

Part I. Rulings and Decisions Under the Internal Revenue Code of 1986

Section 6104.—Publicity of Information Required From Certain Exempt Organizations and Certain Trusts

26 CFR 301.6104(d)–3: Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

T.D. 8818

**DEPARTMENT OF THE TREASURY
Internal Revenue Service
26 CFR Part 301 and 602**

Public Disclosure of Material Relating to Tax-Exempt Organizations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations.

SUMMARY: This document contains final regulations relating to the public disclosure requirements of section 6104(d) of the Internal Revenue Code (Code), as amended by the Tax and Trade Relief Extension Act of 1998. These final regulations apply only to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt under section 501(a)) other than private foundations. These final regulations provide guidance for tax-exempt organizations (other than private foundations) required to make their applications for tax exemption and annual information returns available for public inspection. In particular, these regulations provide guidance for tax-exempt organizations required to comply with requests made in person or in writing from individuals who seek a copy of those documents. These regulations describe how a tax-exempt organization can make those documents widely available and, therefore, not be required to provide copies in response to individual requests. These regulations also address the standards that apply in determining whether a tax-exempt organization is the subject of a harassment campaign and provide guidance on the applicable procedures for obtaining relief from the requirement that copies of documents be provided in response to requests.

DATES: These regulations are effective June 8, 1999.

FOR FURTHER INFORMATION CONTACT: Michael B. Blumenfeld, (202) 622-6070 (not toll-free number).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in these final regulations have been reviewed and approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 U.S.C. 3507) under control number 1545-1560. Responses to these collections of information are mandatory.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection of information displays a valid control number.

The estimated annual burden per respondent/recordkeeper varies from 0 hours to 55 hours, depending on individual circumstances with an estimated average of 30 minutes.

Comments on the accuracy of this burden estimate and suggestions for reducing the burden should be sent to the **Internal Revenue Service**, Attn: IRS Reports Clearance Officer, OP:FS:FP, Washington, DC 20224, and to the **Office of Management and Budget**, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503.

Books or records relating to this collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by 26 U.S.C. 6103.

Background

This document contains amendments to the Procedure and Administration Regulations (26 CFR part 301) relating to the section 6104(d) public disclosure requirements applicable to tax-exempt organizations (organizations described in sections 501(c) or (d) and exempt from taxation under section 501(a)). Section 6104(d),

as amended by section 14(b) of the Tax and Trade Relief Extension Act of 1998 (Division J of H.R. 4328, the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999) (Public Law 105–277, 112 Stat. 2681) (Tax and Trade Relief Extension Act of 1998), will apply to requests made to all tax-exempt organizations (other than private foundations) after June 8, 1999. Until such date, all tax-exempt organizations continue to be subject to the requirements of section 6104(e) as currently in effect, without regard to the Tax and Trade Relief Extension Act of 1998.

Although the Tax and Trade Relief Extension Act of 1998 extended fully to private foundations the public disclosure requirements that apply to other tax-exempt organizations, those requirements do not go into effect with respect to private foundations until the 60th day after the Secretary of the Treasury issues final regulations under section 6104(d) that apply to private foundations. In the meantime, private foundations continue to be subject to the public disclosure requirements under sections 6104(d) and (e) of the Internal Revenue Code, as in effect prior to the Tax and Trade Relief Extension Act of 1998.

Description of Current Law Section 6104(e)

Section 10702 of the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) added subsection (e) to section 6104. Section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to allow public inspection of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to allow public inspection at the organization's principal office (and certain regional or district offices) of its three most recent annual information returns. (Section 6104(e) does not apply to private foundation annual information returns, which are subject to public disclosure under section 6104(d), as in effect prior to the Tax and Trade Relief Extension Act of 1998.) Under section 6104(e), each annual information return must be

made available for a 3-year period beginning on the date the return is required to be filed or is actually filed, whichever is later. In Notice 88-120 (1988-2 C.B. 454), the IRS provided tax-exempt organizations with guidance for complying with the public inspection requirements.

The Taxpayer Bill of Rights 2 (TBOR2), enacted on July 30, 1996, amended section 6104(e) by adding additional public disclosure requirements. As amended, section 6104(e) requires each tax-exempt organization, including one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's application for recognition of tax exemption. Section 6104(e) also requires each tax-exempt organization, other than one that is a private foundation, to comply with requests, made either in person or in writing, for copies of the organization's three most recent annual information returns. The organization must fulfill these requests without charge, other than a reasonable fee for reproduction and postage. If the request for copies is made in person, the organization generally must provide the requested copies immediately. If the request for copies is made in writing, the organization must provide the copies within 30 days. Section 6104(e) also provides that an organization is relieved of its obligation to provide copies upon request if, in accordance with regulations promulgated by the Secretary of the Treasury, (1) the organization has made the requested documents widely available, or (2) the Secretary of the Treasury determines, upon application by the organization, that the organization is subject to a harassment campaign such that a waiver of the obligation to provide copies would be in the public interest.

Issuance of Proposed Regulations under Section 6104(e)

In Notice 96-48 (1996-2 C.B. 214), the IRS invited comments on the changes made by TBOR2. Twenty-two comments were received and considered in the drafting of a notice of proposed rulemaking (REG-246250-96, 1997-2 C.B. 627), published in the **Federal Register** (62 F.R. 50533) on September 26, 1997. The IRS received twenty written comments on the proposed regulations and held a public hearing on February 4, 1998. After con-

sideration of all the written comments regarding the proposed regulations, and the amendments made by the Tax and Trade Relief Extension Act of 1998, described below, those regulations are adopted as revised by this Treasury decision.

Amendments Made by the Tax and Trade Relief Extension Act of 1998

The Tax and Trade Relief Extension Act of 1998, which was enacted on October 21, 1998, amended section 6104(e) of the Internal Revenue Code to subject private foundations to the same rules regarding public disclosure of annual information returns that apply to other tax-exempt organizations. In addition, the Tax and Trade Relief Extension Act of 1998 repealed existing section 6104(d), and redesignated section 6104(e), as amended, as new section 6104(d). (Unless otherwise noted, all references in these final regulations to section 6104(d) are to section 6104(d) as amended by the Tax and Trade Relief Extension Act of 1998.)

The Tax and Trade Relief Extension Act of 1998 amendments apply to requests made after the later of December 31, 1998, or the 60th day after the Secretary of the Treasury issues regulations referred to in section 6104(d)(4) (relating to when documents are made widely available and when a particular request is considered part of a harassment campaign). This Treasury decision adopts final regulations under section 6104(d)(4) that are applicable to tax-exempt organizations other than private foundations. Accordingly, amendments to section 6104(d) will become applicable with respect to requests made to tax-exempt organizations other than private foundations after June 8, 1999.

Future Regulations Will Apply to Private Foundations

The IRS and the Treasury Department intend to issue shortly a notice of proposed rulemaking relating to the public disclosure requirements of section 6104(d) as those requirements apply to private foundations. Until 60 days after final regulations are issued, private foundations continue to be subject to sections 6104(d) and (e), as in effect prior to the Tax and Trade Relief Extension Act of 1998. For that reason, existing

§301.6104(d)-1, relating to public inspection of private foundation annual returns, is not affected by this Treasury decision.

Explanation of Provisions

Overview

The final regulations provide guidance concerning the application for tax exemption and annual information returns a tax-exempt organization, other than a private foundation, must make available for public inspection and must supply in response to requests for copies. The final regulations also provide guidance on (1) the place and time the organization must make these documents available for public inspection, (2) conditions the organization may place on requests for copies of the documents, and (3) the amount, form and time of payment of any fees the organization may charge. The final regulations also prescribe how an organization can make its application for tax exemption and annual information returns widely available. Finally, the final regulations provide guidance on the standards that apply in determining whether an organization is the subject of a harassment campaign and on the applicable procedures for obtaining relief from the general requirement that copies of documents be provided in response to requests.

