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**Admitted in DC & VA*

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[redacted]

December 14, 2015

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

RE: Comments on Proposed IRS REG–138344–13, Substantiation Requirement for Certain Contributions

ATTN: CC:PA:LPD:PR (original submitted via www.regulations.gov)

Dear Sir or Madam:

The American Center for Law and Justice (ACLJ), an organization dedicated to the defense of constitutional liberties secured by law, hereby respectfully submits its comments in opposition to the referenced proposed regulations to implement the exception to the "contemporaneous written acknowledgment" (CWA) requirement for substantiating charitable contribution deductions of $250 or more. The regulation as proposed would permit, but not require, charitable organizations to file a new, separate information return (in addition to the Form 990) to substantiate covered contributions. The new informational return would require the charity to collect an individual donor's name, address, and Social Security Number, and provide a copy to the donor.

Overview

Pursuant to section 170(f)(8)(A) of the tax code, 26 USC § 170(f)(8)(A), individuals and organizations claiming a charitable deduction for contributions of $250 or more must obtain a CWA from the charity receiving the donation. The CWA may be a receipt or letter of thanks which specifies (1) the amount of the cash donation or a description of the non-cash property donated; (2) a statement whether any goods and services were provided by the charity in exchange or consideration for the donation; and (3) a description and good faith estimate of the

value of any goods and services provided by the charity or a statement that such goods and services consist of intangible religious benefits (26 USC § 170(f)(8)(B)).[1]

Donors are exempt from their requirement to secure a CWA if the charity reports the donation to the Service. Section 170(f)(8)(C) provides that a CWA "shall not apply to a contribution if the donee organization files a return, on such form and in accordance with such regulations as the Secretary may prescribe, which includes the information described in subparagraph (B) with respect to the contribution."

The proposed regulations formalize the process by which the charity would report such contributions directly to the IRS (not the donor). This would include the existing requirements for gift acknowledgments under Section 170(f)(8)(B), and add reporting the taxpayer's Social Security Number (SSN) or other Taxpayer Identification Number (TIN). The Service's explanation for requiring the charity to obtain the SSN, which is highly sensitive information, to say the least, is "to properly associate the donation information with the correct donor." Unlike a CWA which is only sent to the donor, the charity would now be reporting information to the IRS.

As the Government Accounting Office (GAO) concluded in a May 14, 2009 report to the Senate Finance Committee, when a similar proposal was considered and rejected:[2]

> Requiring information reporting for charitable cash contributions may not be an effective way to improve compliance. Charities could incur substantial costs and burdens if they were required to file information returns with IRS and taxpayers on the cash contributions they receive. . . . requiring information reporting could result in reduced charitable cash contributions from taxpayers, for example, because taxpayers may not want the federal government to know to which charities they donate, particularly for donations to religious organizations.

The GAO 2009 Report also properly concluded that "taxpayers may reduce giving because they are reluctant to provide Social Security numbers to charities given concerns over identity theft." Over the last six years these concerns have grown considerably, and provide more than ample reasons to reject the current proposal.

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[1] *See also*, IRS Publication 1771, Charitable Contributions–Substantiation and Disclosure Requirements.

[2] GAO 09-555, Charitable Cash Contribution Reporting Compliance, released May 14, 2009 (hereinafter "GAO 2009 Report").

The Proposed Regulations Should be Rejected and Do Not Support the Public Interest

Rejection of the proposed regulations is fully supported for the following reasons:

1. On its website the Service advises consumers and taxpayers to provide their SSN (or TIN) only when "absolutely necessary."[3] Even as a voluntary system, the proposed regulations essentially require charities to ask donors to give out their SSNs when it is not absolutely necessary. Voluntary and "absolutely necessary" are diametrically opposed to each other and the Service should not create a system which provides such inconsistent advice. Doing so undermines consumer and taxpayer protections, and erodes public confidence in both charities and the Service.

2. Requests for SSNs are likely to result in reduced charitable giving. When confronted with requests for SSNs for contributions exceeding $250, donors will logically be unwilling to contribute more than $250. This concern, and the following highlights, were included in the GAO 2009 Report:

- Taxpayers may reduce giving because they are reluctant to provide SSNs to charities given concerns over identity theft

- SSNs are generally required on information returns and the Service uses SSNs to match information returns to tax returns

- Donors may perceive that charities will not adequately safeguard their SSNs

- Many charities rely on volunteers, to whom donors may not want to provide their SSNs

3. Concerns about identity theft are real and counsel against adopting the proposed regulations. Just this year, hackers have accessed sensitive employee data at the federal Office of Personnel Management and the Central Intelligence Agency, two sophisticated organizations with the resources to protect against identity theft and sensitive information. Hackers were nevertheless able to breach their fire-walls and steal the information, the consequences of which are yet to be fully understood. If OPM and the CIA (among countless other governmental and private organizations) cannot protect against such security breaches and theft, it seems particularly ill-advised to set up a system that has charities collecting, storing, and (hopefully) protecting SSNs.

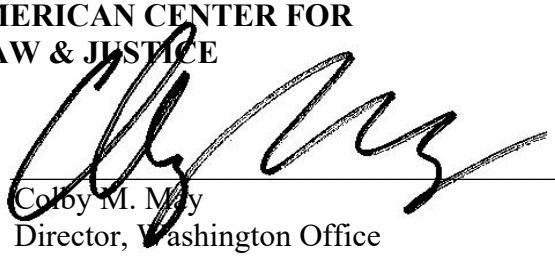
[3] https://www.irs.gov/Individuals/Identity-Protection-Tips

4. As the Service acknowledged in its notice, "the present [CWA] system works effectively, with minimal burden on donors and donees, and the Treasury Department and the IRS have received few requests since the issuance of TD 8690 to implement a donee reporting system." That being the case, there seems little need to create a new, optional, parallel reporting regime that would implement additional administrative burdens on charities. The proposal even notes that: "[g]iven the effectiveness and minimal burden of the [CWA] process, it is expected that donee reporting will be *used in an extremely low percentage of cases*." In the absence of any significant need, the proposed regulations, and the related costs and burdens, should be rejected.

For the foregoing reasons, the regulations proposed in REG–138344–13, Notice of Proposed Rulemaking, Substantiation Requirement for Certain Contributions, should not be approved.

Respectfully Submitted,

AMERICAN CENTER FOR LAW & JUSTICE

By: 

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