

Notice of Proposed Rulemaking and Notice of Public Hearing

Public Disclosure of Material Relating to Tax-Exempt Organizations

REG-246250-96

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking and notice of public hearing.

SUMMARY: This document contains proposed regulations relating to the public disclosure requirements of section 6104(e) of the Internal Revenue Code. The proposed regulations provide guidance for a tax-exempt organization required to make its application for tax exemption and annual information return available for public inspection. The proposed regulations also provide guidance for a tax-exempt organization required to comply with requests made in writing or in person from individuals who seek a copy of those documents. The proposed regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. The proposed regulations address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and guidance on the applicable procedures to obtain relief. This document also provides notice of a public hearing.

DATES: Written comments and requests to speak (with outlines of oral comments) at the public hearing scheduled for February 4, 1998, beginning at 10 a.m. must be submitted by December 26, 1997.

ADDRESSES: Send submissions to: CC:DOM:CORP:R (REG-246250-96), room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington DC 20044. Submissions may be hand-delivered between the hours of 8 a.m. and 5 p.m. to: CC:DOM:CORP:R (REG-246250-96), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue NW., Washington DC. Alternatively, taxpayers may submit comments

electronically via the Internet by selecting the "Tax Regs" option on the IRS Home Page, or by submitting comments directly to the IRS Internet site at http://www.irs.ustreas.gov/prod/tax_reggs/comments.html. The public hearing will be held in the IRS Auditorium, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the regulations, Michael B. Blumenfeld, (202) 622-6070; concerning submissions and the hearing, Michael Slaughter, (202) 622-7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)). Comments on the collections 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, T:FP, Washington, DC 20224. Comments on the collections of information should be received by November 25, 1997. Comments are specifically requested concerning:

Whether the proposed collections of information are necessary for the proper performance of the functions of the **Internal Revenue Service**, including whether the information will have practical utility;

The accuracy of the estimated burden associated with the proposed collections of information;

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

How the burden of complying with the proposed collections of information may be minimized, including through 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 collections of information in these proposed regulations are in §§301.6104(e)-1, 301.6104(e)-2, and 301.6104(e)-3. This information is required to enable a tax-exempt organization to comply with section 6104(e) of the Internal Revenue Code. Under section 6104(e), a tax-exempt organization is required to make its application for tax exemption and its annual information returns available for public inspection. In addition, a tax-exempt organization is required to comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, to make its documents widely available. The requirement that a tax-exempt organization make its application for tax exemption and annual information returns available for public inspection and comply with requests made in writing or in person from individuals who seek a copy of those documents or, in the alternative, make the documents widely available, will enable the public to obtain information about the tax-exempt organization. Under section 6104(e), a tax-exempt organization is permitted to file an application for relief from the requirement to provide copies if the organization reasonably believes it is the subject of a harassment campaign. The information a tax-exempt organization provides when filing an application for a determination that it is subject to a harassment campaign will be used by the IRS to make such determination. The collection of information is required to obtain relief from the requirement to comply with requests for copies if such requests are part of the harassment campaign. The likely respondents and/or recordkeepers are tax-exempt organizations. The burden for recordkeeping and for reporting is reflected below.

Estimated total annual recordkeeping burden: 551,000 hours.

Estimated average annual burden per recordkeeper: 30 minutes.

Estimated number of recordkeepers: 1,100,000.

Estimated total annual reporting burden: 500 hours.

Estimated average annual reporting burden per respondent: 29 minutes.

Estimated number of respondents: 1050.

Estimated annual frequency of responses: on occasion.

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.

Books or records relating to a collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains proposed amendments to the Income Tax Regulations (26 CFR part 301) relating to the section 6104(e) disclosure requirements affecting tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt from taxation under section 501(a)). Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104 of the Internal Revenue Code (Code). Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. Each return must be made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. Notice 88-20 (1988-2 C.B. 454), provided tax-exempt organizations with guidance for complying with the section 6104(e) public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in writing or in person, for

copies of the organization's application for recognition of tax-exempt status. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to comply with requests, made either in writing or in person, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and mailing costs. If the request for copies is made in person, the organization must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations to be promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

In Notice 96-48 (1996-39 I.R.B. 8), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of this notice of proposed rulemaking. The comments addressed a range of issues, although they made several suggestions in common. Several commentators requested that the guidance on the new disclosure requirements follow the existing guidance on the public inspection requirements provided in Notice 88-120. Several commentators also recommended that the fee charged by the IRS for copies of organization documents be used to establish a reasonable fee for an organization to charge when fulfilling requests for copies of the documents. A number of comments were received concerning the Internet. Most, but not all, of these comments urged that posting an organization's documents on the Internet be treated as making those documents widely available. Finally, several commentators asked for guidance in determining when an organization is subject to a harassment campaign, how to apply for a harassment determination, what kind of relief is available while such an applica-

tion is pending and the effect of a determination that the organization is the subject of a harassment campaign.