Application for Tax Exemption

A tax-exempt organization, other than one that is a private foundation, must make its application for tax exemption available pursuant to these final regulations. An application for tax exemption includes the application form (such as Form 1023 or Form 1024) and any supporting documents filed by, or on behalf of, the organization in connection with its application. It also includes any letter or document issued by the IRS in connection with the application. Consistent with the guidance provided in Notice 88-120, if an organization filed its application before July 15, 1987, the final regulations provide that the organization is required to make available a copy of its application only if it had a copy of the application on July 15, 1987.

Annual Information Returns

A tax-exempt organization, other than one that is a private foundation, must

make its three most recent annual information returns available pursuant to these final regulations. Generally, an annual information return includes Forms 990, 990-EZ, 990-BL, and Form 1065. It also includes, generally, all schedules and attachments filed with the IRS. An organization is not required, however, to disclose the parts of the return that identify names and addresses of contributors to the organization, nor is it required to disclose Form 990-T.

A few commentators asked that the final regulations exempt certain items reported on an application for tax exemption or an annual information return from disclosure. For example, one commentator observed that only an organization described in section 501(c)(3) is required by statute (section 6033) to report certain compensation information. By contrast, it is the regulations under section 6033 that require tax-exempt organizations described in other parts of section 501(c) or section 501(d) to report certain compensation information. Accordingly, the commentator asked that the final regulations require public disclosure of the compensation section of Form 990 only when it is a statutory requirement, as opposed to a regulatory requirement, to report such information. Because section 6104(d) requires, except for specific exceptions, disclosure of all the information reported on an application or return, the IRS and the Treasury Department decided that requiring public disclosure of compensation information required to be reported on an annual information return either by statute or regulation is consistent with section 6104(d).

One commentator requested that final regulations require an organization that has not been determined by the IRS to be exempt from taxation under section 501(a) to make its application for tax exemption available for public inspection and to provide copies upon request. Section 301.6104(e)-1(b)(3) of the proposed regulations provided that an organization is not required to disclose its application for tax exemption until the IRS determines it is exempt from taxation. Section 6104(d)(1) requires an organization to disclose its application for tax exemption only where it is exempt under section 501(a). Thus, the statute does not require an organization to disclose its application

for tax exemption while the application is pending or in a case where the IRS issues an adverse determination. Accordingly, the IRS and the Treasury Department continue to believe that the rule of the proposed regulation is consistent with the statute and have decided not to change this provision.

One commentator proposed that a special rule be included in the final regulations so that a religious or apostolic organization described in section 501(d) would not be required to publicly disclose a Schedule K-1 of Form 1065 because it contains taxpayer information with respect to the distributees (i.e., the ratable portions of the net income and expenses of the individual members of the organization). After the submission of this comment, the Internal Revenue Service Restructuring and Reform Act of 1998, Public Law 105-206 (112 Stat. 685) was enacted. Section 6019 of this Act amended Code sections 6104(b) and 6104(e) to provide specifically that organizations described in section 501(d) are not required to publicly disclose a Schedule K-1 filed by the organization. Consistent with this statutory modification of section 6104, the final regulations eliminate the requirement that a religious or apostolic organization described in section 501(d) disclose a Schedule K-1.

Place and Time Documents Must Be Available for Public Inspection

Section 6104(d) requires a tax-exempt organization to make its documents available for public inspection, and provide copies upon request, at its principal office and at certain regional or district offices. Under Notice 88-120, certain sites where services are provided (such as day care or health care) are not treated as regional or district offices for purposes of the public inspection requirements, provided that such sites do “not serve as offices of management staff (other than managers involved solely in managing the specific service of that service provider office).” The IRS and the Treasury Department recognize that many tax-exempt organizations maintain sites where their employees or volunteers solely provide services that further exempt purposes, including services provided directly to the public, but do not maintain administrative or management staff at such sites necessary

to respond to public disclosure requests. Accordingly, the proposed regulations expanded the “service provider exception” of Notice 88-120 slightly. Under the proposed regulations, sites where the only services provided further exempt purposes (such as day care, health care or scientific or medical research) were excluded from the definition of a regional or district office. Thus, under the proposed regulations, a research organization that maintains a laboratory used solely by individuals conducting scientific research on behalf of the organization would not have to respond to public disclosure requests made at the laboratory even though the researchers are not providing direct services to the public. However, a research organization would have a public disclosure obligation at a laboratory if the organization also uses space at that location as offices for some of its management staff (other than those involved solely in managing the exempt function activities at the laboratory).

Several comments were received on this topic. One commentator expressed the view that the definition of regional or district office in the proposed regulations was reasonably well balanced. Other commentators, however, expressed concern that this definition would reduce the number of sites from which the documents could be obtained. One of these commentators expressed the view that exempting organizations from complying with public disclosure requests made at sites where employees engage solely in providing exempt services would unnecessarily complicate the determination whether an organization is required to respond to public disclosure requests at a particular site. This commentator suggested that the final regulations treat any site with 3 or more employees as a regional or district office where an organization must respond to requests for public inspection or copies. Another commentator expressed the view that the exception for sites dedicated solely to providing exempt services was reasonable, but suggested that the final regulations clarify what activities would constitute management activities that would require an organization to respond to public disclosure requests at the site.

The IRS and the Treasury Department believe that the “regional and district of-

“office” rule of section 6104(d) was intended to enhance the availability of documents in the case of an organization that maintains management staff at one or more offices in addition to its principal office. However, Congress explicitly recognized that the burden to an organization of complying with requests for public inspection or copies made at small regional or district offices (those with fewer than 3 employees) would outweigh the public benefit of increased availability of the documents. This rationale applies equally as well to certain sites of a tax-exempt organization where its employees and volunteers engage solely in providing services that further exempt purposes and which do not serve as an office for management staff. The IRS and the Treasury Department believe the rule expressed in the proposed regulations is consistent with the intent of the statute and prior IRS guidance, particularly in light of the new provisions that allow copies to be obtained by mail. Therefore, the rule of the proposed regulations is followed in the final regulations.

The proposed regulations prescribed how an organization that does not maintain a permanent office or whose office has very limited hours during certain times of the year can comply with the public inspection requirements. The proposed regulations also provided rules concerning the conditions the organization may impose on public inspections that are consistent with Notice 88-120. In this regard, the final regulations follow the proposed regulations.

The proposed regulations permitted a principal, regional, or district office of an organization to use an agent to process requests for copies. One commentator asked that the final regulations also allow a tax-exempt organization to retain a local agent to satisfy the organization’s public inspection obligation. After careful consideration of this comment, the IRS and the Treasury Department have concluded that, to avoid potential inconvenience to members of the public, it is important that tax-exempt organizations make their applications and returns available for inspection at their offices. Therefore, the IRS and the Treasury Department did not adopt this comment.

Another commentator asked that the final regulations clarify that an organiza-

tion may apply the same security measures to individuals that request inspection or copies that it applies to the public in general. The IRS and the Treasury Department have determined that the proposed regulations would not preclude a tax-exempt organization from implementing its normal security measures. Thus, no change is reflected in the final regulations.

Requirement to Furnish Copy to a Requester

The proposed regulations generally required that a tax-exempt organization accept requests for copies made in person at the same place and time that the specified documents must be available for public inspection. In general, the proposed regulations required that the copies be provided on the day of the request. However, the proposed regulations provided that, in unusual circumstances, an organization may provide the requested copies on the next business day. Some commentators expressed concern that a one-day delay may not be sufficient. In response to these comments, the final regulations provide that an organization must comply with requests for copies made in person by providing copies no later than the next business day following the day the unusual circumstances cease to exist. However, in no event may the period of delay exceed five business days. In response to another comment, the final regulations clarify that unusual circumstances include times when the organization’s managerial staff capable of fulfilling the request attends an off-site meeting or convention.

When a request for copies is made in writing, the proposed regulations required that a tax-exempt organization mail the copies within 30 days from the date it receives the request. However, the proposed regulations provided that, if an organization requires advance payment of a reasonable fee for copying and postage, it may provide the copies within 30 days from the date it receives payment, rather than from the date of the initial request. In addition, the proposed regulations provided guidance as to what constitutes a request, when a request is considered received, and when copies are deemed provided. The final regulations follow the rules in the proposed regulations.

