

JOINT COMMITTEE ON TAXATION

PRESS RELEASE

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For Immediate Release:

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The staff of the Joint Committee on Taxation (the "Joint Committee") today submitted its three volume study on the disclosure provisions of the Internal Revenue Code (the "Code"), including provisions relating to tax-exempt organizations, to the House Committee on Ways and Means and the Senate Committee on Finance.

The Internal Revenue Service Reform and Restructuring Act of 1998 required the Joint Committee and the Treasury Department to conduct separate studies on the present-law provisions regarding disclosure of Federal tax returns and return information, including whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations. The studies are to include any legislative or administrative recommendations the Joint Committee or Treasury Department deem appropriate. The studies are due by January 22, 2000.

Attached are the separate Executive Summaries for the Joint Committee staff study regarding the general disclosure rules for Federal tax returns and return information and the rules for disclosure of information relating to tax-exempt organizations.

Volume I of the study contains the following: (1) an executive summary and a discussion of the methodology employed by the Joint Committee staff in conducting the study (Part One); (2) a description of the present-law rules relating to general disclosure provisions, including a discussion of sections 6103 and 6110 of the Internal Revenue Code (the "Code"), the Freedom of Information Act, and the Privacy Act (Part Two); (3) a discussion of the policies underlying confidentiality and disclosure of tax returns and return information (Part Three); (4) data and background information regarding the use of tax returns and return information obtained under present-law rules (Part Four); and (5) Joint Committee staff recommendations relating to general disclosure provisions (Part Five). Volume I also contains the following appendices: (1) a description of the legislative history of section 6103 (Appendix A); (2) a list of information provided by the taxpayer in an advanced pricing agreement request (Appendix B); (3) a list of Congressional resolutions authorizing disclosures to nontax writing committees (Appendix C); (4) a summary of public comments received by the Joint Committee staff relating to general disclosure provisions (Appendix D); and (5) a copy of the most recent annual disclosure report provided by the Joint Committee pursuant to section 6103(p)(3)(C) (Appendix E).

Volume II of the study (relating to tax-exempt organizations) contains the following: (1) an executive summary (Part I); (2) a discussion of the methodology employed by the Joint

Committee staff in conducting the study (Part II); (3) a description of present law and background information relating to disclosure rules applicable to tax-exempt organizations (Part III); (4) an economic analysis of the benefits of tax-exempt status (Part IV); (5) an analysis of issues relating to the disclosure of information regarding tax-exempt organizations (Part V); and (6) Joint Committee staff recommendations to increase disclosure of information relating to tax-exempt organizations (Part IV). Volume II also contains the following appendices: (1) a description of the legislative history of the disclosure provisions applicable to tax-exempt organizations under section 6104 of the Code (Appendix A); (2) copies of IRS Annual Returns for Tax Exempt Organizations (Appendix B); and (3) a summary of public comments received by the Joint Committee staff relating to disclosure provisions regarding tax-exempt organizations (Appendix C).

Volume III contains reproductions of the public comments received by the Joint Committee staff in connection with the study and reproductions of two reports prepared for the study by the General Accounting Office at the request of the Joint Committee staff.

Volumes I and II of the Joint Committee staff's study are available now at the Joint Committee on Taxation website on the Internet at:

<http://www.house.gov/jct>

All three volumes of the Joint Committee's study also are expected to be available for purchase next week from the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402 (telephone orders: 202-512-1808).

SUMMARY OF JOINT COMMITTEE ON TAXATION STAFF STUDY OF GENERAL DISCLOSURE PROVISIONS

A. Introduction

This study was performed pursuant to section 3802 of the Internal Revenue Service Restructuring and Reform Act of 1998 (the “IRS Reform Act”), which requires the Joint Committee on Taxation (the “Joint Committee”) and the Department of the Treasury to conduct separate studies of the scope and use of provisions regarding taxpayer confidentiality and to report the findings of their studies, together with such recommendations as they deem appropriate, to the Congress not later than January 22, 2000. To satisfy this legislative mandate, the Joint Committee staff undertook an extensive study and review of the laws relating to disclosure of tax returns and return information, including relevant sections of the Internal Revenue Code of 1986 (the “Code”);¹ the Freedom of Information Act, the Privacy Act, and the Taxpayer Browsing Act of 1997.

