 29, 2007, to provide interim guidance on the amended section 6104(d) pending the issuance of revised regulations. Notice 2007-45 provides that Forms 990-T filed with the IRS after August 17, 2006, must be made available for public inspection and copying by all charities, regardless of whether the charity is otherwise subject to the disclosure requirements of section 6104. Notice 2007-45 also provides that Forms 990-T must be made available for public inspection and copying in their entirety as filed with the IRS, including all schedules, attachments, and supporting documents.

On December 29, 2007, the President signed the Act. Section 3(g) of the Act revised the language of section 6104(d)(1)(A)(ii) to refer to: "any annual return which is filed under section 6011 by an organization described in section 501(c)(3) and which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations)." (Emphasis added.) As revised, section 6104(d)(1)(A)(ii) makes clear that charities must make available for public inspection and copying only those returns and attachments to the return that are both filed under section 6011 and that relate to the imposition of tax on unrelated business income of charitable organizations. Section 3(g) of the Act amended section 6104(d)(2) to require organizations to make Forms 990-T available for public inspection only for the three-year period following the filing of the return. In addition, section 3(g) of the Act provided that the IRS, and not just the organization, is required to make Forms 990-T publicly available pursuant to section 6104(b), and that the IRS must treat Forms 990-T in the same manner as Forms 990. See 153 Cong. Rec. S16056-03 (Dec. 19, 2007).

**Section 3. Modification of Interim Guidance**

This notice modifies Notice 2007-45 to incorporate the new provisions from the Act for section 6104(d). Specifically, Section 3 of Notice 2007-45 is hereby modified as follows. The guidelines for making annual returns available for public inspection and copying set forth in Treas. Reg. § 301.6104(d)-1 generally apply except that the definition of "annual information return" in Treas. Reg. § 301.6104(d)-1(b)(4)(i) includes an exact copy of the Form 990-T filed by a charity with the IRS after August 17, 2006, including any schedules, attachments, and supporting documents that relate to the imposition of tax on the unrelated business income of the charitable organization. Schedules, attachments, and supporting documents filed with Form 990-T that do not relate to the imposition of unrelated business income tax are not required to be made available for public inspection and copying. Such schedules and attachments, for example, include Form 5471, *Information Return of U.S. Persons With Respect To Certain Foreign Corporations*, Form 8886, *Reportable Transaction Disclosure Statement*, and Form 8913, *Credit for Federal Telephone Excise Tax Paid* (generally this form was used only for tax year 2006). Further guidance with respect to schedules or attachments that are not required to be made available when attached to Form 990-T will be provided in forms, instructions and other public announcements.

Further, under the amended section 6104(d)(2), charities must make Forms 990-T available for public inspection and copying only for the three-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

The IRS is now required to make Forms 990-T of section 501(c)(3) organizations publicly available pursuant to section 6104(b). The procedures for requesting public inspection or copying of Forms 990-T are set forth in Announcement 2008-21.

All remaining provisions of Notice 2007-45 shall continue in full force and effect.

**Section 4. Request for Comments**

The IRS and the Treasury Department invite comments on implementation of the public inspection requirement of section 6104(d)(1)(A)(ii), including comments with respect to those schedules or attachments that should not be available for public inspection when attached to Form 990-T. Comments should refer to Notice 2008-49 and be submitted to:

Internal Revenue Service  
CC:PALPD:PR (Notice 2008-49)  
Room 5203  
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:

Courier's Desk  
Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224  
Attn: CC:PA:LPD:PR  
(Notice 2008-49)

Alternatively, taxpayers may submit comments electronically to [notice.comments@irs.counsel.treas.gov](mailto:notice.comments@irs.counsel.treas.gov). Please include "Notice 2008-49" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

### **Section 6. Drafting Information**

The principal author of this notice is Melinda Williams of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Williams at 202-283-9467 (not a toll-free call).

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