The proposed regulations provided that individuals may request a specific part of

an application for tax exemption or annual information return. One commentator expressed concern that requiring a tax-exempt organization to provide a copy of only part of a document may create a significant burden on the tax-exempt organization because the organization would have to identify the particular information requested. In order to minimize this potential burden, without requiring the requester to pay for a copy of parts of a document that the requester has no interest in obtaining, the final regulations permit a requester to request a copy of any specifically identified part or schedule of an application or a return (except for information which is not subject to public disclosure under section 6104(d)(3)). For example, a requester may request a copy of Part V (List of Officers, Directors, Trustees and Key Employees) of Form 990.

Reasonable Fee for Providing Copies

Section 6104(d)(1)(B) permits an organization to charge a reasonable fee for the cost of copying and mailing documents in response to requests for copies. The proposed regulations stated that a fee was reasonable only if it did not exceed the fees the IRS charges for copies of tax-exempt organization tax returns and related documents. This fee is currently \$1.00 for the first page and \$.15 for each subsequent page. In addition, the proposed regulations allowed a charge for actual postage costs. Some commentators requested that the reasonable fee be greater than the amount stated in the proposed regulations. One commentator suggested that the final regulations allow organizations to consider personnel costs and not limit the fee to the IRS charge. The IRS and the Treasury Department are concerned that permitting organizations to charge a higher fee could hinder the public’s ability to receive a copy of an application or return. Consequently, it was decided that, on balance, the reasonable fee set forth in the proposed regulations is appropriate. Thus, the final regulations adopt the reasonable fee provision of the proposed regulations.

The proposed regulations permitted an organization to collect payment in advance of providing the requested copies. Under the proposed regulations, if an or-

ganization receives a written request for copies with no payment enclosed, and the organization requires payment in advance, the organization must request payment within 7 days from the date it receives the request. The proposed regulations required an organization to accept payment made by cash or money order and, when the request is made in writing, also accept payment made by personal check. An organization is permitted to accept other forms of payment. One commentator asked for the elimination of the requirement to accept a personal check because an organization could be liable for bank charges if there are insufficient funds to cover the personal check. The final regulations generally follow the proposed regulations, except that the final regulations provide that a tax-exempt organization that accepts payment by credit card is not required to accept personal checks.

Consistent with the proposed regulations, the final regulations protect requesters from unexpected fees where a tax-exempt organization does not require prepayment and where a requester does not enclose prepayment with a request, by requiring that an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage is in excess of \$20.

Local and Subordinate Organizations

Some commentators stated that the proposed regulations were overly burdensome with respect to local or subordinate organizations recognized as tax-exempt under a group exemption letter or that file a group return pursuant to §1.6033-2(d) and Rev. Proc. 80-27 (1980-1 C.B. 677). Specifically, they objected to the requirement that a local or subordinate organization make available copies of documents submitted by the central or parent organization to the IRS to include the local or subordinate organization in the group ruling, which often consists of lengthy lists or directories of names and addresses of affiliated organizations. In addition, one commentator expressed the view that the annual filing under Rev. Proc. 80-27 that a central or parent organization submits to the IRS to cover a local or subordinate organization under its group exemption letter does not constitute an application for tax exemption within the meaning of sec-

tion 6104(d)(2)(A). In response to these comments, the final regulations reduce the burden on local and subordinate organizations. Under the final regulations, a local or subordinate organization that receives a request made in person for inspection or for a copy of its application for tax exemption is required to acquire, and make available within a reasonable amount of time (normally not more than two weeks), the application for a group exemption letter (if any) filed by the central or parent organization. In addition, a local or subordinate organization must also make available any documents submitted by the central or parent organization to the IRS to include the subordinate organization in the group ruling. However, if the central or parent organization submits a list or directory of organizations covered by the group exemption letter, the local or subordinate organization need only provide the application for group exemption and those pages of the list or directory that refer to it. If a local or subordinate organization that does not file its own annual information return but is covered under a group return receives a request made in person for inspection or for a copy of its annual information return, the local or subordinate organization must make its group return available for inspection or provide copies within a reasonable amount of time (normally not more than two weeks). However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return.

If the requester seeks inspection of an application for tax exemption or an annual information return, the local or subordinate organization may mail a copy of the applicable document to the requester within a reasonable amount of time (normally not more than two weeks) in lieu of allowing an inspection. In such a case, the local or subordinate organization may not charge for the copies without the consent of the requester. A local or subordinate organization must comply with written requests for copies in accordance with the general rules for written requests discussed above.

The final regulations also clarify, consistent with Notice 88-120, the obligation

of the central or parent organization to comply, at its principal office, with requests for inspection or copies of documents relating to its local and subordinate organizations.

Making Applications and Information Returns Widely Available

The final regulations provide that a tax-exempt organization is not required to comply with requests for copies if the organization has made the requested documents widely available. The final regulations specify that an organization can make its application for tax exemption and/or its annual information returns widely available by posting the applicable document on the organization's World Wide Web page on the Internet or by having the applicable document posted on another organization's World Wide Web page as part of a database of similar materials, provided that the documents are posted in a format which meets the criteria set forth in the final regulations. An organization that makes its application for tax exemption and/or its annual information returns widely available must provide the individuals who request copies with the World Wide Web address where the documents are available.

The proposed regulations provided that an organization must post its documents on its World Wide Web page in a format that the IRS uses to post forms and publications. Unlike the proposed regulations, the final regulations do not enumerate one or more particular formats that must be used. Instead, the final regulations provide that the documents must be posted in a format that meets the following criteria. First, any individual with access to the Internet must be able to access, download, view and print the posted document in a format which exactly reproduces the image of the original document filed with the IRS, except for any information permitted to be withheld from public disclosure under section 6104(d). The final regulations require an exact reproduction because a format that does not exactly reproduce the image of the original document may raise questions about the accuracy or authenticity of the posted document. Second, the format must allow any individual with access to the Internet to access, download, view and print the posted document without payment of

a fee to either the tax-exempt organization or the entity maintaining the World Wide Web page and without special computer hardware or software required for that format, other than software that is readily available to members of the public free of charge.

The IRS and the Treasury Department understand that some of the formats that the IRS itself uses to post forms and publications on the IRS World Wide Web page may not satisfy the criteria specified in the final regulations. For example, some of these formats could require users to have access to special hardware or software that is not commonly used by the public to access, download, view and print documents. The final regulations provide a one-year transition rule for any tax-exempt organization that posted its documents on the Internet on or before April 9, 1999, in a manner consistent with the proposed regulations. Until June 8, 2000, such an organization will be treated as having made its documents "widely available" for purposes of the final regulations even if the format used does not currently satisfy all of the criteria set forth in the final regulations.

Some commentators suggested that the final regulations permit an organization to post its documents on the Internet in HTML format. As discussed above, the approach of the final regulations is to identify the criteria that an Internet format must satisfy. The IRS and the Treasury Department understand that, currently, when a heavily formatted document, such as a tax return, is posted in HTML format, it may not exactly reproduce the image of the original document.

One format that currently satisfies the criteria set forth in the final regulations is Portable Document Format (PDF). PDF is designed to reproduce the image of the original document exactly. In addition, documents in the PDF format can be viewed, navigated and printed by anyone using the freely available reader software. Of course, there may be other formats that currently satisfy the criteria set forth in the final regulations. The IRS and the Treasury Department refer to PDF only for the purpose of illustrating an acceptable format. No inference should be drawn that the IRS and the Treasury Department view PDF as an especially or singularly qualified format, that IRS and

the Treasury Department endorse or warrant a specific document format (or software used in connection with a format), or that use or failure to use a specific document format (or software used in connection with a format) will result in any preferential treatment from the IRS or the Treasury Department. The IRS and the Treasury Department note that a specific format that currently satisfies the "widely available" criteria set forth in the final regulations may be altered such that it no longer satisfies the "widely available" criteria in the future. Conversely, a specific format that does not currently satisfy the "widely available" criteria may be refined to satisfy the "widely available" criteria in the future.