To assist in this study, the Joint Committee staff requested the General Accounting Office (“GAO”) to review certain matters relating to the study, including who currently receives Federal tax returns and return information and the uses made of such information. The Joint Committee staff also obtained data from the Internal Revenue Service (“IRS”). The Joint Committee staff met with and consulted with representatives of various IRS functions and the Office of the Treasury Inspector General for Tax Administration. The Joint Committee staff solicited comments from interested parties. The Joint Committee staff reviewed the written comments submitted in response to its requests for comments and met with various interested parties.

B. Overview of Present Law

In general

There are three separate statutory regimes relevant to determining whether Federal tax returns and return information may (or must) be disclosed and, if the information is subject to disclosure, the rules applicable to the disclosure. These provisions are: (1) the Code; (2) the Freedom of Information Act; and (3) the Privacy Act. The interrelationship of these provisions is not always clear, and has generated litigation.

The Code

The Code contains three basic provisions that control the disclosure of returns and return information: sections 6103, 6104, and 6110. Prior to 1976, tax returns were considered public records, and were subject to disclosure pursuant to executive order. Due to concerns regarding the misuse of tax information, including misuse by the Nixon White House, section 6103 was amended in the Tax Reform Act of 1976. Section 6103 embodies the policy that returns are confidential, and provides that returns and return information may not be disclosed by the IRS,

¹ References in this study to section or sec. refer to the Code, unless otherwise indicated.

other Federal employees, State employees, and certain others having access to the information except as provided in section 6103. Section 6103 also contains a number of exceptions to this general rule of nondisclosure which authorize disclosure in particular circumstances. Section 6103 imposes recordkeeping and safeguard requirements to protect the confidentiality of returns and return information. Criminal and civil sanctions apply under the Code to the unauthorized disclosure or inspection of returns and return information.

Section 6104 provides for the public disclosure of certain information relating to tax-exempt organizations. This provision is discussed in detail in Volume II of this study.

With certain exceptions, section 6110 makes the text of any written determination issued by the IRS (and related background file document) available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Before making written determinations and background file documents available for public inspection, section 6110 requires the IRS to delete specific categories of information.

The Freedom of Information Act

The Freedom of Information Act (“FOIA”), enacted in 1966, established a statutory right to access government information. While the purpose of section 6103 is to restrict access to returns and return information, the basic purpose of the FOIA is to ensure that the public has access to government documents. In general, the FOIA provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. This right is enforceable in court.

Returns and return information that cannot be disclosed under section 6103 cannot be disclosed under the FOIA.² However, persons seeking access to information have used the FOIA as an alternative method to attempt to compel disclosure of information arguably protected under section 6103. Cases involving tax information and the FOIA have primarily involved the disclosure of IRS guidance and the determination of what qualifies as “return information” under section 6103. FOIA litigation has resulted in the disclosure of IRS documents such as private letter rulings, general counsel memoranda, technical advice memoranda, and field service advice.

The Privacy Act

The Privacy Act was enacted in 1974 to regulate the collection, use, dissemination, and maintenance of personal information about individuals by Federal agencies. The Privacy Act

² Courts use two approaches to reach this result. Some courts have held that section 6103 preempts the FOIA. Most courts, however, have held that section 6103 meets the requirements of exemption 3 of the FOIA, which allows the withholding of information prohibited from disclosure by another statute if certain requirements are met.

does not apply to persons other than individuals (e.g., corporations). The Privacy Act has four principal provisions. These provisions: (1) restrict the disclosure of personally identifiable records maintained by agencies; (2) allow individuals to access agency records maintained about the individual; (3) allow an individual to request amendment of agency records pertaining to the individual if the individual believes the records are not accurate, relevant, timely, or complete; and (4) require agencies to comply with statutory guidelines for collection, maintenance, and dissemination of records.

In general, the provisions of the Privacy Act prohibit the disclosure of an individual's records without the consent of the individual. "Routine uses" of information are not subject to this consent requirement. Disclosure pursuant to section 6103 is considered a routine use of information so that such disclosures are not subject to the Privacy Act's consent requirements. The Privacy Act permits an individual to sue for damages if an agency fails to comply with the Privacy Act. Courts disagree on whether the Privacy Act is preempted by section 6103.

