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Exempt Organizations Can Redact Donor-Identifying Information From IRS Form 990, Schedule B Before Public Disclosure

Last week, a political-spending watchdog group sent a potentially misleading written request to many exempt organizations (they say over 100) involved in political activities, seeking copies of Form 990, Schedule B for past tax years, including filings that are more than three years old.

The request does not explicitly acknowledge the exempt organizations' **right to redact donor-identifying information**, or inform the recipient that **the disclosure requirement generally does not apply to filings that are more than three years old**. As a result, some organizations that received that request might believe that they must publicly disclose donor information that the law **permits them to withhold**.

We summarize below federal tax law governing disclosure of Form 990 (including schedules and attachments), and provide recommendations for how to respond to **any** request for disclosure.

Disclosure Requirements in General

Form 990 (including its schedules and attachments) is, for the most part, a public document. Both the IRS and the filing organization are required to provide a copy of **most** of the Form 990, as filed, upon request. (California organizations also generally file Form 990 with the California Attorney General (and sometimes with the California Franchise Tax Board). The Attorney General makes the Form, without Schedule B, available on its website.) This general disclosure requirement applies to Forms 990 that were due or filed (whichever is later) during the three years preceding the request.

If the request is made in person at the exempt organization's principal office during regular business hours, the organization must, absent unusual circumstances, provide a copy the same business day. If the request is made in writing, the organization has 30 days to provide a copy. No fee may be charged, but the exempt organization may require advance payment of reasonable copying (currently no more than \$0.20/page) and postage costs; for written requests, it must notify the requester of the amount of these costs within seven days of receiving the request.

Limitation on Schedule B Disclosure

Most organizations exempt under Internal Revenue Code ("IRC") Section 501(c) are **not required** to publicly disclose the identities of their donors. (Private foundations, and political organizations exempt under IRC Section 527, on the other hand, must do so.) Donor-identifying information is disclosed **to the IRS** on Form 990, Schedule B, but is **excepted** from the general public disclosure requirement that otherwise applies to Form

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The IRS is **required** to redact donor-identifying information from Schedule B before releasing an exempt organization's Form 990, and the filing organization is **permitted** to do so. (Copies of Form 990 obtained from Guidestar do not include Schedule B.)

Responding to a Disclosure Request

Before responding to any request for disclosure of Form 990 or any of its schedules or attachments, an exempt organization should:

- › Redact from Schedule B the names, addresses, **and any other potentially identifying information** (which, in some cases, such as gifts of stock or other property, may include details of the contribution) of any Form 990 it determines must be disclosed;
- › Promptly determine whether it wishes to require the requester to pre-pay copying and postage costs, and, for written requests, notify the requester of the amount within seven days of the request; and
- › Consider consulting with knowledgeable counsel to review the intended disclosure to prevent the undesired release of information that could legally be withheld.

Since an in-person request at the organization's principal office requires same-day disclosure, every exempt organization subject to these disclosure obligations should maintain, at its principal office, a disclosure-ready copy of Forms 990, including **redacted** versions of Schedule B, that were due or filed (whichever is later) within the preceding three years.

Finally, any staff likely to receive such requests should be trained to respond appropriately.