

Part III. Administrative, Procedural, and Miscellaneous

Public Inspection of Form 990-T, Exempt Organization Business Income Tax Return

Notice 2008-49

Section 1. Purpose

This notice modifies Notice 2007-45, 2007-22 I.R.B. 1320, and provides additional interim guidance with respect to the requirement under section 6104 of the Internal Revenue Code (the Code) that section 501(c)(3) organizations make available for public inspection Forms 990-T, Exempt Organization Business Income Tax Return. This notice reflects the amendments to sections 6104(b) and 6104(d) of the Code contained in section 3(g) of the Tax Technical Corrections Act of 2007, Pub. L. 110-172 (H.R. 4839) (the Act). The amendments are effective for Forms 990-T filed with the Internal Revenue Service (IRS) after August 17, 2006.

Section 2. Background

Prior to the enactment of the Pension Protection Act of 2006, Pub. L. 109-280 (the PPA), organizations exempt from Federal income tax under section 501(a) as described in section 501(c) of the Code were required to make available for public inspection and copying only the annual information returns filed by such organizations under section 6033 (Forms 990, 990-EZ, and 990-PF). The public inspection and

copying requirement with respect to these returns applies for the three-year period beginning on the last day prescribed for the filing of the returns.

The PPA amended section 6104(d)(1)(A)(ii) to require organizations to make available for public inspection and copying “any annual return filed under section 6011 which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated business income of charitable, etc., organizations) by such organization, but only if such organization is described in section 501(c)(3).” Thus, for section 501(c)(3) organizations (charities), the PPA extended the public inspection and copying requirement to Forms 990-T. The PPA was silent regarding whether the public inspection and copying requirement for Forms 990-T applied only for the three-year period beginning on the last day prescribed for the filing of the returns.

The IRS issued Notice 2007-45 on May 29, 2007, to provide interim guidance on the amended section 6104(d) pending the issuance of revised regulations. Notice 2007-45 provides that Forms 990-T filed with the IRS after August 17, 2006, must be made available for public inspection and copying by all charities, regardless of whether the charity is otherwise subject to the disclosure requirements of section 6104. Notice 2007-45 also provides that Forms 990-T must be made available for public inspection and copying in their entirety as filed with the IRS, including all schedules, attachments, and supporting documents.

On December 29, 2007, the President signed the Act. Section 3(g) of the Act revised the language of section 6104(d)(1)(A)(ii) to refer to: “any annual return which is filed under section 6011 by an organization described in section 501(c)(3) *and* which relates to any tax imposed by section 511 (relating to imposition of tax on unrelated

business income of charitable, etc., organizations).” (Emphasis added.) As revised, section 6104(d)(1)(A)(ii) makes clear that charities must make available for public inspection and copying only those returns and attachments to the return that are both filed under section 6011 and that relate to the imposition of tax on unrelated business income of charitable organizations. Section 3(g) of the Act amended section 6104(d)(2) to require organizations to make Forms 990-T available for public inspection only for the three-year period following the filing of the return. In addition, section 3(g) of the Act provided that the IRS, and not just the organization, is required to make Forms 990-T publicly available pursuant to section 6104(b), and that the IRS must treat Forms 990-T in the same manner as Forms 990. See 153 Cong. Rec. S16056-03 (Dec. 19, 2007).

Section 3. Modification of Interim Guidance

This notice modifies Notice 2007-45 to incorporate the new provisions from the Act for section 6104(d). Specifically, Section 3 of Notice 2007-45 is hereby modified as follows. The guidelines for making annual returns available for public inspection and copying set forth in Treas. Reg. § 301.6104(d)-1 generally apply except that the definition of “annual information return” in Treas. Reg. § 301.6104(d)-1(b)(4)(i) includes an exact copy of the Form 990-T filed by a charity with the IRS after August 17, 2006, including any schedules, attachments, and supporting documents that relate to the imposition of tax on the unrelated business income of the charitable organization. Schedules, attachments, and supporting documents filed with Form 990-T that do not relate to the imposition of unrelated business income tax are not required to be made available for public inspection and copying. Such schedules and attachments, for

example, include Form 5471, Information Return of U.S. Persons with Respect to Certain Foreign Corporations, Form 8886, Reportable Transaction Disclosure Statement, and Form 8913, Credit for Federal Telephone Excise Tax Paid (generally this form was used only for tax year 2006). Further guidance with respect to schedules or attachments that are not required to be made available when attached to Form 990-T will be provided in forms, instructions and other public announcements.

Further, under the amended section 6104(d)(2), charities must make Forms 990-T available for public inspection and copying only for the three-year period beginning on the last day prescribed for filing such return (determined with regard to any extension of time for filing).

The IRS is now required to make Forms 990-T of section 501(c)(3) organizations publicly available pursuant to section 6104(b). The procedures for requesting public inspection or copying of Forms 990-T are set forth in Announcement 2008-21.

All remaining provisions of Notice 2007-45 shall continue in full force and effect.

Section 4. Request for Comments

The IRS and the Treasury Department invite comments on implementation of the public inspection requirement of section 6104(d)(1)(A)(ii), including comments with respect to those schedules or attachments that should not be available for public inspection when attached to Form 990-T. Comments should refer to Notice 2008-49 and be submitted to:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2008-49)
Room 5203

P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: CC:PA:LPD:PR (Notice 2008-49)

Alternatively, taxpayers may submit comments electronically to notice.comments@irs.counsel.treas.gov. Please include "Notice 2008-49" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

Section 6. Drafting Information

The principal author of this notice is Melinda Williams of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Ms. Williams at 202-283-9467 (not a toll-free call).