C. Policy Issues Regarding Disclosure of Returns and Return Information

Determining whether to allow disclosure of returns and return information involves a balancing of sometimes competing policy objectives. In support of confidentiality are a taxpayer's right to privacy, the concern that disclosure will undermine voluntary compliance, the belief that the government should not disclose information that taxpayers are required by law to provide, and concerns regarding misuse of the information. On the other hand, a variety of State and Federal agencies seek access to Federal returns and return information in order to monitor compliance with both tax and nontax laws. In some cases, Federal returns and return information may be the best source of information needed by the agency.

The present-law rules regarding confidentiality and disclosure of returns and return information reflect a balancing of these competing policy objectives. As described above, the basic policy embodied in section 6103 is that returns and return information are confidential. This confidentiality is based on persons' right to privacy, as well as the view that voluntary compliance will be increased if taxpayers know that the information they provide to the government will not become public. Section 6103 also recognizes, however, that in some cases the need for returns and return information outweighs the policy of confidentiality. While providing access to returns and return information in certain cases, section 6103 still attempts to guard confidentiality by providing access only to the extent necessary and applying safeguards to prevent the misuse or subsequent disclosure of the information.

D. Data and Background Information Regarding the Use of Returns and Return Information

During the years 1997 and 1998, 37 Federal and 215 State agencies received taxpayer information under the provisions of section 6103. These agencies fall roughly into four categories: (1) Federal agencies; (2) State and local tax administration agencies; (3) State and

local child support agencies; and (4) State and local welfare or public assistance agencies. Congress also requests returns and return information from the IRS. Detailed information regarding the use of such information and a discussion of safeguard efforts relating to such information are contained in Part Four, below.

E. Joint Committee Staff Recommendations

1. General recommendations relating to section 6103

General recommendations relating to exceptions to section 6103

- The staff of the Joint Committee recommends that new access to returns and return information should not be provided unless the requesting agency can establish a compelling need for the disclosure that clearly outweighs the privacy interests of the taxpayer.
- The Joint Committee staff also recommends that the IRS continue to monitor disclosures under present law to ensure that the information provided is tailored to the needs of the recipient.

Coordination of section 6103 with other disclosure provisions

- The staff of the Joint Committee recommends that all provisions authorizing access to returns and return information should be contained in the Code.

Matters made part of the public record

- The staff of the Joint Committee recommends that returns and return information properly made a part of public records (i.e., court records and lien filings) pursuant to Federal tax administration activities should not be protected by section 6103.

Access to working law of the IRS

- The staff of the Joint Committee recommends that all final written legal interpretations issued to IRS employees should be made publicly available to the extent that such interpretations: (1) affect a member of the public; and (2) are issued by the IRS or the IRS Chief Counsel.

Application of the FOIA to returns and return information

- The staff of the Joint Committee recommends that it be clarified that 6103 preempts the FOIA as to returns and return information. Thus, section 6103 would be the sole means by which returns and return information can be requested. The staff of the

Joint Committee further recommends that the FOIA administrative provisions and opportunity for de novo judicial review be incorporated into section 6103.

Tax treaties and tax information exchange agreements

- For tax information that is not return information under section 6103, the staff of the Joint Committee recommends that it should be clarified that tax treaties qualify under exemption 3 of the FOIA and under section 6110(c)(3). Similarly, the staff of the Joint Committee recommends that it should be clarified that tax information exchange agreements, as authorized by the Code, qualify under exemption 3 of the FOIA and under section 6110(c)(3). Thus, information exchanged pursuant to tax treaties and tax information exchange agreements would be protected from disclosure under the FOIA and section 6110 to the extent provided in such agreements.

Application of the Privacy Act to returns and return information

- The staff of the Joint Committee recommends that it should be clarified that sections 6103 and 7431 preempt the Privacy Act with respect to the disclosure of returns and return information and the remedy for unauthorized disclosure.

2. Reforms of current exceptions under section 6103

Disclosure of collection activities with respect to a joint return

- The staff of the Joint Committee recommends amending section 6103(e)(8) to permit the IRS to honor oral requests from a former spouse (or an authorized representative of the former spouse) regarding joint return collection activities.

Clarification of the scope of section 6103(h)(1): investigation of taxpayer representatives

- The staff of the Joint Committee recommends clarifying that an IRS employee's official duties do not include determining whether a taxpayer's representative is current in his or her tax filing obligations merely because the taxpayer is under audit.

