

# Tax-Exempt Organization Information Returns—Requirement to Provide Copies to the Public and Increases in Certain Penalties

## Notice 96-48

This notice summarizes certain aspects of Taxpayer Bill of Rights 2 related to (1) inspection requirements for exempt organizations and (2) increases in certain penalties on exempt organizations. Taxpayer Bill of Rights 2, Pub. L. No. 104-168, 110 Stat. 1452, (TBOR2) was enacted July 30, 1996.

This notice also describes a provision of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755, enacted August 20, 1996, that increases certain penalties on exempt organizations for failing to satisfy inspection requirements.

This notice also solicits comments to be considered in drafting future guidance. See Notice 96-46, page 7, this Bulletin, for aspects of TBOR2 related to excise taxes on excess benefit transactions engaged in by certain tax-exempt organizations, and Notice 96-47, page 8, this Bulletin, for aspects of TBOR2 related to the express prohibition of private inurement for § 501(c)-(4) organizations.

### *I. Inspection Requirements Related to Annual Information Returns*

Section 1313(a) of TBOR2 amends § 6104(e) with regard to the manner in which an exempt organization, other than a private foundation, must allow inspection by the public of its annual information returns and its application for exemption. Section 6104(e), as amended, provides that if a request is made, in person or in writing, for a copy of certain documents, an organization must provide the copies to the requester without charge, other than a reasonable fee for any reproduction and mailing costs. The documents that may be requested under § 6104(e) are (1)

one or more of an exempt organization's three most recent information returns, and (2) the organization's application for recognition of exemption under § 501(a) (together with a copy of any supporting papers and any document issued by the Internal Revenue Service in response). If the request is made in person, the copies must be provided immediately. If the request is made in writing, the copies must be provided within 30 days.

Pursuant to § 6104(e)(3), this new requirement to provide copies without charge (other than a reasonable fee for any reproduction and mailing costs) does not apply if, in accordance with regulations promulgated by the Secretary, the organization has made the requested documents widely available. Additionally, the new § 6104(e) requirement does not apply if the Secretary determines, upon application by the organization, that the request is part of a harassment campaign and that compliance with the request is not in the public interest.

The requirement to provide copies without charge (other than a reasonable fee for any reproduction and mailing costs) does not take effect until 60 days after the Secretary of the Treasury first issues regulations under new § 6104(e)(3). Until that time, the prior law governs the manner in which an exempt organization, other than a private foundation, must allow inspection of its annual information returns by the public.

Until regulations are issued, prior law requires tax-exempt organizations to show a requester copies of the organization's three most recent annual information returns, and the organization's application for exemption (together with a copy of any supporting papers and any document issued by the Internal Revenue Service in response), at the organization's principal place of business (and at other offices in certain instances). Although prior law requires the organization to allow inspection of the returns and requires the organization to allow the requester to take notes while inspecting the returns, it does not require the organization to provide a copy that the requester can take from the organization's office.

## II. Increases in Certain Penalties

### *Failure to File Complete and Timely Annual Information Returns*

Section 1314(a) of TBOR2 amends § 6652(c)(1)(A) to increase the penal-

ties on exempt organizations for failure to file complete and timely annual information returns. Section 6652(c)(1)(A) provides that a failure to timely file an annual information return, failure to include any of the information required to be shown on the return, or failure to show the correct information, results in a penalty to be paid by the organization of \$20 per day (increased from \$10 per day) for each day during which the failure occurs. The maximum penalty under § 6652(c)(1)(A) with respect to any one return shall not exceed the lesser of \$10,000 (increased from \$5,000) or 5 percent of the gross receipts of the organization for the year.

### *Failure to Allow Inspection of Annual Returns and Exemption Applications*

Section 1704(s) of the Small Business Job Protection Act, Pub. L. No. 104-188, 110 Stat. 1755 (SBJPA), enacted August 20, 1996, amends § § 6652(c)(1)(C) and (D) to increase the penalties for failure to allow inspection of any return or application under § 6104(d) or § 6104(e). Under the amended § 6652(c)(1)(C), any person failing to allow inspection of annual returns must pay \$20 per day (increased from \$10 per day) for each day during which such failure continues, not to exceed \$10,000 (increased from \$5,000). Under the amended § 6652(c)(1)(D), any person failing to allow inspection of an organization's application for exemption must pay \$20 per day (increased from \$10 per day) for each day such failure continues.

### *Willful Failure to Allow Inspection*

Section 1313(b) of TBOR2 amends § 6685 to increase the penalty for a willful failure to allow inspection of any return or application for exemption under § § 6104(d) or (e) from \$1,000 to \$5,000. The amendment to § 6685 does not take effect until 60 days after the Secretary of the Treasury first issues regulations under new § 6104(e)(3).

### *Special Penalty for Large Tax-Exempt Organizations*

Section 1314(b) of TBOR2 creates a new special penalty for large organizations under § 6652(c)(1)(A). Under this provision, a failure to timely file an annual information return, failure to include any of the information required to be shown on the return, or failure to show the correct information by an exempt organization with gross receipts exceeding \$1,000,000 for any year re-

sults in a penalty to be paid by the organization of \$100 per day for each day during which the failure occurs. The maximum penalty under § 6652(c)(1) for an organization with gross receipts exceeding \$1,000,000 shall not exceed \$50,000.

The amended penalties in § 6652(c)(1) apply to returns for taxable years ending on or after July 30, 1996.

