

Action Urged on Proposed Regulation for Substantiating Charitable Donations

12.03.15 | Linda J. Rosenthal, JD



The Internal Revenue Service has been tinkering around with the rules about substantiating charitable donations of more than \$250. The agency wants to know what you think – by December 16, 2015.

“If It Ain’t Broke, Don’t Fix It”

The National Council of Nonprofits is leading the charge against these proposed regulations. It has called on the nonprofit community to –“exercise their rights to submit comments to the proposed regulations in order to explain the real-world consequences of the rule to help inform government officials before a final decision is made.”

In other words, this influential group wants you to tell these regulators to ditch the proposed regulations. First, they aren’t needed; government officials admit (in the Federal Register announcement of the rule change) that the current system of documenting charitable donations works just fine in most cases, and the proposed fix “creates entirely unnecessary burdens, risks, and problems – not the least of which is the requirement to “ask for, store, and report donor Social Security numbers.”

“The Internal Revenue Service is proposing a voluntary nonprofit reporting regime that encourages nonprofits to ask for, store, and report donor Social Security numbers. The proposed regulations would give nonprofits the option of filing a separate new information return with the IRS and individual donors by February 28 every year to substantiate contributions of more than \$250. A similar mandatory proposal was considered and rejected in the past based on numerous legal, policy, and confidentiality problems it raised.”

The National Council of Nonprofits has published a [thoughtful, detailed analysis](#); here, though, we'll summarize what's it all about and why NCP thinks the proposed regulation is a bad idea.

What is the Current Law?

The rules are set out in [section 170\(f\)\(8\)](#) of the Internal Revenue Code, and in almost identical language at Treasury Regulations [section 1.170A-13\(f\)](#).

A donor who contributes \$250 or more to a 501(c)(3) organization may claim a tax deduction only if the donation is substantiated by a “contemporaneous written acknowledgement by the donee organization that meets certain specific requirements,” including specifics on the amount, whether the organization provided any goods or services, and the value of any such goods or services.

The “contemporaneous written acknowledgement” doesn't have to be in any specific format, but there's a deadline: the donor must have it on or before the earlier of (a) the date he or she files the tax return for the year in which the contribution is made, or (b) the due date for that return.

There's an exception to the “contemporaneous written acknowledgement” (CWA) method. The organization, itself, can choose to file “a return, on such form and in accordance with such regulations as the Secretary [of the Treasury] may prescribe,....” (The Secretary “shall prescribe” – that is, must – “prescribe such regulations as may be necessary or appropriate....”)

What are the Proposed Changes?

Here's the situation: There's an authorized exception to the CWA substantiation method, and the Treasury Secretary has been directed to adopt regulations to implement this alternative donee reporting form – but no one's done it. It's no accident or oversight; the Treasury Secretary in 1997 [refused to issue](#) new regulations.

It's been almost two decades since the charitable contribution substantiation rules were enacted, but there's no official form or procedure to use this exception.

You may think, then, that this regulation vacuum has wreaked havoc on the charitable community and its valued donors, with frequent pleas to remedy this egregious omission. It has not.

Treasury officials, in the [September 17th Notice of Proposed Rulemaking](#), acknowledge that “[t]he present [contemporaneous written acknowledgement] system works effectively, with minimal burden on donors and donees, and the Treasury Department and the IRS have received few requests since [...the 1990's...] to implement a donee reporting system.”

So what prompted action in 2015 to implement this alternative of a donee reporting form?

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.

To help out “some taxpayers,” the Treasury Department decided to go ahead and propose regulations “prescribing the method by which donee reporting may be accomplished.”

Having decided that “...the form 990 is unsuitable for donee reporting” because “...the form 990 doesn’t protect donor privacy sufficiently,” the government now proposes an alternate donee reporting form – which, by the way, it hasn’t yet developed.

The National Council of Nonprofits does a good job of summarizing the change: “The Treasury Department has] published proposed regulations ... that would permit, but not require, charitable nonprofits to file a new, separate information return with the IRS (in addition to the Form 990) by February 28 every year to substantiate contributions of more than \$250 in value. The new informational tax return (“Donee Report”) would require the nonprofit to collect the donor’s name, address, and Social Security number or other taxpayer identification number. Nonprofits taking this option would also be required by that date to provide a copy to each donor listed (but only the portion that contains “information related to that donor”).

“The proposed regulations seek to create the process through which nonprofits report contributions directly to the IRS. It is important to note that any new Donee Report form proposed in the rulemaking would include the existing requirements for gift acknowledgements, but adds a fourth requirement: reporting the taxpayer’s Social Security number or other taxpayer identification number.”

What are the Criticisms?

In the Notice of Proposed Rulemaking, officials assert that “[t]he 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.”

Opponents strongly disagree with this conclusion; in particular, the requirement of asking for social security numbers is the worst aspect of this proposed regulation: “The proposed voluntary reporting regime is inappropriate because the process could impose significant costs and burdens on nonprofit organizations, would create public confusion and disincentives for donors to support the work of nonprofits, and could lead fraudulent actors to increase targeting donors and reputable nonprofit organizations.”

“Moreover,” they continue, “Treasury and the IRS state in the background description of the proposed rule that the current system of contemporaneous written acknowledgement of donations “works effectively, with the minimal burden on donors and donees.” The proposal to add a potentially confusing parallel reporting regime that needlessly introduces the risks of fraud, identity theft, and decreased donations to the community should be rejected.”

These critics point specifically to a 2009 GAO analysis of an earlier proposal to make this type of donee reporting a mandatory requirement. The report title says it all: “Requiring Information Reporting for Charitable Cash Contributions May Not Be an Effective Way to Improve Compliance.”

Conclusion

The National Council of Nonprofits concludes with a plea to take action: “Since there is not an overriding need for an alternative system, the flawed proposal to adopt a confusing and potentially dangerous Donee Report Rule should be rejected.”

In its position paper, this agency encourages immediate action: “Numerous concerned citizens have already submitted comments, but government decision-makers need to hear from as many people as possible with, whether you want to file a lengthy analysis, a short opinion, or even just a sentence.” It offers a helpful guide to crafting and submitting comments to government officials.

The Notice of Proposed Rulemaking includes specific instructions about where to send submissions and how to request additional information, adding that “[all] comments will be available at <http://www.regulations.gov> or upon request.” Any person who submits comments by the deadline may request a public hearing in writing.

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