Disclosure of criminal investigation

- The staff of the Joint Committee recommends that IRS special agents should be required to identify themselves and the nature of their investigation when interviewing third parties.

Disclosure in judicial and administrative tax proceedings

- The staff of the Joint Committee recommends that when nonparty taxpayer returns and

return information are to be disclosed pursuant to section 6103(h)(4)(A)-(C), the taxpayer should be given notice prior to the disclosure. The staff of the Joint Committee further recommends that only the portions of a nonparty return or return information that directly relate to the resolution of an issue in the proceeding should be disclosed in such proceeding. Finally, the staff of the Joint Committee recommends that the nonparty taxpayer should be given an opportunity to participate in the redaction process.

Investigative disclosure authority

- The staff of the Joint Committee recommends that section 6103(k)(6), regarding investigative disclosure authority, should be clarified to include personnel of the Office of the Treasury Inspector General for Tax Administration.³

Information related to offers in compromise

- The staff of the Joint Committee recommends that the IRS should not disclose the taxpayer identification number and street address of taxpayers who are parties to accepted offers in compromise.

Refund offset disclosures

- The staff of the Joint Committee recommends the repeal of section 6103(m)(2), relating to the Federal debt collection refund offset program, as the usefulness of this provision has been superceded by the Treasury Offset Program.

Disclosure to contractors

- The staff of the Joint Committee recommends that States receiving returns and return information should be required to: (1) conduct annual on-site safeguard reviews of all their contractors (if the duration of the contract is less than one year, a review would be conducted mid-way through the duration of the contract); and (2) submit the findings of such reviews to the IRS as part of their annual safeguard activity report, along with a certification that their contractors are in compliance with all safeguard restrictions. The certification should include the name of each contractor, a description of their contract responsibility, and the duration of the contract.
- The staff of the Joint Committee recommends that the present-law disclosure rules for using contractors for nontax administration purposes should not be expanded.

³ A technical correction making this change was included in section 1602(a) of the House version of H.R. 2488, 106th Cong. 1st Sess. (1999).

Consent to authorize disclosure to third parties

- The staff of the Joint Committee recommends that the Code should prohibit a third party from requesting the execution of a consent that does not designate a recipient. The staff of the Joint Committee also recommends that the Code should prohibit a third party from requesting a taxpayer to execute a consent that will not be dated by the taxpayer at the time of execution.
- The staff of the Joint Committee recommends that all third parties, governmental or otherwise, receiving returns and return information under section 6103(c) should be required to: (1) ensure that the information received will be kept confidential; (2) use the information only for the purpose for which it was requested; and (3) not further disclose the information except to accomplish that purpose, unless a separate consent from the taxpayer is obtained.

Statistical disclosure authority for the Federal Trade Commission

- The staff of the Joint Committee recommends the repeal of the provision authorizing disclosures to the Federal Trade Commission for statistical purposes, as this information is no longer needed.

3. Unauthorized disclosure

- The staff of the Joint Committee recommends that the IRS notify the taxpayer at the time the Treasury Inspector General for Tax Administration administratively determines that the taxpayer's returns or return information have been unlawfully accessed or disclosed (rather than at the time of criminal indictment). In addition, the staff of the Joint Committee recommends that the IRS should provide, as part of its present-law public annual report to the Joint Committee, information regarding unauthorized disclosure and inspection of returns and return information. This information should include the number, status, and results of: (1) administrative investigations; (2) civil lawsuits brought under section 7431 (including settlement amounts or damages awarded); and (3) criminal prosecutions.

4. Public disclosure of nonfilers

- The staff of the Joint Committee does not recommend the publication of the identities of nonfilers by the Federal government at this time. In addition, the staff of the Joint Committee recommends that States provide updated information to the Congress on their programs to publicize delinquent taxpayers.

5. Undelivered refunds

- The staff of the Joint Committee recommends that it be clarified that the IRS is able to notify taxpayers of undelivered refunds via any means of mass communication, including the Internet.

