

IRS Announces Major Change To Nonprofit Donor Disclosure Requirements

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Election and Political Law

In a significant and unexpected development, the U.S. Treasury Department announced yesterday that certain nonprofits — including trade associations and 501(c)(4) social welfare organizations — would no longer be required to disclose the names and addresses of their donors on the annual "Form 990" they file with the Internal Revenue Service. Although the IRS already redacts this donor information before making a Form 990 public, these groups will now no longer need to disclose this information to the IRS in the first place. In this advisory, we discuss the background and implications of this development, which is an important one for trade associations, social welfare organizations, and major donors.

Why Did Treasury Make the Change?

In making the [change](#), the Treasury Department emphasized that donor disclosure for organizations other than 501(c)(3) charities and 527 political organizations is not statutorily mandated. Further, in the [press release](#) announcing the change, the Treasury Department explained that the previous policy, which required the IRS to redact donor names and addresses, was not a prudent use of taxpayer dollars and that disclosure of donor names and addresses was not necessary because "the IRS makes no systematic use of Schedule B with respect to these organizations in administering the tax code." In addition, the government emphasized that the "new policy will better protect taxpayers by reducing the risk of inadvertent disclosure or misuse of confidential information," acknowledging that the IRS "has accidentally released confidential Schedule B information in the past" and that certain tax-exempt groups had previously received "inappropriate" government inquiries "related to donors."

Which Groups Are Now Exempt From Disclosing Donor Names?

Once the policy becomes effective, "tax-exempt organizations required to file the Form 990 or Form 990-EZ, other than those described in 501(c)(3), will no longer be required to provide names and addresses of contributors on their Forms 990 or Forms 990-EZ and thus will not be required to complete these portions of their Schedules B." Thus, the new policy exempts 501(c)(4) social welfare organizations, 501(c)(5) labor organizations, 501(c)(6) trade associations, and lesser-known nonprofits such as social clubs, volunteer fire departments, and fraternal benefit societies.

Which Groups Are Not Exempt From the Change?

As noted, 501(c)(3) charities are still required to disclose donor names and addresses on the Schedule B, unless they qualify for a separate exemption, such as the exemption available to churches. Similarly, 527 political organizations that file a Form 990 (such as the Democratic Governors Association and the Republican Governors Association) will still be required to disclose donor names and addresses.

Does This Change What the Public Sees?

No. Even under the current regulations, donor names and addresses on the "Schedule B's" filed by the now-exempted nonprofits were redacted by the Internal Revenue Service or by the nonprofit before they were made public.

Is Schedule B Gone?

No. Even though many nonprofits will no longer be required to include donor names and addresses on the Schedule B, it appears they still must complete the Schedule B, itemizing the amounts of contributions from donors who give \$5,000 or more in a year. But they would no longer be required to include the names and addresses of donors on this schedule.

When Does The Change Become Effective?

The revised reporting requirements apply to returns for taxable years ending on or after December 31, 2018.

Does This Mean That the IRS Will Never Be Able to See 501(c)(4) and 501(c)(6) Donor Information?

No. The new guidance makes clear that the IRS could conceivably still review this information in connection with an audit or enforcement proceeding: "Organizations relieved of the obligation to report contributors' names and addresses must continue to keep this information in their books and records in order to permit the IRS to efficiently administer the internal revenue laws through examinations of specific taxpayers."

Does This Mean That These Groups Will Not Be Required to Disclose Their Donors At The State Level?

It depends. There are several states, including New York and California, that require certain 501(c)(4) social welfare organizations to register as charitable organizations with the state and file detailed reports that include unredacted versions of the Form 990 donor list. Once this policy becomes effective, the Form 990s submitted by 501(c)(4) organizations in these states will no longer contain the names and addresses of donors, which represents a significant shift in those states. However, because this policy does not affect 501(c)(3) charities, similar state-level filings by these public charities will go unchanged.

In addition, we have highlighted in previous client advisories and on our [Inside Political Law](#) blog how states are increasing their efforts to compel nonprofits to disclose their donors. Whether it is the [DISCLOSE Act in Washington](#) or an [Executive Order in Montana](#), states are finding innovative ways to obtain donor information from nonprofits. These targeted state-level efforts should not be affected by this policy change at the IRS. After this policy change, however, we expect that regulators in states that promote donor transparency will use the opportunity to occupy this space and push for new donor disclosure laws or regulations. Covington will continue to monitor the response at the state level.

If you have any questions concerning the material discussed in this client alert, please contact the following members of our Election and Political Law practice:

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