Explanation of Provisions

Overview

The proposed regulations provide guidance concerning the application and returns a tax-exempt organization must make available for public inspection and must supply in response to requests for copies. The proposed regulations also provide guidance on (1) the place and time for making these documents available for public inspection, (2) conditions that may be placed on requests for copies of documents, and (3) the amount, form and time of payment of any fees that may be charged. The regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the proposed regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief.

Material Required to be Made Available for Public Inspection and Supplied in Response to a Request for Copies

The proposed regulations specify the documents that a tax-exempt organization must make available for public inspection or supply in response to a request for copies. A tax-exempt organization, including one that is a private foundation, must make its application for tax exemption available. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by the organization in support of its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88-120, if an organization filed its application before July 15, 1987, the proposed regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

A tax-exempt organization, other than one that is a private foundation, must make its three most recent annual infor-

mation returns available. Generally, an annual information return includes Forms 990, 990-EZ, 990-BL, and Form 1065. It also includes all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990-T. The proposed regulations provide rules concerning the documents that must be made available by an organization that is recognized as tax-exempt under a group exemption letter or that files a group return pursuant to §1.6033-2(d) and Rev. Proc. 80-27, 1980-1 C.B. 677 (or any successor provision). Finally, the proposed regulations provide guidance to an individual denied inspection, or a copy, of an application or a return. In such a case, the individual may provide the IRS with a statement that describes the reason why the individual believes the denial was in violation of legal requirements.

Place and Time Documents Must Be Available for Public Inspection

The proposed regulations provide that a tax-exempt organization must make the specified documents available for public inspection at its principal, regional and district offices. The specified documents generally must be available for inspection on the day of the request during the office's normal business hours. Consistent with section 6104(e) and Notice 88-120, the proposed regulations provide that an office of an organization will be considered a regional or district office only if it has three or more paid full-time employees (or paid employees, whether part-time or full-time, whose aggregate number of paid hours per week is at least 120). The rules exclude certain sites where the organization's employees perform solely exempt function activities from being treated as a regional or district office. In addition, the proposed regulations prescribe how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provide rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88-120.

Requirement to Furnish Copy to a Requester

The proposed regulations require that a tax-exempt organization accept requests for copies made in person at the same place and time that the information must be available for public inspection. They also generally require an organization to provide the copies on the day of the request. In unusual circumstances, an organization will be permitted to provide the requested copies on the next business day.

When a request is made in writing, the proposed regulations require that a tax-exempt organization furnish the copies within 30 days from the date it receives the request. If an organization, however, requires advance payment of a reasonable fee for copying and mailing, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request.

The proposed regulations provide guidance as to what constitutes a request, when a request is considered received, and when copies are considered provided. The proposed regulations provide that, instead of requesting a copy of an entire application for tax exemption or annual information return, individuals may request a specific part of either document. Finally, the proposed regulations permit a principal, regional, or district office of an organization to use an agent to process requests for copies.

Reasonable Fee for Providing Copies

The proposed regulations provide that the reasonable fee a tax-exempt organization is permitted to charge for copies may be no more than the fees charged by the IRS for copies of tax-exempt organization tax returns and related documents (currently \$1.00 for the first page and \$.15 for each subsequent page), plus actual postage costs. The proposed regulations permit an organization to collect payment in advance of providing the requested copies. If an organization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. Payment will be deemed to occur on the day an organization receives the cash, check (provided the check subsequently clears) or

money order. The proposed regulations require an organization to accept payment made by cash or money order, and when the request is made in writing, also accept payment made by personal check. An organization is permitted, though not required, to accept other forms of payment. To protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of \$20.

Making Applications and Information Returns Widely Available

The proposed 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 proposed regulations specify that an organization can make its application for tax exemption and/or an annual information return 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 page as part of a database of similar materials. In addition, the proposed regulations provide that the Commissioner may prescribe, by revenue procedure or other guidance, other methods that an organization can use to make its application and/or its return widely available. An organization that makes its application and/or its return widely available must inform individuals who request copies how and where to obtain the requested document. The Treasury and the IRS are interested in comments on additional methods by which applications and returns could be made widely available, including the use of a clearinghouse that maintains a large inventory of documents from many organizations.

