



# AMERICANS FOR LIMITED GOVERNMENT

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December 15, 2015

CC:PA:LPD:PR (REG-138344-13)  
Room 5203  
Internal Revenue Service  
POB 7604  
Ben Franklin Station  
Washington, DC 20044

Via online submission

**Re: Comment on Notice of Proposed Rulemaking on Substantiation Requirement for Certain Contributions**

To Whom It May Concern:

I write today to provide the comments of Americans for Limited Government (ALG) on the Notice of Proposed Rulemaking (NPRM) referenced above. The ALG is a non-profit organization that is recognized as exempt from taxation under Section 501(c)(4) of the Internal Revenue Code (IRC). Although not directly affected by the NPRM as it targets entities that may receive contributions for which an income tax deduction may be taken, the ALG does have significant experience with the reporting issues that are part of the NPRM.

As an initial matter, the NPRM makes clear that no regulation is needed in this area and therefore the NPRM is truly a solution in search of a problem. In fact, the NPRM states,

The present CWA system works effectively, with minimal burden on donors and donees, and the Treasury Department and the IRS have received few requests since the issuance of TD8690 to implement a donee reporting system.<sup>1</sup>

Based on this admission, the public in general and the regulated community in particular should be puzzled to say the least as to the reasons why the IRS is now

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<sup>1</sup> Substantiation Requirements for Certain Contributions, 80 Fed. Reg. 55,802, 3 (September 17, 2015) (to be codified at 26 C.F.R. pt. 1.)

proposing this regulation. The IRC Section, Section 170(f)(8)(D) that provides the authority to promulgate regulations regarding a return with donee information was passed as part of the Omnibus Budget Reconciliation Act of 1993. Now, greater than two decades later, the IRS has decided to promulgate a regulation that it admits isn't necessary and is not required.

Section 170(f)(8)(D) of the IRC states,

Substantiation not required for contributions reported by the donee organization. Subparagraph (A) shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution.

This section, while providing the authority for an alternative means of substantiation, does not require the IRS to promulgate a regulation. It may, however, promulgate a regulation, provided that it shows that the regulation is necessary. As will be shown by the analysis that follows, and the fact that the current system has operated just fine for over two decades, the IRS has failed to demonstrate that the regulation is necessary.

### **The IRS Cannot Protect the Donor Information it Now Receives and Should Not be Trusted to Receive Additional Donor Information**

As the IRS knows very well, it has a bad track record when it comes to protecting confidential donor information. Donors and the entities to which they donate have suffered as a result.

Information on donors who contribute to tax-exempt organizations is contained on Schedule B which is filed with the IRS Form 990. The Schedule B reporting threshold under the general rule is \$5,000. For 501(c)(3) organizations that meet the 33 1/3% support test only those contributions over \$5,000 which are 2% or more of revenue are reported.<sup>2</sup>

Schedule B contains information on the donor's name and address, and the amount and type of the contribution. This information is protected by law from disclosure. Even though this information is protected from disclosure, the IRS has had problems keeping this information confidential.

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<sup>2</sup> Instructions for IRS Form 990, Schedule B, p. 5. Available online at: <https://www.irs.gov/pub/irs-pdf/f990ezb.pdf> (accessed November 30, 2015).



Several organizations have had their Schedule B information leaked. My organization was a victim of an unauthorized disclosure of Schedule B information in 2006.

The IRS recently settled a case brought by the National Organization for Marriage over the illegal release of information from its Schedule B. The IRS paid \$50,000 in damages for the release.<sup>3</sup>

The reports which will be filed if the NPRM is promulgated as a final rule will require the disclosure of the taxpayer identification number of the donor. This means that these new reports will contain more information than that which is reported on Schedule B. As a result, more donor information than is currently at risk for disclosure will be risked in the future.

### **Alleged Problems in Donors Receiving the CWA are Overblown**

Under IRC § 170(f)(8)(D) a deduction cannot be taken for \$250 or more unless the donor has a contemporaneous written acknowledgement (CWA) from the donee organization.

The NPRM claims, without citation to any supporting evidence, that some donors who are being audited have claimed that their failure to produce a CWA could be cured if the donee organization were to file an amended IRS Form 990.<sup>4</sup>

The NPRM further states, "the IRS has consistently maintained that section 170(f)(8)(D) exception is not available unless and until the Treasury Department and the IRS issue final regulations prescribing the method by which donee reporting may be accomplished. Moreover, the Treasury Department and the IRS have concluded that the Form 990 is unsuitable for donee reporting."<sup>5</sup>

This begs the question, unanswered by the NPRM, how many donors who make donations large enough to trigger the filing of a Schedule B by the donee organization do not receive a CWA from the donee organization?

Since tax exempt organizations require donations in order to perform their program activities, they typically are very responsive to the documentation needs of donors. It is very unlikely that a donor who asked for a CWA would not be given one.

Since the IRS is using this line of reasoning as one basis for its new done reporting regime, it should at a minimum supplement the record with information showing how

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<sup>3</sup> Mackenzie Weinger, *IRS pays \$50K in confidentiality suit*, POLITICO, June 24, 2014. Available online at: <http://www.politico.com/story/2014/06/irs-nom-lawsuit-108266> (accessed December 8, 2015).

<sup>4</sup> Substantiation Requirements for Certain Contributions, *supra*, at 55,803.

<sup>5</sup> *Id.*

often the lack of a CWA is a problem, and how many times deductions were disallowed due to the failure of a donor to receive a CWA in these types of situations.

Also left unanswered by the IRS is the issue that if for the sake of argument a donee organization couldn't or didn't provide a CWA, why would they be more likely to file the additional report with the IRS and send a copy to the donor?

### **Conclusion**

Given that the IRS lacks the ability to adequately protect taxpayer's private information, no regulations should be promulgated which require or encourage the sending of more private taxpayer information to the IRS.

The IRS is wasting taxpayers' hard-earned money by considering this issue. The regulation is clearly not needed, will be used little if at all, and poses numerous privacy problems. Based on the foregoing, the NPRM should be immediately withdrawn.

Sincerely,

A handwritten signature in black ink, appearing to read "Richard Manning", with a long horizontal flourish extending to the right.

Richard Manning  
President