**SUMMARY OF JOINT COMMITTEE ON TAXATION STAFF
STUDY OF DISCLOSURE PROVISIONS
RELATING TO TAX-EXEMPT ORGANIZATIONS**

A. Introduction

This study was performed pursuant to section 3802 of the IRS Reform Act, which requires the Joint Committee on Taxation (the “Joint Committee”) and the Department of the Treasury to conduct separate studies of the scope and use of provisions regarding taxpayer confidentiality and to report the findings of their studies, together with such recommendations as they deem appropriate, to the Congress not later than January 22, 2000. Under the IRS Reform Act, the studies are to examine specific issues relating to taxpayer confidentiality, including whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations described in section 501 of the Code.¹ To satisfy this legislative mandate, the Joint Committee staff undertook an extensive study and review of the laws relating to disclosure of tax returns and return information of tax-exempt organizations, including relevant sections of the Code and the Freedom of Information Act.

To assist in this study, the Joint Committee staff requested data and certain other information from the Internal Revenue Service (the “IRS”), including data regarding tax-exempt organizations. The Joint Committee staff met with and consulted with representatives of various IRS functions. The Joint Committee staff solicited comments from interested parties. The Joint Committee staff reviewed the written comments submitted in response to its requests for comments and met with various interested parties.

In general, the Joint Committee staff study encompasses all organizations exempt from tax under section 501. However, the Joint Committee staff study does not address disclosure rules relating to churches, because the issues relating to churches are unique. In addition, the Joint Committee staff study does not address disclosure rules relating to tax-exempt pension trusts described in section 401(a) and exempt from tax under section 501(a).

B. Overview of Present Law

In general

There are several statutory regimes relevant to determining whether Federal tax returns and return information of tax-exempt organizations may (or must) be disclosed and, if the information is subject to disclosure, the rules applicable to the disclosure. The primary statutory provisions applicable to disclosure of information relating to tax-exempt organizations are (1) sections 6103, 6104, and 6110 of the Code; and (2) the Freedom of Information Act.² The

¹ References in this study to section or sec. refer to the Code, unless otherwise indicated.

² The Privacy Act, which was enacted in 1974 to regulate the collection, use, dissemination, and maintenance of personal information about individuals by Federal agencies,

interrelationship of these provisions is not always clear, and has generated litigation.

The Code

The Code contains three basic provisions that control the disclosure of returns and return information: sections 6103, 6104, and 6110. Section 6103 embodies the policy that returns and return information are confidential, and provides that returns and return information may not be disclosed by the IRS, other Federal employees, State employees, and certain others receiving such information except as provided in section 6103. Section 6103 also contains a number of exceptions to this general rule of nondisclosure which authorize disclosure in particular circumstances. Section 6103 imposes recordkeeping and safeguard requirements to protect the confidentiality of returns and return information. Criminal and civil sanctions apply under the Code to the unauthorized disclosure or inspection of returns and return information.

In order to allow the public to scrutinize the activities of tax-exempt organizations, section 6104 grants an exception to the confidentiality rule of section 6103 for certain categories of tax-exempt organization documents and information. Section 6104 requires the release in unredacted form of approved applications for tax-exempt status, certain related documents, and annual information returns filed by tax-exempt organizations. As a general rule, to the extent section 6104 specifically provides for the disclosure of tax-exempt organization information, other disclosure provisions (section 6103, section 6110, or the Freedom of Information Act) do not apply. If tax-exempt organization information does not come within the scope of section 6104, other disclosure provisions will govern whether the information may be disclosed.

With certain exceptions, section 6110 makes the text of any written determination issued by the IRS (and related background file document) available for public inspection. A written determination is any ruling, determination letter, technical advice memorandum, or Chief Counsel advice. Before making written determinations and background file documents available for public inspection, section 6110 requires the IRS to delete specific categories of information. Section 6110 does not apply to any matter to which section 6104 applies. Treasury regulations have interpreted this restriction to apply to some written determinations and other documents relating to tax-exempt organizations that are not subject to disclosure under section 6104. Thus, some written determinations regarding tax-exempt organization issues are not disclosable under either section 6110 or 6104.

The Freedom of Information Act

The Freedom of Information Act (the "FOIA"), enacted in 1966, established a statutory right to access government information. While the purpose of section 6103 is to restrict access to returns and return information, the basic purpose of the FOIA is ensure that the public has access

does not apply to persons other than individuals. Therefore, the Privacy Act is inapplicable to tax-exempt organizations.

to government documents. In general, the FOIA provides that any person has a right of access to Federal agency records, except to the extent that such records (or portions thereof) are protected from disclosure by one of nine exemptions or by one of three special law enforcement record exclusions. This right is enforceable in court.