Harassment Campaigns

The proposed regulations provide guidance in determining whether a tax-exempt organization is the subject of a harassment campaign. Generally, a harassment campaign exists where an organization receives a group of requests, and the relevant facts and circumstances show that

the purpose of the group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contain examples that evaluate whether particular situations constitute a harassment campaign and whether an organization has a reasonable basis for believing that a request is part of the harassment campaign. For example, the IRS will not allow organizations to suspend compliance with a request for copies from a representative of the news media even though the organization believes that request is part of a harassment campaign. The proposed regulations also permit an organization to disregard requests in excess of two per month or four per year made by a single individual or sent from a single address. Finally, the proposed regulations provide procedures for requesting a determination that an organization is subject to a harassment campaign, the treatment of requests for copies while a request for a determination is pending, and the effect of such a determination.

Proposed Effective Date

These regulations are proposed to be effective beginning 60 days after publication of these regulations as final regulations.

Special Analyses

Pursuant to sections 603(a) and 605(b) of the Regulatory Flexibility Act, it is certified that the collection of information referenced in this notice of proposed rulemaking will not have a significant economic impact on a substantial number of small entities. Although a substantial number of small entities will be subject to the collection of information requirements in these regulations, the requirements will not have a significant economic impact on these entities. The average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the re-

porting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make its documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that on average it will cost tax-exempt organizations less than \$10 per year to comply with these regulations, which is not a significant economic impact.

Pursuant to section 7805(f) of the Internal Revenue 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 Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments (a signed original and eight (8) copies) that are submitted timely to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for February 4, 1998, beginning at 10 a.m. in the IRS Auditorium, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Because of access restrictions, visitors will not be admitted beyond the Internal Revenue Service Building lobby more than 15 minutes before the hearing starts.

The rules of 26 CFR 601.601(a)(3) apply to the hearing.

Persons that wish to present oral comments at the hearing must submit written

comments and an outline of the topics to be discussed and the time devoted to each topic (signed original and eight (8) copies) by December 26, 1997.

A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the schedule of speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and Treasury Department also participated in their development.

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Proposed Amendments to the Regulations

Accordingly, 26 CFR Part 301 is proposed to be amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for 26 CFR part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(e)–2 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(e)–3 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(e)–0, 301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3 are added to read as follows:

§301.6104(e)–0 Table of contents.

This section lists captions contained in §§301.6104(e)–1, 301.6104(e)–2, and 301.6104(e)–3.

§301.6104(e)–1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

- (a) In general.
- (b) Definitions.
 - (1) Tax-exempt organization.
 - (2) Private foundation.
 - (3) Application for tax exemption.
- (i) In general.

(ii) No prescribed application form.

(iii) Exceptions.

(4) Annual information return.

(i) In general.

(ii) Returns more than 3 years old.

(5) Regional or district offices.

(i) In general.

(ii) Site not considered a regional or district office.

(c) Special rules relating to public inspection.

(1) Permissible conditions on public inspection.

(2) Organizations that do not maintain permanent offices.

(d) Special rules relating to copies.

(1) Time and place for providing copies in response to requests made in person.

(i) In general.

(ii) Unusual circumstances.

(iii) Agents for providing copies.

(2) Request for copies in writing.

(i) In general.

(ii) Time and manner of fulfilling written requests.

(A) In general.

(B) Agents for providing copies.

(3) Request for a copy of parts of document.

(4) Fees for copies.

(i) In general.

(ii) Form of payment.

(A) Request made in person.

(B) Request made in writing.

(iii) Avoidance of unexpected fees.

(iv) Responding to inquiries of fees charged.

(e) Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations.

(1) Documents to be provided by regional and district offices.

(2) Documents to be provided by local and subordinate organizations.

(f) Failure to comply with public inspection or copying requirements.

(g) Effective date.

§301.6104(e)-2 Making applications and returns widely available.

(a) In general.

(b) Widely available.

(1) In general.

(2) Internet posting.

(3) Notice requirement.

(c) Effective date.

§301.6104(e)-3 Tax-exempt organization subject to harassment campaign.

(a) In general.

(b) Harassment.

(c) Special rule for multiple requests from a single individual or address.

(d) Harassment determination procedure.

(e) Effect of a harassment determination.

(f) Examples.

(g) Effective date.