## III. Comments on Future Guidance Invited

The Service invites comments on the amendments to the Internal Revenue Code made by § § 1313 and 1314 of TBOR2 and § 1704(s) of SBJPA (inspection requirements and penalty increases). The Service will consider these comments in drafting future guidance. In particular, comments are requested concerning ways in which an organization can make the relevant documents widely available, and, therefore, qualify for exemption from the general requirements of § 6104(e)(3). The Service is interested in providing suitable or helpful alternatives for qualifying for the exemption. These could include, but are not limited to, electronic dissemination through the internet or other electronic databases, depositing copies at public libraries, or providing copies to third-party organizations that will make the documents available to the public for a reasonable fee. The Service is also interested in comments with respect to how these methods could satisfy requests made in person or in writing. The Service intends to expeditiously issue guidance on the § 6104(e)(3) exception, and therefore requests that written comments be submitted by November 12, 1996. Send submissions to: CC:DOM:CORP:R (Notice 96-48), 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 (Notice 96-48), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC. Alternatively, taxpayers may submit comments electronically via the internet by submitting comments directly to the IRS Internet site at [http://www.irs.ustreas.gov/prod/tax\\_regs/comments.html](http://www.irs.ustreas.gov/prod/tax_regs/comments.html).

The principal author of this notice is Phyllis Haney of the Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations). For further in-

formation regarding this notice contact Ms. Haney on (202) 622-4290 (not a toll-free call).

26 CFR 601.201: Rulings and determination letters.

(Also Part I, §§ 561, 562, 852; 1.561-1, 1.562-2, 1.852-1, 1.852-3)

## Rev. Proc. 96-47

### SECTION 1. PURPOSE

This revenue procedure describes conditions under which distributions made to shareholders of a regulated investment company (RIC) may vary and nevertheless be deductible as dividends under § 562 of the Internal Revenue Code.

### SECTION 2. BACKGROUND

.01 Section 852(b)(2)(D) allows a RIC a deduction for dividends paid (as defined in § 561 with certain modifications). Section 561 defines the deduction for dividends paid and applies the rules of § 562 to determine which dividends are eligible for the deduction for dividends paid. Section 562(c) provides that the amount of any distribution is not considered a dividend for purposes of computing the dividends paid deduction under § 561 unless the distribution is pro rata, does not prefer any share of stock of a class over any other share of stock of that same class, and does not prefer one class of stock over another class except to the extent that one class is entitled (without reference to waivers of their rights by shareholders) to the preference.

.02 Many RICs have issued groups of shares that represent interests in the same portfolio of securities but have different arrangements for shareholder services or the distribution of shares or both. Because the fees for these arrangements and services may vary, shareholders with equivalent investments in the same fund may receive different distributions. To permit open-end management investment companies to issue these groups of shares, the Securities and Exchange Commission (SEC) has adopted Rule 18f-3, 17 C.F.R. 270.18f-3, under the Investment Company Act of 1940, 15 U.S.C. 80a-1 to -64 (1940 Act).

### SECTION 3. SCOPE

This revenue procedure applies to a corporation that meets all of the following requirements:

.01 The corporation is described in § 851(a) and § 851(b)(1).

.02 Groups of shares of the corporation have different arrangements for shareholder services or the distribution of shares or both (Qualified Groups). Expenses related to these arrangements are allocated to the Qualified Group of shares on behalf of which the expenses were incurred. The requirements in this subsection are to be interpreted in a manner consistent with the SEC's interpretation of analogous requirements in the rules under the 1940 Act. Thus, to determine whether groups of shares have different arrangements for shareholder services or the distribution of shares, see Rule 18f-3(a)(1)(i), 17 CFR 270.18f-3(a)(1)(i), and *Exemptions for Open End Management Investment Companies Issuing Multiple Classes of Shares*, Investment Company Act Release No. 20,915, 60 Fed. Reg. 11,876 at 11,878 (Mar. 2, 1995).

.03 Advisory fees and other expenses related to the management of the corporation's assets (including custodial fees and tax-return preparation fees) are allocated to all shares by net asset value, regardless of Qualified Group.

.04 Expenses other than those described in section 3.02 and 3.03 (for example, transfer agency fees) that are incurred on behalf of one or more Qualified Groups in a different amount or at a different rate from the amount or rate at which the expense is incurred on behalf of one or more other Qualified Groups are allocated either by net asset value, regardless of Qualified Group, or on the basis of the amount incurred on behalf of each Qualified Group.

.05 The rights and obligations of the shareholders of each Qualified Group are fixed in the corporation's organizing documents. Except as otherwise provided in this revenue procedure, each Qualified Group is entitled to distributions calculated under those documents in the same manner and at the same time as all other Qualified Groups. For purposes of this calculation, expenses are allocated under those documents to each Qualified Group at the same time as to all other Qualified Groups.

.06 Each Qualified Group separately meets the requirements of § 67(c)(2)(B) (defining the required characteristics of shares of a publicly offered RIC).

### SECTION 4. PROCEDURE

If variations in distributions to shareholders of different Qualified Groups

exist solely as a result of the allocation of expenses in accordance with the applicable provisions of section 3 of this revenue procedure, those variations do not prevent the distributions from being dividends under § 562.

### SECTION 5. EFFECTIVE DATE

This revenue procedure is effective September 6, 1996.

### DRAFTING INFORMATION

The principal author of this revenue procedure is Arnold Golub of the Office of Assistant Chief Counsel (Financial Institutions and Products). For further information regarding this revenue procedure, contact Mr. Golub at (202) 622-3950 (not a toll-free call).

26 CFR 601.602: Tax forms and instructions.

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