As technology advances, the IRS and the Treasury Department anticipate that an increasing number of formats will meet the criteria set forth in the final regulations. Accordingly, the IRS and the Treasury Department do not intend to limit technologies that organizations may use to post their documents as long as the posted document is readily and freely accessible and appears, whether viewed on screen or in print, exactly as the original.

The IRS and the Treasury Department will continue to consider other additional methods by which applications and returns could be made widely available. Accordingly, the final regulations provide that the Commissioner may prescribe, by revenue procedure or other guidance, additional methods that an organization can use to make its application for tax exemption and/or its annual information returns widely available.

Harassment Campaigns

The proposed regulations provided guidance in determining whether a tax-exempt organization is the subject of a harassment campaign such that requiring compliance with requests for copies that are part of the harassment campaign would not be in the public interest. Generally, the proposed regulations provided that a harassment campaign exists where the relevant facts and circumstances show that the purpose of a group of requests was to disrupt the operations of the tax-exempt organization rather than to obtain information. The proposed regulations also contained examples that evaluated

whether particular situations constituted a harassment campaign and whether an organization had a reasonable basis for believing that a request was part of the harassment campaign. The final regulations retain this rule and the examples set forth in the proposed regulations.

The proposed regulations provided that an organization may suspend compliance with a request if the organization reasonably believes that the request is part of a harassment campaign. Commentators expressed concern that, if there is a delay in the issuance of an IRS determination as to whether the organization's belief is reasonable, the organization could be subject to significant penalties for the intervening period. The final regulations do not limit the penalties that may be retroactively imposed in cases where an organization is subsequently determined to have lacked a reasonable belief for suspending compliance. However, the IRS and the Treasury Department recognize that it may be appropriate to mitigate penalties in certain circumstances, especially where a delay in the issuance of a determination is completely outside the control of the organization requesting the determination. The IRS intends to publish a revenue procedure that will provide additional detail concerning harassment campaign determinations procedures and may prescribe rules concerning the imposition and mitigation of penalties.

The proposed regulations required an organization to file an application for a harassment campaign determination within 5 days after suspending compliance with a request that the organization believes to be part of such harassment campaign. One commentator asked that the time period for filing an application be expanded to either 10 or 15 business days. Another commentator observed, however, that such an extension of time would further delay compliance with requests for copies that an organization reasonably believes, but are determined not to be, part of a harassment campaign. The final regulations require an organization to file an application for a harassment determination within 10 business days after suspending compliance. The IRS and the Treasury Department believe that this time period strikes an appropriate balance by providing organizations sufficient time to prepare and file an application without

substantially delaying access to copies of the documents. In addition, the final regulations allow an organization, without submitting an application, to disregard requests for copies in excess of two per month or four per year made by a single individual or sent from a single address.

Some commentators asked for clarification concerning the period that an organization may continue not to comply with requests for copies that are part of a harassment campaign once it has received such a determination. The IRS and the Treasury Department believe that the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) should exercise reasonable discretion, based on the facts and circumstances of each case, in deciding the exact terms and conditions of a harassment campaign determination. Consequently, the final regulations do not change this provision of the proposed regulations.

Various comments concerned the examples of harassment campaigns and requests from members of the news media. In this regard, example 4 has been modified to better illustrate that a request made by a member of the news media is a strong factor tending to indicate that the request is not part of a harassment campaign.

Other Matters

The proposed regulations provided that an individual denied inspection, or a copy, of an application for tax exemption or an annual information return could seek assistance from the IRS by providing to the Director of the Exempt Organizations Division a statement that describes the request and the reason for the individual's belief that the denial was in violation of the legal requirements. The final regulations provide instead that such individuals should send their statements directly to the district director for the key district in which the principal office of the tax-exempt organization is located (or such other person as the Commissioner may designate). Finally, various comments raised questions regarding the availability of an administrative appeal of a harassment campaign determination and whether harassment campaign applications and determinations are publicly available. Whether an administrative ap-

peal is available and whether a harassment campaign determination is publicly available are matters beyond the scope of these regulations, but may be addressed in subsequent guidance.

Effective Date

The final regulations are effective June 8, 1999.

Special Analyses

It is hereby certified that the collections of information in these regulations will not have a significant economic impact on a substantial number of small entities. This certification is based on the fact that the average time required to maintain and disclose the information required under these regulations is estimated to be 30 minutes for each tax-exempt organization. This estimate is based on the assumption that, on average, a tax-exempt organization will receive one request per year to inspect or provide copies of its application for tax exemption and its annual information returns. Less than 0.001 percent of the tax-exempt organizations affected by these regulations will be subject to the reporting requirements contained in the regulations. It is estimated that annually, approximately 1,000 tax-exempt organizations will make their documents widely available by posting them on the Internet. In addition, it is estimated that annually, approximately 50 tax-exempt organizations will file an application for a determination that they are the subject of a harassment campaign such that a waiver of the obligation to provide copies of their applications for tax exemption and their annual information returns is in the public interest. The average time required to complete, assemble and file an application describing a harassment campaign is expected to be 5 hours. Because applications for a harassment campaign determination will be filed so infrequently, they will have no effect on the average time needed to comply with the requirements in these regulations. In addition, a tax-exempt organization is allowed in these regulations to charge a reasonable fee for providing copies to requesters. Therefore, it is estimated that on average it will cost tax-exempt organizations less than \$10 per year to comply with these regulations, which is not a sig-

nificant economic impact. Therefore, a Regulatory Flexibility Analysis under the Regulatory Flexibility Act (5 U.S.C. chapter 6) is not required. Pursuant to section 7805(f) of the Internal Revenue Code, the notice of proposed rulemaking preceding these regulations was submitted to Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these regulations is Michael B. Blumenfeld, Office of Associate Chief Counsel (Employee Benefits and Exempt Organizations), IRS. Other personnel from the IRS and the Treasury Department also participated in their development.

* * * * *

Adoption of Amendments to the Regulations

Accordingly, 26 CFR Parts 301 and 602 are amended as follows:

PART 301—PROCEDURE AND ADMINISTRATION

Paragraph 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 301.6104(d)-4 also issued under 26 U.S.C. 6104(e)(3);

Section 301.6104(d)-5 also issued under 26 U.S.C. 6104(e)(3); * * *

Par. 2. Sections 301.6104(d)-2 through 301.6104(d)-5 are added to read as follows:

§301.6104(d)-2 Table of contents.

This section lists captions contained in §§301.6104(d)-3 through 301.6104(d)-5.

§301.6104(d)-3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

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- (i) In general.
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- (5) Regional or district offices.
 - (i) In general.
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- (c) Special rules relating to public inspection.
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 - (d) Special rules relating to copies.
 - (1) Time and place for providing copies in response to requests made in person.
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 - (A) In general.
 - (B) Request for a copy of parts of document.
 - (C) Agents for providing copies.
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 - (i) In general.
 - (ii) Form of payment.
 - (A) Request made in person.
 - (B) Request made in writing.
 - (iii) Avoidance of unexpected fees.
 - (iv) Responding to inquiries of fees charged.
 - (e) Documents to be provided by regional and district offices.
 - (f) Documents to be provided by local and subordinate organizations.
 - (1) Applications for tax exemption.
 - (2) Annual information returns.
 - (3) Failure to comply.
 - (g) Failure to comply with public inspection or copying requirements.
 - (h) Effective date.

§301.6104(d)-4 Making applications and returns widely available.

- (a) In general.
- (b) Widely available.
 - (1) In general.
 - (2) Internet posting.
 - (i) In general.
 - (ii) Transition rule.

- (iii) Reliability and accuracy.
- (c) Discretion to prescribe other methods for making documents widely available.
- (d) Notice requirement.
- (e) Effective date.

§301.6104(d)-5 Tax-exempt organization subject to harassment campaign.

- (a) In general.
- (b) Harassment.
- (c) Special rule for multiple requests from a single individual or address.
- (d) Harassment determination procedure.
- (e) Effect of a harassment determination.
- (f) Examples.
- (g) Effective date.

§301.6104(d)-3 Public inspection and distribution of applications for tax exemption and annual information returns of tax-exempt organizations (other than private foundations).

