

IRS VOLUNTARY GIFT SUBSTANTIATION PROPOSED RULE

The Internal Revenue Service has recently proposed a rule change that would permit, but not require, charities to file an additional new information return with the IRS regarding charitable donations received. Charitable organizations choosing to participate would file an additional new form with the IRS that includes detailed information about donors who contribute \$250 or more, including taxpayer identification or Social Security numbers.

Background

Policymakers have at times expressed concern about the extent to which taxpayers accurately report their charitable gifts, and a 2012 audit by the Treasury Inspector General for Tax Administration (TIGTA) found that approximately 273,000 taxpayers still made erroneous claims regarding their noncash charitable contributions.ⁱ

Under current law, in order to deduct cash donations, a taxpayer must have a bank record or a written communication from the charity showing the name of the charity and the date and amount of the contribution. Documentation can include cancelled checks, credit cards statements, W-2 statements, etc.ⁱⁱ Additionally, for cash gifts of \$250 or more, as well as all noncash gifts, donors must obtain a contemporaneous written acknowledgement from the charitable organization that includes:

- The donor's name;
- The amount of cash or a description of the property contributed (separately itemized if one receipt is used to document two or more contributions);
- A statement explaining whether the charity provided any goods or services in return for the gift; and
- If goods or services were provided, a description of the services and an estimate of the value.ⁱⁱⁱ

Proposed Regulatory Change

On September 16, 2015, the Internal Revenue Service issued [proposed regulations](#) that would allow charitable organizations to opt out of providing contemporaneous written agreements to donors who make contributions of \$250 or more. Organizations choosing this option would be required to file a new information return – in addition to Form 990 – with the IRS by February 28 to substantiate charitable contributions for the preceding tax year. Participating charities must also provide each donor a copy of the portion of the form that contains his or her information.

The form filed by participating charitable organizations would contain the following information:

- Name and address of the charitable organization;
- Name and address of the donor;
- Social Security or taxpayer identification number of the donor;
- The amount of cash and a description (but not necessarily the value) of any property other than cash contributed;
- Whether any goods and services were provided by the organization in consideration, in whole or in part, for the contribution; and
- A description and good faith estimate of the value of any goods and services provided by the organization or a statement that such goods and services consist solely of intangible religious benefits.

The requirement to file a second information return with the IRS that includes donor Social Security or taxpayer identification numbers resembles the current substantiation requirements for vehicle donations valued over \$500.

Implications for Sector

In a 2009 report to the Senate Finance Committee, the Government Accountability Office stated “Charities could incur substantial costs and burdens if they were required to file information returns with the IRS and taxpayers on the [contributions] they receive.”^{iv} GAO went on to state that limiting the reporting requirements to only cover gifts over a specific amount, as proposed in the IRS rule, would limit the policy’s effectiveness and make it a less than desirable solution to correct taxpayer reporting errors.^v

Beyond the additional cost of filing a new form with the IRS, nonprofits would also face administrative costs associated with collecting and protecting private donor information. A 2011 article in the *National Tax Journal* noted that “Some reformers propose requiring charities to provide receipts to both taxpayers and the IRS that specify the value of donated property once it exceeds some threshold. New reporting requirements, however, would impose higher compliance costs on charities and introduce privacy concerns as donors would have to provide their Social Security numbers to charities.”^{vi}

As a result of increasing data breaches across all sectors, consumers and donors may become more cautious when providing private data to third parties, raising questions about whether the proposal may effectively discourage charitable giving to organizations that choose to participate in this process. In fact, an IRS Research Bulletin several years ago suggested that “Current rules regarding the deductibility of charitable contributions already impose some burden on individual taxpayers, and ramping up documentation requirements might actually discourage bona fide contributions.”^{vii}

Evaluating the Proposal’s Impact

The IRS is [accepting public comments](#) on the proposed rule change through December 16, 2015, and Independent Sector working to evaluate the proposed regulation, including the likelihood of a voluntary expanded reporting requirement ultimately being made mandatory for all charitable organizations.

To assist in our analysis we request your input on the following issues:

- To what extent would the collection and reporting of personal information for donors who give more than \$250 impact your organization’s work? How much would it cost to implement this proposal?
- How would the collection of taxpayer identification or Social Security numbers impact your resource development strategy? If you raise funds through third parties (such as workplace campaigns, Facebook, or “text to give” initiatives), how will you collect individual taxpayer information?
- Do you have in place a plan to protect private donor information?
- To what extent would the February 28 timeframe for filing the information return and providing individual donors with a copy impact your financial operations?
- What other concerns does this proposal raise for your organization?

We ask that you share your feedback with us by December 4 at publicpolicy@independentsector.org. In the meantime, please be in touch if you have questions or need additional information.

ⁱ “Many Taxpayers Are Still Not Complying with Noncash Charitable Contribution Reporting Requirements.” Treasury Inspector General for Tax Administration. U.S. Department of Treasury. December 20, 2012. <https://www.treasury.gov/tigta/auditreports/2013reports/201340009fr.pdf>.

ⁱⁱ “Charitable Contributions – Substantiation and Disclosure Requirements.” Internal Revenue Service Publication 1771. <https://www.irs.gov/pub/irs-pdf/p1771.pdf>.

ⁱⁱⁱ Ibid.

^{iv} “Tax Gap: Requiring Information Reporting for Charitable Cash Contributions May Not Be an Effective Way to Improve Compliance.” U.S. Government Accountability Office Report to the U.S. Senate Committee on Finance. May, 2009. <http://www.gao.gov/assets/290/289664.pdf>.

^v Ibid.

^{vi} Ackerman, Deena and Gerald Auten. “Tax Expenditures for Noncash Charitable Contributions.” *National Tax Journal*, June, 2011. Vol. 64 (2, Part 2). <http://www.ntanet.org/NTJ/64/2/ntj-v64n02p651-87-tax-expenditures-for-noncash.pdf>.

^{vii} Turk, Alex, Maryamm Muzikir, Marsha Bluementhal, and Laura Kalambokidis. “Charitable Contributions in a Voluntary Compliance Income Tax System: Itemized Deductions versus Matching Subsidies.” *The IRS Research Bulletin: Proceedings of the 2007 IRS Research Conference*. 2007. <https://www.irs.gov/pub/irs-soi/07resconftrk.pdf>.