§301.6104(e)-1 Public inspection and distribution of annual information returns of tax-exempt organizations (other than private foundations) and applications for tax exemption.

(a) *In general.* Except as otherwise provided in this section, a tax-exempt organization, including one that is a private foundation, shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection without charge at its principal, regional and district offices during regular business hours. A tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in §301.6104(e)-2 and §301.6104(e)-3, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any application or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(4) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of section 6104(e) and the regulations thereunder, the following definitions apply:

(1) *Tax-exempt organization.* The term *tax-exempt organization* means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term *private*

foundation means a private foundation as defined in section 509(a).

(3) *Application for tax exemption—(i) In general.* The term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief supporting an application, or a response to questions from the Internal Revenue Service during the application process, is a supporting document.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements, as of the date the application is submitted, showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that has not yet been recognized, on the basis of the application, by the Internal Revenue Service as exempt from taxation for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987 unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in §301.6104(a)–1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(4) *Annual information return*—(i) *In general.* The term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return filed with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990–EZ or 990–BL except Form 990–T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name or address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 containing supplementary information on section 501(c)(3) organizations, and those parts of the return that show compensation paid to specific persons (Part VI of Form 990 and Parts I and II of Schedule A of Form 990). The term *annual information return* does not include Schedule A of Form 990–BL, Form 990–T, Exempt Organization Business Income Tax Return or Form 1120–POL, U.S. Income Tax Return For Certain Political Organizations. For purposes of this section and the regulations thereunder, an annual information return does not include the return of a private foundation. See §301.6104(d)–1 for requirements relating to public disclosure of private foundation annual returns.

(ii) *Returns more than 3 years old.* The term *annual information return* does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization has filed an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has—

(A) 3 or more paid full-time employees; or

(B) Paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection, and to photocopy the document at no charge, if the individual provides the photocopying equipment at the place of inspection.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or has very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* A tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(e) in response to a request made in person at the time and place that it makes its documents available for inspection under paragraph (a) of this section. Except as provided in paragraph (d)(1)(ii) of this section, an organization shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* Where unusual circumstances exist such that fulfilling a request on the same business day places an unreasonable burden on the tax-exempt organization, the organization may provide the copies in response to a request made in person on the next business day following the day of the request. Unusual circumstances may include, but are not limited to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff is conducting special duties, such as student registration, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent, within reasonable proximity of the applicable office, to process in person requests for copies of its documents. An agent that receives a request for copies must provide the copies within the time and under the conditions that apply to the organization itself. For example, an agent must provide a copy to a requester on the day the agent receives the request. However, an office using such an agent that receives an in-person request for a copy must immediately provide the name, address and telephone number of the local agent to the requester. An organization that notifies an in-person requester of such an agent is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)–(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's agent fails to provide

the documents as required under section 6104(e).

(2) *Request for copies in writing*—(i) *In general.* A tax-exempt organization must honor a written request for a copy of documents that the organization is required to provide under section 6104(e) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, a private delivery service as defined in section 7502(f), or in person, to the principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests*—(A) *In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the requested documents (or the requested parts of documents) within 30 days from the date it receives the request. If a tax-exempt organization requires payment in advance, it shall provide the copies within 30 days from the date it receives payment. If an organization requiring payment in advance receives a written request without payment or an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A request or payment that is mailed shall be deemed (in the absence of evidence to the contrary) to be received by an organization 7 days after the date of the postmark. Requests transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. Copies are deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time and

under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g. before the agent), the deadline for providing a copy in response to a request shall be determined in reference to when the organization received the request, not when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. However, if the organization's agent fails to provide the documents as required under section 6104(e), the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any identifiable part, attachment or supporting paper of its application or return. A request for a copy of less than its entire application or less than its entire return must describe the information desired in sufficient detail to enable the organization to identify the desired part of the applicable document without placing an unreasonable burden upon the organization. For example, a request may be limited to those parts of an organization's annual information return that relates to the compensation of the organization's officers and managers.

(4) *Fees for copies*—(i) *In general.* A tax-exempt organization charges a reasonable fee for providing copies only if it charges no more than the per-page copying charge stated in §601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. An organization may require that an individual requesting copies of documents pay the fee before the documents are provided. If the organization has provided an individual making a request with notice of the fee, and the individual has not paid the fee within 30 days, or if the individual pays the fee by check and the check does not clear when deposited, the organization may disregard the request.