(a) *In general.* Except as otherwise provided in this section, if a tax-exempt organization (as defined in paragraph (b)(1) of this section), other than a private foundation (as defined in paragraph (b)(2) of this section), filed an application for recognition of exemption under section 501, it shall make its application for tax exemption (as defined in paragraph (b)(3) of this section) available for public inspection without charge at its principal, regional and district offices during regular business hours. Except as otherwise provided in this section, a tax-exempt organization, other than a private foundation, shall make its annual information returns (as defined in paragraph (b)(4) of this section) available for public inspection without charge in the same offices during regular business hours. Each annual information return shall be made available for a period of three years beginning on the date the return is required to be filed (determined with regard to any extension of time for filing) or is actually filed, whichever is later. In addition, except as provided in §§301.6104(d)-4 and 301.6104(d)-5, an organization shall provide a copy without charge, other than a reasonable fee for reproduction and actual postage costs, of all or any part of any ap-

plication or return required to be made available for public inspection under this paragraph to any individual who makes a request for such copy in person or in writing. See paragraph (d)(3) of this section for rules relating to fees for copies.

(b) *Definitions.* For purposes of applying the provisions of section 6104(d), this section and §§301.6104(d)-4 and 301.6104(d)-5, the following definitions apply:

(1) *Tax-exempt organization.* The term tax-exempt organization means any organization that is described in section 501(c) or section 501(d) and is exempt from taxation under section 501(a).

(2) *Private foundation.* The term private foundation means a private foundation as defined in section 509(a).

(3) *Application for tax exemption—(i) In general.* Except as described in paragraph (b)(3)(iii) of this section, the term *application for tax exemption* includes any prescribed application form (such as Form 1023 or Form 1024), all documents and statements the Internal Revenue Service requires an applicant to file with the form, any statement or other supporting document submitted by an organization in support of its application, and any letter or other document issued by the Internal Revenue Service concerning the application (such as a favorable determination letter or a list of questions from the Internal Revenue Service about the application). For example, a legal brief submitted in support of an application, or a response to questions from the Internal Revenue Service during the application process, is part of an application for tax exemption.

(ii) *No prescribed application form.* If no form is prescribed for an organization's application for tax exemption, the application for tax exemption includes—

(A) The application letter and copy of the articles of incorporation, declaration of trust, or other similar instrument that sets forth the permitted powers or activities of the organization;

(B) The organization's bylaws or other code of regulations;

(C) The organization's latest financial statements showing assets, liabilities, receipts and disbursements;

(D) Statements describing the character of the organization, the purpose for which it was organized, and its actual activities;

(E) Statements showing the sources of the organization's income and receipts and their disposition; and

(F) Any other statements or documents the Internal Revenue Service required the organization to file with, or that the organization submitted in support of, the application letter.

(iii) *Exceptions.* The term *application for tax exemption* does not include—

(A) Any application for tax exemption filed by an organization that the Internal Revenue Service has not yet recognized, on the basis of the application, as exempt from taxation under section 501 for any taxable year;

(B) Any application for tax exemption filed before July 15, 1987, unless the organization filing the application had a copy of the application on July 15, 1987; or

(C) Any material, including the material listed in §301.6104(a)-1(i) and information that the Secretary would be required to withhold from public inspection, that is not available for public inspection under section 6104.

(iv) *Local or subordinate organizations.* For rules relating to applications for tax exemption of local or subordinate organizations, see paragraph (f)(1) of this section.

(4) *Annual information return*—(i) *In general.* Except as described in paragraph (b)(4)(ii) of this section, the term *annual information return* includes an exact copy of any return filed by a tax-exempt organization pursuant to section 6033. It also includes any amended return the organization files with the Internal Revenue Service after the date the original return is filed. The copy must include all information furnished to the Internal Revenue Service on Form 990, Return of Organization Exempt From Income Tax, or any version of Form 990 (such as Forms 990-EZ or 990-BL except Form 990-T) and Form 1065, as well as all schedules, attachments and supporting documents, except for the name and address of any contributor to the organization. For example, the annual information return includes Schedule A of Form 990 (containing supplementary information on section 501(c)(3) organizations), and those parts of the return that show compensation paid to specific persons (currently, Part V of Form 990 and Parts I and II of Schedule A of Form 990).

(ii) *Exceptions.* The term *annual information return* does not include Schedule A of Form 990-BL, Form 990-T, Exempt Organization Business Income Tax Return, Schedule K-1 of Form 1065 or Form 1120-POL, U.S. Income Tax Return For Certain Political Organizations, and the return of a private foundation. See §301.6104(d)-1 for requirements relating to public disclosure of private foundation annual returns.

(iii) *Returns more than 3 years old.* The term *annual information return* does not include any return after the expiration of 3 years from the date the return is required to be filed (including any extension of time that has been granted for filing such return) or is actually filed, whichever is later. If an organization files an amended return, however, the amended return must be made available for a period of 3 years beginning on the date it is filed with the Internal Revenue Service.

(iv) *Local or subordinate organizations.* For rules relating to annual information returns of local or subordinate organizations, see paragraph (f)(2) of this section.

(5) *Regional or district offices*—(i) *In general.* A regional or district office is any office of a tax-exempt organization, other than its principal office, that has paid employees, whether part-time or full-time, whose aggregate number of paid hours a week are normally at least 120.

(ii) *Site not considered a regional or district office.* A site is not considered a regional or district office, however, if—

(A) The only services provided at the site further exempt purposes (such as day care, health care or scientific or medical research); and

(B) The site does not serve as an office for management staff, other than managers who are involved solely in managing the exempt function activities at the site.

(c) *Special rules relating to public inspection*—(1) *Permissible conditions on public inspection.* A tax-exempt organization may have an employee present in the room during an inspection. The organization, however, must allow the individual conducting the inspection to take notes freely during the inspection. If the individual provides photocopying equipment at the place of inspection, the orga-

nization must allow the individual to photocopy the document at no charge.

(2) *Organizations that do not maintain permanent offices.* If a tax-exempt organization does not maintain a permanent office, the organization shall comply with the public inspection requirements of paragraph (a) of this section by making its application for tax exemption and its annual information returns, as applicable, available for inspection at a reasonable location of its choice. Such an organization shall permit public inspection within a reasonable amount of time after receiving a request for inspection (normally not more than 2 weeks) and at a reasonable time of day. At the organization's option, it may mail, within 2 weeks of receiving the request, a copy of its application for tax exemption and annual information returns to the requester in lieu of allowing an inspection. The organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. An organization that has a permanent office, but has no office hours or very limited hours during certain times of the year, shall make its documents available during those periods when office hours are limited or not available as though it were an organization without a permanent office.

(d) *Special rules relating to copies*—(1) *Time and place for providing copies in response to requests made in-person*—(i) *In general.* Except as provided in paragraph (d)(1)(iii) of this section, a tax-exempt organization shall provide copies of the documents it is required to provide under section 6104(d) in response to a request made in person at its principal, regional and district offices during regular business hours. Except as provided in paragraph (d)(1)(ii) of this section, an organization shall provide such copies to a requester on the day the request is made.

(ii) *Unusual circumstances.* In the case of an in-person request, where unusual circumstances exist such that fulfilling the request on the same business day places an unreasonable burden on the tax-exempt organization, the organization must provide the copies no later than the next business day following the day that the unusual circumstances cease to exist or the fifth business day after the date of the request, whichever occurs first. Unusual circumstances include, but are not limited

to, receipt of a volume of requests that exceeds the organization's daily capacity to make copies; requests received shortly before the end of regular business hours that require an extensive amount of copying; or requests received on a day when the organization's managerial staff capable of fulfilling the request is conducting special duties, such as student registration or attending an off-site meeting or convention, rather than its regular administrative duties.

