

LEGAL MATTERS

LET THE SUN SHINE IN: THE IRS PROVIDES TEETH TO TAX-EXEMPT ORGANIZATION DISCLOSURE REQUIREMENTS

by Bruce A. Smith, Esq.

Tax-exempt organizations enjoy prominent roles in their communities and are often an important economic force in those same communities. Regulations recently adopted by the IRS will allow the public better access to tax documents—which describe an organization's operations, activities and finances—filed by those organizations with the IRS. The result will be increased public awareness, and perhaps increased public scrutiny, of tax-exempt hospitals, nursing homes and health systems and other tax-exempt organizations.

The operation of tax-exempt organizations in the sunshine—that is, with public knowledge of the organizations' activities—has been a longstanding concern of Congress. Since 1987, the public has generally had the right to obtain from a tax-exempt organization copies of the organization's Forms 1023 and 1024 (Application for Recognition of Exemption). Unfortunately, some organizations were unresponsive to these document requests and the IRS did not have a way, short of revoking the organization's tax-exempt status, to enforce compliance.

The new regulations will apply to all document requests made after June 8, 1999. These regulations clarify existing requirements for tax-exempt organizations to make available for public inspection their IRS Forms 1023 or 1024. More significantly, however, they make effective the added requirement that exempt organizations provide copies of their most recent Forms 990 and their Applications for Exemp-

tion to anyone requesting them in person or in writing, including via e-mail or fax. An organization's Form 990 will disclose, among other information, the identity of the organization's officers and di-



rectors, the compensation of key employees, important transactions undertaken during the previous year and the organization's financial activity.

According to the regulations, an Application for Exemption includes any supporting documents filed by or on behalf of the organization and any letter or document issued by the IRS in connection with the application. An annual information return includes all forms, schedules, attachments, and supporting documents filed with the IRS, including compensation information, but does not include donor lists. An organiza-

tion must fulfill requests for copies without charge, other than a reasonable fee for reproduction and postage. A reasonable charge is defined as the amount the IRS charges for copies, currently \$1.00 for the first page and \$.15 for each additional page, plus the actual cost of postage.

Inspection must be allowed without charge during regular business hours. Generally, a request for copies made in person during regular business hours must be fulfilled the same day, and a request made in writing must be fulfilled within 30 days. Exceptions to the requirement to provide copies apply if the organization has made the requested documents "widely available" or is subject to a harassment campaign.

Failure to comply with the public disclosure requirements in the new regulations would subject organizations and their managers to penalties. Failure to comply with respect to Forms 990 subjects a person to a \$20 per-day penalty, up to a maximum of \$10,000 with respect to any one return. Failure to comply with respect to an Application for Exemption subjects a person to a penalty of \$20 per day, with no maximum. In addition, a person who willfully fails to comply with the disclosure requirements is subject to an additional penalty of \$5,000 with respect to each return or application.

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