(ii) *Form of payment*—(A) *Request made in person.* If a tax-exempt organi-

zation charges a fee for copying as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as personal checks or credit cards.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage as permitted under paragraph (d)(4)(i) of this section, it shall accept payment by certified check, personal check and money order for requests made in writing. The organization may accept other forms of payment, such as credit cards.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose prepayment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage under paragraph (d)(4)(i) of this section is in excess of \$20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example, the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Rules relating to documents to be provided by regional and district offices, and local and subordinate organizations*—(1) *Documents to be provided by regional and district offices.* A regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to public inspection and providing copies of its application for tax exemption and annual information returns. However, a regional or district office is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(2) *Documents to be provided by local and subordinate organizations.* A local

organization that does not file its own annual information return (because it is affiliated with a central organization that files a group return pursuant to §1.6033-2(d)) must make available the applicable annual information returns filed by the central organization. However, a local organization is not required to make its annual information return available for inspection or for providing copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed by the central organization, whichever is later. If a subordinate organization is covered by a group exemption letter, the application for tax exemption the subordinate organization must make available for public inspection and furnish in response to requests for copies is the application submitted to the Internal Revenue Service by its parent or supervisory organization to obtain the group exemption letter, as well as any additional documents submitted in order to cover the subordinate organization under the group exemption letter.

(f) *F a i l u r e t o c o m p l y w i t h p u b l i c i n s p e c t i o n o r c o p y i n g r e q u i r e m e n t s .* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under section 6104(e) and this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the Director, Exempt Organizations Division, CP:E:EO, Internal Revenue Service, 1111 Constitution Avenue, NW., Washington, D.C. 20224 that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(e).

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register**.

§301.6104(e)-2 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a request for a copy of its application for tax exemption or an annual information return pursuant to §301.6104(e)-1(a) if the organization has made the requested ap-

plication or return widely available in accordance with paragraph (b) of this section. An organization that makes its application or return widely available must nevertheless make the application or return available for public inspection as required under §301.6104(d)-1 or §301.6104(e)-1, as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization uses a method specified in paragraph (b)(2) of this section or in a revenue procedure or other form of guidance issued by the Commissioner, and if the organization satisfies the requirements of paragraph (b)(3) of this section.

(2) *Internet posting.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the application or return on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the application or return posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. In order for the application or return to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the application or return that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the application or return posted on its page. Furthermore, the application or return will be considered widely available only if—

(i) it is posted in the same format used by the Internal Revenue Service to post forms and publications on the Internal Revenue Service World Wide Web page;

(ii) the World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(iii) when downloaded and printed in hard copy, the application or return is in substantially the same form as the original application or return, and contains the same information provided in the original application or return filed with the Internal Revenue Service (except information

withheld pursuant to §301.6104(e)-1(b)(4)(i)(the names and addresses of contributors listed on the annual information), Schedule A of Form 990-B and information on the application for tax exemption required to be withheld under section 6104(a)(1)(D) and §301.6104(e)-1(b)(3)(trade secrets and similar information)); and

(iv) a person can access and download the application or return without payment of a fee to the organization maintaining the World Wide Web page.

(3) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return otherwise widely available it must tell any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(c) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the **Federal Register**.

§301.6104(e)-3 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the key district director for the district where the organization's principal office is located determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request (as otherwise required by §301.6104(e)-1(a)) for a copy that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization rather than to collect information about the organization. Whether a group of requests constitutes a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harass-

ment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless of whether the key district director has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign by submitting a signed application to the key district director for the key district where the organization's principal office is located. The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application, and describing in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 5 days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of a harassment cam-

paign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate key district director determines that a tax-exempt organization is the subject of a harassment campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the key district director. A person (as defined in section 6652(c)-4(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), (D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the key district director that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the key district director further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section may be further illustrated by the following examples.

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked

for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2*, except that during March 1997, Y receives 100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the district director for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3*, except that Y receives 5 additional requests from representatives of the news media. In the past, some of these representatives have published articles criticizing Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to be reasonable under paragraph (d) of this section if it disregards requests from members of the news media. There are no additional facts that demonstrate that Y could reasonably believe the requests from the news media to be part of X's harassment campaign. Thus, although Y is the subject of a harassment campaign, it must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective beginning 60 days after its publication as a final regulation in the Federal Register.

Michael P. Dolan,
Acting Commissioner of
Internal Revenue.

(Filed by the Office of the Federal Register on September 25, 1997, 8:45 a.m., and published in the issue of the Federal Register for September 26, 1997, 62 F.R. 50533)