(iii) *Agents for providing copies.* A principal, regional or district office of a tax-exempt organization subject to the requirements of this section may retain a local agent to process requests made in person for copies of its documents. A local agent must be located within reasonable proximity of the applicable office. A local agent that receives a request made in person for copies must provide the copies within the time limits and under the conditions that apply to the organization itself. For example, a local agent generally must provide a copy to a requester on the day the agent receives the request. When a principal, regional or district office of a tax-exempt organization using a local agent receives a request made in person for a copy, it must immediately provide the name, address and telephone number of the local agent to the requester. An organization that provides this information is not required to respond further to the requester. However, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization if the organization's local agent fails to provide the documents as required under section 6104(d).

(2) *Request for copies in writing—(i) In general.* A tax-exempt organization must honor a written request for a copy of documents (or the requested part) that the organization is required to provide under section 6104(d) if the request—

(A) Is addressed to, and delivered by mail, electronic mail, facsimile, or a private delivery service as defined in section 7502(f) to a principal, regional or district office of the organization; and

(B) Sets forth the address to which the copy of the documents should be sent.

(ii) *Time and manner of fulfilling written requests—(A) In general.* A tax-exempt organization receiving a written request for a copy shall mail the copy of the

requested documents (or the requested parts of documents) within 30 days from the date it receives the request. However, if a tax-exempt organization requires payment in advance, it is only required to provide the copies within 30 days from the date it receives payment. For rules relating to payment, see paragraph (d)(3) of this section. In the absence of evidence to the contrary, a request or payment that is mailed shall be deemed to be received by an organization 7 days after the date of the postmark. A request that is transmitted to the organization by electronic mail or facsimile shall be deemed received the day the request is transmitted successfully. If an organization requiring payment in advance receives a written request without payment or with an insufficient payment, the organization must, within 7 days from the date it receives the request, notify the requester of its prepayment policy and the amount due. A copy is deemed provided on the date of the postmark or private delivery mark (or if sent by certified or registered mail, the date of registration or the date of the postmark on the sender's receipt). If an individual making a request consents, a tax-exempt organization may provide a copy of the requested document exclusively by electronic mail. In such case, the material is provided on the date the organization successfully transmits the electronic mail.

(B) *Request for a copy of parts of document.* A tax-exempt organization must fulfill a request for a copy of the organization's entire application for tax exemption or annual information return or any specific part or schedule of its application or return. A request for a copy of less than the entire application or less than the entire return must specifically identify the requested part or schedule.

(C) *Agents for providing copies.* A tax-exempt organization subject to the requirements of this section may retain an agent to process written requests for copies of its documents. The agent shall provide the copies within the time limits and under the conditions that apply to the organization itself. For example, if the organization received the request first (e.g., before the agent), the deadline for providing a copy in response to a request shall be determined by reference to when the organization received the request, not

when the agent received the request. An organization that transfers a request for a copy to such an agent is not required to respond further to the request. If the organization's agent fails to provide the documents as required under section 6104(d), however, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 continue to apply to the tax-exempt organization.

(3) *Fees for copies—(i) In general.* A tax-exempt organization may charge a reasonable fee for providing copies. A fee is reasonable only if it is no more than the per-page copying charge stated in §601.702(f)(5)(iv)(B) of this chapter (fee charged by the Internal Revenue Service for providing copies to a requester), plus no more than the actual postage costs incurred by the organization to provide the copies. Before the organization provides the documents, it may require that the individual requesting copies of the documents pay the fee. If the organization has provided an individual making a request with notice of the fee, and the individual does not pay the fee within 30 days, or if the individual pays the fee by check and the check does not clear upon deposit, the organization may disregard the request.

(ii) *Form of payment—(A) Request made in person.* If a tax-exempt organization charges a fee for copying (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by cash and money order for requests made in person. The organization may accept other forms of payment, such as credit cards and personal checks.

(B) *Request made in writing.* If a tax-exempt organization charges a fee for copying and postage (as permitted under paragraph (d)(3)(i) of this section), it shall accept payment by certified check, money order, and either personal check or credit card for requests made in writing. The organization may accept other forms of payment.

(iii) *Avoidance of unexpected fees.* Where a tax-exempt organization does not require prepayment and a requester does not enclose payment with a request, an organization must receive consent from a requester before providing copies for which the fee charged for copying and postage exceeds \$20.

(iv) *Responding to inquiries of fees charged.* In order to facilitate a re-

requester's ability to receive copies promptly, a tax-exempt organization shall respond to any questions from potential requesters concerning its fees for copying and postage. For example, the organization shall inform the requester of its charge for copying and mailing its application for exemption and each annual information return, with and without attachments, so that a requester may include payment with the request for copies.

(e) *Documents to be provided by regional and district offices.* Except as otherwise provided, a regional or district office of a tax-exempt organization must satisfy the same rules as the principal office with respect to allowing public inspection and providing copies of its application for tax exemption and annual information returns. A regional or district office is not required, however, to make its annual information return available for inspection or to provide copies until 30 days after the date the return is required to be filed (including any extension of time that is granted for filing such return) or is actually filed, whichever is later.

(f) *Documents to be provided by local and subordinate organizations—(1) Applications for tax exemption.* Except as otherwise provided, a tax-exempt organization that did not file its own application for tax exemption (because it is a local or subordinate organization covered by a group exemption letter referred to in §1.508-1 of this chapter) must, upon request, make available for public inspection, or provide copies of, the application submitted to the Internal Revenue Service by the central or parent organization to obtain the group exemption letter and those documents which were submitted by the central or parent organization to include the local or subordinate organization in the group exemption letter. However, if the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, the local or subordinate organization is required to provide only the application for the group exemption ruling and the pages of the list or directory that specifically refer to it. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a reasonable amount of time (normally not

more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its application for tax exemption, it must fulfill the request in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of the application for group exemption and the material submitted by the central or parent organization to include a local or subordinate organization in the group ruling. If the central or parent organization submits to the Internal Revenue Service a list or directory of local or subordinate organizations covered by the group exemption letter, it must make such list or directory available for public inspection, but it is required to provide copies only of those pages of the list or directory that refer to particular local or subordinate organizations specified by the requester. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(2) *Annual information returns.* A local or subordinate organization that does not file its own annual information return (because it is affiliated with a central or parent organization that files a group return pursuant to §1.6033-2(d) of this chapter) must, upon request, make available for public inspection, or provide copies of, the group returns filed by the central or parent organization. However, if the group return includes separate schedules with respect to each local or subordinate organization included in the group return, the local or subordinate organization receiving the request may omit any schedules relating only to other organizations included in the group return. The local or subordinate organization shall permit public inspection, or comply with a request for copies made in person, within a

reasonable amount of time (normally not more than 2 weeks) after receiving a request made in person for public inspection or copies and at a reasonable time of day. In a case where the requester seeks inspection, the local or subordinate organization may mail a copy of the applicable documents to the requester within the same time period in lieu of allowing an inspection. In such a case, the organization may charge the requester for copying and actual postage costs only if the requester consents to the charge. If the local or subordinate organization receives a written request for a copy of its annual information return, it must fulfill the request by providing a copy of the group return in the time and manner specified in paragraph (d)(2) of this section. The requester has the option of requesting from the central or parent organization, at its principal office, inspection or copies of group returns filed by the central or parent organization. The central or parent organization must fulfill such requests in the time and manner specified in paragraphs (c) and (d) of this section.

(3) *Failure to comply.* If an organization fails to comply with the requirements specified in this paragraph, the penalty provisions of sections 6652(c)(1)(C), 6652(c)(1)(D), and 6685 apply.

(g) *Failure to comply with public inspection or copying requirements.* If a tax-exempt organization denies an individual's request for inspection or a copy of an application for tax exemption or an annual information return as required under this section, and the individual wants to alert the Internal Revenue Service to the possible need for enforcement action, the individual may provide a statement to the district director for the key district in which the applicable tax-exempt organization's principal office is located (or such other person as the Commissioner may designate) that describes the reason why the individual believes the denial was in violation of the requirements of section 6104(d).

(h) *Effective date.* This section is effective June 8, 1999.

§301.6104(d)-4 Making applications and returns widely available.

(a) *In general.* A tax-exempt organization is not required to comply with a re-

quest for a copy of its application for tax exemption or an annual information return pursuant to §301.6104(d)–3(a) if the organization has made the requested document widely available in accordance with paragraph (b) of this section. An organization that makes its application for tax exemption and/or annual information return widely available must nevertheless make the document available for public inspection as required under §301.6104(d)–3(a), as applicable.

