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AICPA Seeks Guidance Limiting Required Disclosure of Exempt Org Returns.

Jeffrey Porter of the American Institute of Certified Public Accountants has suggested that Treasury issue guidance clarifying that the public inspection requirements only apply to items required to be filed under sections 6033 and 6011 to protect sensitive tax information of taxpayers and related parties from tax identity theft and tax fraud.

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),¹ 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, 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.

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; Jeffrey D. Frank, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (317) 656-6921, or jdfrank@deloitte.com; or Amy Wang, AICPA Technical Manager — Taxation, at (202) 434-9264, or awang@aicpa.org.

Respectfully submitted,

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Chair, AICPA Tax Executive

Committee

American Institute of CPAs

Washington, DC