

RECENT DEVELOPMENTS FOR TAX-EXEMPT ORGANIZATIONS/NONPROFITS

Hodgson Russ Tax-Exempt Organizations Alert
November 10, 2021

As tax-exempt organizations continue to navigate the COVID landscape, they should be cognizant of a number of recent non-COVID-related changes that could materially impact their operations. This alert will summarize some of these developments, including detailing what the Supreme Court's ruling in *Americans for Prosperity Foundation* could mean for your organization.

Americans for Prosperity Foundation – The End of State-Level Donor Disclosure?

After many contentious years of litigation, the Supreme Court has dealt a victory to charitable organizations seeking to avoid up-front disclosure of the names, addresses, and contribution amounts of their substantial donors. In *Americans for Prosperity Foundation*, the Supreme Court passed down a 6-3 decision holding that California's up-front donor disclosure requirement was facially unconstitutional. Instead of such up-front disclosure laws, the Court found, states must narrowly tailor their disclosure requirements to avoid a widespread burden on donors' First Amendment rights to free speech and association. Each state's attorney general's office is responsible for monitoring and policing charitable organization activity to prevent and detect fraud and malfeasance. Before the Supreme Court's decision, the following three states actively enforced an up-front, unredacted copy of Schedule B disclosure with a charitable organization's annual renewal filing: New York, New Jersey, and California. Although states have a clear and strong interest in preventing charitable fraud, the Court concluded that California failed to prove that other means of obtaining donor information (such as audit letters) were inefficient and ineffective compared to up-front collection.

As noted above, before the *Americans for Prosperity Foundation* decision, New York required tax-exempt organizations to disclose the information on Schedule B of IRS Form 990 to the State, citing its need to regulate and oversee tax-exempt entities operating in the State. As a result of the *Americans for Prosperity Foundation* decision, New York announced that it has "suspended its collection of IRS Form 990 Schedule B" while it reviews amendments to its policies that might be necessary in light of the Supreme Court's ruling. As such, effective immediately, charities' annual filings will no longer require disclosure information that identifies donors. Any notices that charities have received regarding any deficiency due to missing or incomplete

Attorneys

Andrew Besch
Thomas Collura
Catherine Eberl
Kenneth Friedman
Elizabeth Holden
Kenneth Hunt
Heather Kimmins
Adam Perry
Patricia Sandison
Valerie Stevens
William Turkovich
Marla Waiss
Sujata Yalamanchili

Practices & Industries

Tax-Exempt Organizations

RECENT DEVELOPMENTS FOR TAX-EXEMPT ORGANIZATIONS/NONPROFITS

Schedule Bs are no longer operative as to such deficiency, and annual filings will no longer be considered deficient in such regard. Notably, however, this does not mark the end of state-level donor disclosure. Instead, the Supreme Court decision in *Americans for Prosperity Foundation* merely prohibits states from broad sweeping up-front requirements for donor information.

IRS Priority Guidance Plan

Each year, the IRS issues its Priority Guidance Plan for the upcoming year, detailing tax issues that it plans to address through guidance, including regulations, notices, revenue procedures, etc. On September 9, 2021, the IRS released its 2021-2022 Priority Guidance Plan (“PGP”). The PGP contains various issues affecting tax-exempt organizations that it hopes to address in the coming year, including (but not limited to) the following:

- Guidance on circumstances under which an LLC can qualify for recognition under Internal Revenue Code (“Code”) section 501(c)(3).
- Final regulations on Code section 509(a)(3) supporting organizations (proposed Treasury regulations were released in 2016).
- Regulations regarding the excise taxes on donor advised funds and fund management.
- Final regulations on bond reissuance under Code section 150 (proposed regulations were released in 2018).

Hopefully, the forthcoming IRS guidance on these and other issues will increase certainty for both practitioners and nonprofits alike.

The professionals at Hodgson Russ LLP will continue to monitor relevant developments and publish updates as information becomes available. Please contact [Marla Waiss](#) (716.848.1203) or [Patricia Sandison](#) (518.433.2427) for any questions you may have regarding how these changes may impact your organization.

Please check our [Coronavirus Resource Center](#) for information about developments related to the COVID-19 pandemic.

If you received this alert from a third party or from visiting our website, and would like to be added to any of our mailing lists, please visit us [HERE](#).