(b) *Widely available*—(1) *In general.* A tax-exempt organization makes its application for tax exemption and/or an annual information return widely available if the organization complies with the requirements specified in paragraph (b)(2) of this section, and if the organization satisfies the requirements of paragraph (d) of this section.

(2) *Internet posting*—(i) *In general.* A tax-exempt organization can make its application for tax exemption and/or an annual information return widely available by posting the document on a World Wide Web page that the tax-exempt organization establishes and maintains or by having the document posted, as part of a database of similar documents of other tax-exempt organizations, on a World Wide Web page established and maintained by another entity. The document will be considered widely available only if—

(A) the World Wide Web page through which it is available clearly informs readers that the document is available and provides instructions for downloading it;

(B) the document is posted in a format that, when accessed, downloaded, viewed and printed in hard copy, exactly reproduces the image of the application for tax exemption or annual information return as it was originally filed with the Internal Revenue Service, except for any information permitted by statute to be withheld from public disclosure. (See section 6104(d)(3) and §301.6104(d)–3(b)(3) and (4)); and

(C) any individual with access to the Internet can access, download, view and print the document without special computer hardware or software required for that format (other than software that is readily available to members of the public without payment of any fee) and without

payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(ii) *Transition rule.* A tax-exempt organization that posted its application for tax exemption or its annual information returns on a World Wide Web page on or before April 9, 1999, in a manner consistent with regulation project REG–246250–96 (1997 C.B. 627) (see §601.601(d)(2) of this chapter) will be treated as satisfying the requirements of paragraphs (b)(2)(i)(B) & (C) of this section until June 8, 2000, provided that an individual can access, download, view and print the document without payment of a fee to the tax-exempt organization or to another entity maintaining the World Wide Web page.

(iii) *Reliability and accuracy.* In order for the document to be widely available through an Internet posting, the entity maintaining the World Wide Web page must have procedures for ensuring the reliability and accuracy of the document that it posts on the page and must take reasonable precautions to prevent alteration, destruction or accidental loss of the document when posted on its page. In the event that a posted document is altered, destroyed or lost, the entity must correct or replace the document.

(c) *Discretion to prescribe other methods for making documents widely available.* The Commissioner, from time to time, may prescribe additional methods, other than an Internet posting meeting the requirements of paragraph (b)(2) of this section, that a tax-exempt organization may use to make its documents widely available.

(d) *Notice requirement.* If a tax-exempt organization has made its application for tax exemption and/or an annual information return widely available it must notify any individual requesting a copy where the documents are available (including the address on the World Wide Web, if applicable). If the request is made in person, the organization shall provide such notice to the individual immediately. If the request is made in writing, the notice shall be provided within 7 days of receiving the request.

(e) *Effective date.* This section is effective June 8, 1999.

§301.6104(d)–5 Tax-exempt organization subject to harassment campaign.

(a) *In general.* If the district director for the key district in which the organization's principal office is located (or such other person as the Commissioner may designate) determines that the organization is the subject of a harassment campaign and compliance with the requests that are part of the harassment campaign would not be in the public interest, a tax-exempt organization is not required to fulfill a request for a copy (as otherwise required by §301.6104(d)–3(a)) that it reasonably believes is part of the campaign.

(b) *Harassment.* A group of requests for an organization's application for tax exemption or annual information returns is indicative of a harassment campaign if the requests are part of a single coordinated effort to disrupt the operations of a tax-exempt organization, rather than to collect information about the organization. Whether a group of requests constitutes such a harassment campaign depends on the relevant facts and circumstances. Facts and circumstances that indicate the organization is the subject of a harassment campaign include: a sudden increase in the number of requests; an extraordinary number of requests made through form letters or similarly worded correspondence; evidence of a purpose to deter significantly the organization's employees or volunteers from pursuing the organization's exempt purpose; requests that contain language hostile to the organization; direct evidence of bad faith by organizers of the purported harassment campaign; evidence that the organization has already provided the requested documents to a member of the purported harassing group; and a demonstration by the tax-exempt organization that it routinely provides copies of its documents upon request.

(c) *Special rule for multiple requests from a single individual or address.* A tax-exempt organization may disregard any request for copies of all or part of any document beyond the first two received within any 30-day-period or the first four received within any one-year-period from the same individual or the same address, regardless

of whether the district director for the applicable key district (or such other person as the Commissioner may designate) has determined that the organization is subject to a harassment campaign.

(d) *Harassment determination procedure.* A tax-exempt organization may apply for a determination that it is the subject of a harassment campaign and that compliance with requests that are part of the campaign would not be in the public interest by submitting a signed application to the district director for the key district where the organization's principal office is located (or such other person as the Commissioner may designate). The application shall consist of a written statement giving the organization's name, address, employer identification number, and the name, address and telephone number of the person to contact regarding the application. The application must describe in detail the facts and circumstances that the organization believes support a determination that the organization is subject to a harassment campaign. The organization may suspend compliance with respect to any request for a copy of its documents based on its reasonable belief that such request is part of a harassment campaign, provided that the organization files an application for a determination within 10 business days from the day the organization first suspends compliance with respect to a request that is part of the alleged campaign. In addition, the organization may suspend compliance with any request it reasonably believes to be part of the harassment campaign until it receives a response to its application for a harassment campaign determination.

(e) *Effect of a harassment determination.* If the appropriate district director (or such other person as the Commissioner may designate) determines that a tax-exempt organization is the subject of a harassment campaign and it is not in the public interest to comply with requests that are part of the campaign, such organization is not required to comply with any request for copies that it reasonably believes is part of the campaign. This determination may be subject to other terms and conditions set forth by the district director (or such other person as the Commissioner may designate). A person (as

defined in section 6652(c)(4)(C)) shall not be liable for any penalty under sections 6652(c)(1)(C), 6652(c)(1)(D) or 6685 for failing to timely provide a copy of documents in response to a request covered in a request for a harassment determination if the organization fulfills the request within 30 days of receiving a determination from the district director (or such other person as the Commissioner may designate) that the organization is not subject to a harassment campaign. Notwithstanding the preceding sentence, if the district director (or such other person as the Commissioner may designate) further determines that the organization did not have a reasonable basis for requesting a determination that it was subject to a harassment campaign or reasonable belief that a request was part of the campaign, the person (as defined in section 6652(c)(4)(C)) remains liable for any penalties that result from not providing the copies in a timely fashion.

(f) *Examples.* The provisions of this section are illustrated by the following examples:

Example 1. V, a tax-exempt organization, receives an average of 25 requests per month for copies of its three most recent information returns. In the last week of May, V is mentioned in a national news magazine story that discusses information contained in V's 1996 information return. From June 1 through June 30, 1997 V receives 200 requests for a copy of its documents. Other than the sudden increase in the number of requests for copies, there is no other evidence to suggest that the requests are part of an organized campaign to disrupt V's operations. Although fulfilling the requests will place a burden on V, the facts and circumstances do not show that V is subject to a harassment campaign. Therefore, V must respond timely to each of the 200 requests it receives in June.

Example 2. Y is a tax-exempt organization that receives an average of 10 requests a month for copies of its annual information returns. From March 1, 1997 to March 31, 1997, Y receives 25 requests for copies of its documents. Fifteen of the requests come from individuals Y knows to be active members of the board of organization X. In the past X has opposed most of the positions and policies that Y advocates. None of the requesters have asked for copies of documents from Y during the past year. Y has no other information about the requesters. Although the facts and circumstances show that some of the individuals making requests are hostile to Y, they do not show that the individuals have organized a campaign that will place enough of a burden on Y to disrupt its activities. Therefore, Y must respond to each of the 25 requests it receives in March.