Returns and return information that cannot be disclosed under section 6103 cannot be disclosed under the FOIA. However, persons seeking access to returns and return information have used the FOIA as an alternative method to attempt to compel disclosure of information arguably protected under section 6103. Cases involving returns and return information and the FOIA have primarily involved the disclosure of IRS guidance and the determination of what qualifies as “return information” under section 6103. FOIA litigation has resulted in the disclosure of IRS documents such as private letter rulings, general counsel memoranda, technical advice memoranda, and field service advice.

C. Policy Issues Relating to Disclosure of Information of Tax-Exempt Organizations

The statutory mandate for this study requires the Joint Committee to determine whether the public interest would be served by greater disclosure of information relating to tax-exempt organizations. Making this determination involves the balancing of sometimes competing policy objectives. This balancing generally involves, on the one hand, the organization’s right to privacy and concerns about misuses of information and, on the other hand, the legitimate public interest in information regarding tax-exempt organizations. Also involved is the question of the effect of disclosure on voluntary compliance with the tax laws. Other factors may also be relevant, such as whether disclosure would impose additional burdens on tax-exempt organizations and the effect of disclosure on donors and prospective donors. A similar balancing occurs with respect to determining whether to allow disclosure of returns and return information of taxable persons.

Like individual taxpayers, tax-exempt organizations may assert a right to privacy regarding their activities and interactions with the IRS. However, for some time, different disclosure rules have applied to tax-exempt organizations than to individuals and more recent changes in the law have led to increased levels of public disclosure of returns and return information of tax-exempt organizations. Public disclosure of information regarding tax-exempt organizations enables the public to provide oversight of such organizations and the activities in which they are involved. Disclosure of information regarding tax-exempt organizations also allows the public to determine whether the organizations should be supported--through continued tax benefits and contributions of donors--and whether changes in the laws regarding such organizations are needed.

The public has an interest in information about the tax-exempt sector as a whole, as well as in information regarding specific organizations. The public has an interest in knowing whether tax-exempt organizations are complying with the law, how such organizations are carrying out their exempt purposes, and whether the tax benefits provided to such organizations

are accomplishing their purposes and should be continued, modified, or eliminated. Members of the public who wish to donate funds to tax-exempt organizations also need to know whether the deduction will be tax deductible.

D. General Principles Relating to Disclosure of Returns and Return Information of Tax-Exempt Organizations

The public has a legitimate interest in access to information of tax-exempt organizations. This public interest derives from the tax benefits accorded under Federal law to such organizations, as well as the nature and purposes of such organizations. The public has an interest in ensuring that tax-exempt organizations are complying with applicable laws and that the funds of such organizations (whether or not solicited from the general public) are being used for the exempt purposes of the organization.

The Joint Committee staff believes that increased disclosure of information regarding tax-exempt organizations will improve the efficiency of the operation of the tax-exempt sector by: (1) increasing public oversight of tax-exempt organizations; (2) increasing compliance with Federal tax and other applicable laws; (3) promoting the fair application and administration of the Federal tax laws; and (4) advancing the policies underlying the Federal tax rules regarding such organizations, including the encouragement of charitable giving. Thus, the Joint Committee staff believes that the general principle governing disclosure of information regarding tax-exempt organizations is that such information should be disclosed unless there are compelling reasons for nondisclosure that clearly outweigh the public interest in disclosure.

In determining whether particular information regarding tax-exempt organizations should not be disclosed, the public interest in disclosure should be balanced against the reasons for nondisclosure. There may be a variety of factors relevant to this determination. For example, in some cases, returns and return information regarding a tax-exempt organization may involve returns and return information of individuals, such as donors. In such a case, the privacy interests of the individual may outweigh the general public interest in the information. In other cases, disclosure of the information may be inconsistent with the objectives of disclosure. For example, in some circumstances, disclosure of information may be viewed as undermining voluntary compliance. In some cases, the administrative burdens on the organization may be unreasonable given the public benefit to be derived from disclosure. The Joint Committee staff believes that any proposed exceptions to the general principle of disclosure should be evaluated on a case-by-case basis to determine whether the exception is appropriate.

