
# New IRS Rule Allows Many Nonprofits to Withhold Donor Information From the IRS

**05.28.2020 | By William A. Powers, Douglas W. Schwartz, Frederick T. Dombo III, Amber R. Maltbie**

On May 26, 2020, the U.S. Treasury released Final Regulations on donor disclosure requirements that shield many nonprofits – except 501(c)(3) charities and 527 political organizations – from the requirement to disclose the names of significant donors on Schedule B (Schedule of Contributors) to their annual Form 990 returns. The Final Regulations were expected: The IRS had tried to implement these rules 2 years ago without regulations in Revenue Procedure 2018-38, but the federal district court in Montana vacated that guidance in *Bullock v. IRS* for failure to follow Administrative Procedure Act rulemaking requirements (as our earlier e-alert noted).

As of May 28, 2020,[1] eligible nonprofits, including 501(c)(4) advocacy and social welfare organizations, 501(c)(5) labor and agricultural organizations, and 501(c)(6) trade organizations, need not disclose the names of donors to the IRS when they file annual Form 990 returns. For many nonprofits whose Form 990 deadline (original, or with extension) fell after March 31 but before July 15, 2020, the IRS extended that deadline to July 15, 2020 in response to COVID-19 (as we noted here), and those nonprofits can now rely on the Final Regulations in filing these delayed returns. As a practical matter, the Final Regulations do not change how affected nonprofits approach Schedule B from last year's filings because Revenue Procedure 2018-38 stated that the IRS would not enforce the Schedule B donor disclosure rule against nonprofits who did not identify donors in reliance on the IRS guidance.

**What Types of Nonprofits Must Identify Significant Donors on Schedule B?**

Until 2018, *all* nonprofit organizations were required to file Schedule B and disclose the identifying information about donors of $5,000 or more to the IRS. On the one hand, donor information for some organizations (such as 501(c)(3) private foundations and 527 political organizations) was public information; on the other hand, the Internal Revenue Code prohibited the IRS from disclosing donor information of other nonprofits (*e.g.,* 501(c)(4)s, (c)(5)s, (c)(6)s, and "public" (c)(3)s). Despite this prohibition, there were concerns

about inadvertent (or even intentional) disclosures and the impact on donor privacy. Thus, with Revenue Ruling 2018-38, the IRS began to cut back the requirement that donors' identifying information even *be included* on returns; instead, the IRS required that eligible tax-exempt organizations themselves maintain the information and disclose it to the IRS on a case-by-case basis in an audit or other compliance action.

The IRS's Final Regulations confirm this stance and allow nonprofits, except 501(c)(3)s (regardless of whether they are public charities or private foundations) and 527s, to avoid disclosing the names of donors of $5,000 or more to the IRS. Therefore, under the Final Regulations, 501(c)(4), (c)(5), and (c)(6) organizations need not identify donors on Schedule B.[2] The IRS will continue to redact donor information for "public" 501 (c)(3)s (but not private foundations). (See the chart below for a summary of donor disclosure requirements on Schedule B for different types of exempt organizations).

**Summary of Donor Disclosure on IRS Form 990**

**501(c)(3)**

**501(c)(4), (c)(5), & (c)(6)s**

**527s**

**Private Foundation**

**Public Charity**

**Reported to IRS on Schedule B?**

Yes, Donors of $5,000 and more

Yes, Donors of $5,000 and more

No

Yes, Donors of $5,000 and more

(Donors of $200 or more reported on Form 8872)

**Disclosed to the Public?**

Yes

No

N/A (not reported in the first place)

Yes

**IRS's Rationale**

The IRS's justification for the Final Regulations rests on two principles:

- First, the agency has wide latitude, beyond the context of charitable giving, to exercise its discretion regarding the usefulness of providing names of donors to enforce federal tax law; and
- Second, the agency has zero enforcement need to receive this information on a more widespread basis.

The IRS's reliance on its discretion under the statutory framework is no surprise, given that the Montana court in *Bullock* said as much in its decision that sparked this rulemaking and vacated Revenue Ruling 2018-38. However, the IRS's statement that it "does not need the names and addresses of substantial contributors to tax-exempt organizations not described in section 501(c)(3) to be reported annually … in order to administer the internal revenue laws" is striking. The IRS thereby shifts the process for obtaining such information from an administrative one through the annual Schedule B filing, to a process relying on audits or other enforcement actions.

In its balancing test, the IRS determined that the burdens of collecting this information on Schedule B clearly outweighed any benefit, which the IRS perceived as zero. The burdens of collecting donor information were twofold: the potential for inadvertent disclosure of private donor information, and the threat of harassment that such donors might face. The legitimacy of these burdens may well be the subject of renewed litigation in the vein of *Bullock*, but for the time being the IRS considers these burdens as outweighing the zero benefit that the IRS perceives from collecting this information.

It is important to note that these Final Regulations do *not*:

- require "qualified state and local political organizations" (*e.*, most state PACs with gross receipts of $100,000 or more) to file a Form 990 (the threshold stays the same even though some commenters sought to lower it); or
- change the filing threshold to use the Form 990-N (a/k/a the "postcard" return), which remains $50,000 in gross receipts for exempt organizations (other than private foundations, 509(a)(3) supporting organizations, and some foreign organizations).

**Conclusion**

The Final Regulations codify what has been the practice since 2018 under Revenue Ruling 2018-38. With an effective date of May 28, 2020, they will apply to tax-exempt organizations as they prepare their Form 990 Schedule B for the extended deadline of July 15, 2020. Whether there will be further litigation remains to be seen (we think it's likely), but exempt organizations, particularly 501(c)(4)s, (c)(5)s, and (c)(6)s now have a full notice and comment rulemaking on which to rely.

[1] Effective as of the date the Final Regulations appear in the Federal Register.

[2] Note that a very small number of nonprofits that accept contributions for charitable purposes must still disclose donors of more than $1,000 to the IRS. These include 501(c)(7) social clubs, 501(c)(8) fraternal beneficiary societies, and 501(c)(10) domestic fraternal societies. This Final Regulations did not change those existing disclosure requirements.