Example 3. The facts are the same as in *Example 2*, except that during March 1997, Y receives

100 requests. In addition to the fifteen requests from members of organization X's board, 75 of the requests are similarly worded form letters. Y discovers that several individuals associated with X have urged the X's members and supporters, via the Internet, to submit as many requests for a copy of Y's annual information returns as they can. The message circulated on the Internet provides a form letter that can be used to make the request. Both the appeal via the Internet and the requests for copies received by Y contain hostile language. During the same year but before the 100 requests were received, Y provided copies of its annual information returns to the headquarters of X. The facts and circumstances show that the 75 form letter requests are coordinated for the purpose of disrupting Y's operations, and not to collect information that has already been provided to an association representing the requesters' interests. Thus, the fact and circumstances show that Y is the subject of an organized harassment campaign. To confirm that it may disregard the 90 requests that constitute the harassment campaign, Y must apply to the applicable district director (or such other person as the Commissioner may designate) for a determination. Y may disregard the 90 requests while the application is pending and after the determination is received. However, it must respond within the applicable time limits to the 10 requests it received in March that were not part of the harassment campaign.

Example 4. The facts are the same as in *Example 3*, except that Y receives 5 additional requests from 5 different representatives of the news media who in the past have published articles about Y. Some of these articles were hostile to Y. Normally, the Internal Revenue Service will not consider a tax-exempt organization to have a reasonable belief that a request from a member of the news media is part of a harassment campaign absent additional facts that demonstrate that the organization could reasonably believe the particular requests from the news media to be part of a harassment campaign. Thus, absent such additional facts, Y must respond within the applicable time limits to the 5 requests that it received from representatives of the news media.

(g) *Effective date.* This section is effective June 8, 1999.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Paragraph 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 4. In §602.101, paragraph (b) is amended by adding the following entries in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

* * * * *

(b) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
301.6104(d)-3	1545-1560
301.6104(d)-4	1545-1560
301.6104(d)-5	1545-1560
* * * * *	

Robert E. Wenzel,
*Deputy Commissioner of
Internal Revenue.*

Approved April 8, 1999.

Donald C. Lubick,
*Assistant Secretary of
the Treasury
(Tax Policy).*

(Filed by the Office of the Federal Register on April 8, 1999, 8:45 a.m., and published in the issue of the Federal Register for April 9, 1999, 64 F.R. 17279)

Electronic Funds Transfer— Temporary Waiver of Failure to Deposit Penalty for Certain Taxpayers

Notice 99-20

This notice provides guidance relating to News Release IR-1999-27, issued March 22, 1999, regarding application of the § 6656 failure to deposit penalty to taxpayers currently required to deposit by electronic funds transfer.

In IR-1999-27, the Internal Revenue Service announced that beginning July 1, 1999, any taxpayer that is currently required to deposit federal depository taxes by electronic funds transfer and that deposited more than \$200,000 in aggregate federal depository taxes during calendar year 1998 will be subject to the 10-percent § 6656 failure to deposit penalty if the taxpayer fails to make deposits by electronic funds transfer.

The Service will not, however, impose the § 6656 penalty on taxpayers that did not deposit more than \$200,000 in aggregate federal depository taxes during calendar year 1998 solely for the failure to deposit by electronic funds transfer. This waiver applies only to deposit obligations

incurred after June 30, 1999, and on or before December 31, 1999. This waiver in no way affects the waiver announced in Notice 99-12, 1999-9 I.R.B. 44, covering the period beginning January 1, 1999, and ending June 30, 1999.

BACKGROUND

Section 6302(h)(1)(A) provides that the Secretary will prescribe regulations necessary for the development and implementation of an electronic funds transfer system for the collection of depository taxes. Section 6302(h)(2) provides a phase-in schedule for the system.

Section 31.6302-1(h) of the Employment Taxes and Collection of Income Tax at Source Regulations prescribes rules for implementing an electronic funds transfer system for the collection of depository taxes. Under the regulation, taxpayers are required to deposit taxes by electronic funds transfer if the amount of their depository taxes in a specified earlier year exceeds the applicable threshold amount. The regulation provides that taxpayers with more than \$50,000 of federal employment tax deposits in calendar year 1995 must use electronic funds transfer to make deposits that are due on or after July 1, 1997, and relate to return periods beginning on or after January 1, 1997. Taxpayers with more than \$50,000 in employment tax deposits in calendar year 1996 must use electronic funds transfer to make deposits of taxes that are due on or after January 1, 1998, relating to return periods beginning on or after January 1, 1998. Taxpayers with more than \$50,000 in employment tax deposits in calendar year 1997 must use electronic funds transfer to make deposits of taxes that are due on or after January 1, 1999, relating to return periods beginning on or after January 1, 1999.

In addition, under the regulations, taxpayers with no employment tax deposits in either 1995 or 1996, but with more than \$50,000 in other federal tax deposits in either 1995 or 1996, must use electronic funds transfer to make deposits of taxes that are due on or after January 1, 1998, relating to return periods beginning on or after January 1, 1998. Taxpayers with no employment tax deposits in 1997, but with more than \$50,000 in other federal tax deposits in 1997, must use electronic funds transfer to make deposits of taxes

that are due on or after January 1, 1999, relating to return periods beginning on or after January 1, 1999.

Section 6656(a) provides that in the case of any failure by any person to deposit taxes on the prescribed date in an authorized government depository, a penalty applies unless the failure is due to reasonable cause and not due to willful neglect. Rev. Rul. 95-68, 1995-2 C.B. 272, provides that, absent reasonable cause, a taxpayer that is required to deposit federal taxes by electronic funds transfer is subject to the 10-percent failure to deposit penalty if the taxpayer deposits the taxes by means other than electronic funds transfer.

Notice 97-43, 1997-2 C.B. 294, provides that, in the case of taxpayers first required to deposit electronically on or after July 1, 1997, the Internal Revenue Service will not impose the 10-percent § 6656 penalty solely for the failure to make the deposit electronically, provided the deposit is otherwise made in a timely manner. This waiver applies only to deposit obligations incurred on or before December 31, 1997.

Section 931 of the Taxpayer Relief Act of 1997, Pub. L. No. 105-34, 111 Stat. 881, provides that no penalty shall be imposed under the Internal Revenue Code solely by reason of a failure by a person to use the electronic fund transfer system established under § 6302(h) of the Code if (1) the person is a member of a class of taxpayers first required to use such system on or after July 1, 1997, and (2) the failure occurs before July 1, 1998.

Notice 98-30, 1998-22 I.R.B. 9, provides that, in the case of taxpayers first required to deposit electronically on or after July 1, 1997, the Internal Revenue Service will not impose the 10-percent § 6656 penalty solely for the failure to make the deposit electronically provided the deposit is otherwise made in a timely manner. This waiver applies only to deposit obligations incurred on or before December 31, 1998.

Notice 99-12 provides that for taxpayers first required to make federal tax deposits electronically on or after July 1, 1997, the Service will not impose the 10-percent § 6656 penalty solely for the failure to make those deposits by electronic funds transfer provided the deposit is otherwise made in a timely manner. This

waiver applies only to deposit obligations incurred on or before June 30, 1999.

CONTINUED TEMPORARY WAIVER OF PENALTY FOR CERTAIN TAXPAYERS

For taxpayers that did not deposit more than \$200,000 in aggregate federal depository taxes during calendar year 1998, the Service will not impose the 10-percent § 6656 penalty solely for the failure to make deposits by electronic funds transfer. However, a taxpayer will remain liable for

the § 6656 penalty (absent reasonable cause) if the taxpayer fails to make a required deposit in a timely manner.

This waiver of the 10-percent § 6656 penalty applies only to deposit obligations incurred after June 30, 1999, and on or before December 31, 1999. The penalty waiver includes deposits made after December 31, 1999, provided the deposit obligation was incurred on or before December 31, 1999. The penalty waiver applies to any taxpayer that did not deposit more than \$200,000 in aggregate federal

depository taxes during calendar year 1998, including a taxpayer that was first required to deposit by electronic funds transfer in 1995 or 1996.

DRAFTING INFORMATION

The principal author of this notice is Vincent G. Surabian of the Office of Assistant Chief Counsel (Income Tax and Accounting). For further information regarding the penalty waiver, contact Mr. Surabian at (202) 622-4940 (not a toll-free call).