E. Joint Committee Staff Recommendations

Disclosure of IRS materials

- The Joint Committee staff recommends that all written determinations (and background file documents) involving tax-exempt organizations should be

publicly disclosed. In general, the Joint Committee staff recommends that such disclosure should be made without redactions.

- The Joint Committee staff recommends that the IRS disclose the results of audits of tax-exempt organizations. In addition, the Joint Committee staff recommends that all closing agreements with tax-exempt organizations should be disclosed. In general, the Joint Committee staff recommends that such disclosures should be made without redaction.
- The Joint Committee staff recommends that applications for exempt status (and supporting documents) should be disclosed when the application is made. In addition, the Joint Committee staff recommends that any action taken on the application should be disclosed.
- The Joint Committee staff recommends that rules similar to the disclosure rules that apply to third party communications under section 6110 should be applied to third party communications relating to written determinations and exemption applications subject to disclosure under section 6104.
- The Joint Committee staff recommends that the taxpayer identification number of tax-exempt organizations should not be subject to disclosure.

Form 990 and related forms

- The Joint Committee staff recommends that the Form 990 and related forms: (1) should be accepted by the IRS for electronic filing for returns filed after 2002; and (2) should be revised to ensure that the forms provide relevant and comprehensible information to the public as well as the IRS.
- The Joint Committee staff recommends that the scope of section 6104 should be expanded to require the disclosure of all Forms 990-T and any returns filed by affiliated organizations of tax-exempt organizations.
- The Joint Committee staff recommends that the scope of section 6104 should be expanded to require the disclosure of the annual return filed by political organizations described in section 527, that section 527 organizations should be required to file an annual return even if they have no taxable income, and that the annual return for such organizations should be revised to include more information concerning the activities of such organizations.
- The Joint Committee staff recommends that tax-exempt organizations should be required to provide both their legal name and the name under which they do business on the Form 990.

- The Joint Committee staff recommends that the IRS notify taxpayers in instructions and publications that Form 990 is publicly available.
- The Joint Committee staff recommends that the address of the site on the World Wide Web, if any, of a tax-exempt organization should be included on Form 990 and that the IRS be required to publish such addresses.
- The Joint Committee staff recommends that the Form 990 report more information concerning the transfer of funds among various tax-exempt organizations so that the public and the IRS can better assess whether contributions to tax-exempt organizations are being used to fund political activities.
- The Joint Committee staff recommends that tax-exempt entities (other than churches) that are below the filing threshold for the Form 990-EZ should be required to file annually a brief notification of their status with the IRS.
- The Joint Committee staff recommends that private foundations reporting capital gains and losses on Form 990-PF should be permitted to disclose a summary of those capital transactions. A full listing of capital transactions would be required to be filed with the IRS and to be provided to the public upon request.
- The Joint Committee staff recommends that the present-law tax penalty imposed on tax return preparers should be expanded to apply to any omission or misrepresentation on a Form 990 that either was known or reasonably should have been known to the preparer.
- The Joint Committee staff recommends that the present-law tax penalty imposed on tax return preparers should be expanded to apply to willful or reckless misrepresentation or disregard of rules and regulations with respect to Form 990.

Disclosure of returns and return information of tax-exempt organizations to nontax State officials or agencies

- The Joint Committee staff recommends that the IRS should be permitted to disclose to Attorneys General and other nontax State officials or agencies audit and examination information concerning tax-exempt organizations with respect to whom the State officials have jurisdiction and have made a specific referral of such organization to the IRS prior to a final determination with respect to the denial or revocation of tax exemption. In addition, the Joint Committee staff recommends that the IRS should be permitted to share audit and examination information concerning tax-exempt organizations with nontax State officials and

agencies with jurisdiction over the activities of such organizations and who regularly share information with the IRS when the IRS determines that such disclosure may facilitate the resolution of cases.

Lobbying expenditures

- The Joint Committee staff recommends that public charities (both electing and nonelecting charities) should be required to provide a general description of their lobbying activities on Schedule A to Form 990.
- The Joint Committee staff recommends that public charities should be required to disclose expenditures for self-defense lobbying.
- The Joint Committee staff recommends that public charities should be required to disclose expenditures for nonpartisan study, analysis, and research if such study, analysis, or research includes a limited “call to action.”