



May 11, 2016

Ms. Tamera Ripperda
Director, Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, DC 20224

Re: Additional Guidance on “Reasonable Efforts” and the Definition of “Interested Persons” on Form 990, Schedule L, *Transactions with Interested Persons*, as Related to “Substantial Contributors”

Dear Ms. Ripperda:

The American Institute of CPAs (AICPA) is pleased to provide comments on Form 990, Schedule L, *Transactions with Interested Persons*, and the related instructions. Specifically, we request additional guidance on “reasonable efforts” regarding the satisfaction of the Schedule L requirements related to identifying and obtaining information on reportable transactions from “interested persons,” and a revision of the definition of interested persons for purposes of Schedule L.¹

The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

These comments were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel and approved by the AICPA Tax Executive Committee.

Background

Reasonable Efforts

The Schedule L instructions require that a filing organization must make a reasonable effort to identify whether or not there are reportable transactions between a reporting organization

¹ Our comments are in addition to our letter, which was submitted on September 16, 2015, indicating our top three comments on Form 990, *Return of Organization Exempt from Income Tax* and instructions. <http://www.aicpa.org/Advocacy/Tax/DownloadableDocuments/Top-Three-Comments-on-Form%20990.pdf>.

and their identified interested persons. The instructions provide that the reporting organization has made reasonable efforts when a questionnaire is distributed to interested persons as a means of determining if a transaction required for disclosure on Schedule L has occurred. The questionnaire includes relevant questions to determine if a reportable transaction occurred; definitions and instructions; and a list of other identified interested persons (including “substantial contributors”).

Interested Persons

An interested person includes the persons directly defined in the Schedule L instructions, as well as, any 35% controlled entities. The 35% controlled entities are those entities which are collectively owned by the interested person, their family members, and the other interested persons and their family members.

In 2014, the Schedule L definition of interested persons was harmonized for Parts II-IV of Schedule L and includes substantial contributors.²

Substantial Contributors

Part I of Schedule L relies on the definition of substantial contributor under Internal Revenue Code (IRC or “Code”) section 4958(f)(1)(A)³ which generally includes any person that meets or has previously met the definition of substantial contributor from the organization’s inception.⁴ The definition of substantial contributor for Parts II-IV of Schedule L differs from that of Part I of Schedule L. The substantial contributors who are reported on Form 990, Schedule B, for the filing year, are considered interested persons for Parts II-IV of Schedule L. The inconsistency of the definition of substantial contributor within Schedule L is a cause of confusion for exempt organizations and tax practitioners.

Analysis

The revised definition of interested persons for Parts II-IV of Schedule L has made it difficult for exempt organizations to maintain donor confidentiality when complying with the Schedule L reasonable effort requirements of identifying reportable transactions with interested persons. To comply with the reasonable effort requirements, the exempt organization may have to disclose the names of all of their substantial contributors to recipients of the questionnaires.

In addition, if a reportable transaction with a substantial contributor arises, disclosure of the substantial contributor’s name on Schedule L is required. However, section

² Prior to 2014, only the definition of interested persons for Part III of Schedule L included substantial contributors and it had a limited application.

³ All references herein to “section” or “§” are to the Internal Revenue Code (IRC) of 1986, as amended, or the Treasury Regulations promulgated thereunder.

⁴ Section 507(d)(2)(B)(iv).

6104(d)(3)(A) excludes exempt organizations from disclosing the list of major contributors (the nondisclosure of contributors does not apply to private foundations or political organizations exempt from taxation under section 527). The guidance in the Schedule L instructions creates an inconsistency between the nondisclosure of major contributors per the Code and the disclosure of substantial contributors as interested persons to properly implement reasonable efforts.

The AICPA is concerned that the distribution of questionnaires to substantial contributors based on the example provided in the Schedule L instructions for reasonable efforts may cause significant donor relations issues for the filing organization, including the reduction or loss of contributions. We are concerned that large contributors may hesitate to make future contributions if they are asked to complete a questionnaire annually or if they are at risk for the disclosure of their identifying information on Schedule L. Contributors may respond negatively or request a refund of their donations.

In addition, organizations will incur significant time and costs to identify and send questionnaires to their substantial contributors in order to satisfy the reasonable effort requirements, when these organizations do not have any business transactions with these donors. Based on our members experience with working with exempt organizations, we believe it is unlikely that interested persons will return the questionnaires. Therefore, we believe the extra time spent to produce and track the questionnaires is an administrative burden with limited value provided to the public or the IRS.

Further, transactions that most organizations have with substantial contributors (or entities controlled by substantial contributors) generally occur in the ordinary course of business. The current exception in the instructions for Part IV of Schedule L excludes the reporting of transactions with publicly-traded companies on the same terms as generally available to the public (or more favorable to the filing organization), but not transactions with locally-owned businesses under the same circumstances. For example, a local charity may purchase a vehicle from a local car dealership at arm's length, and if the dealership is owned by a substantial contributor, the transaction becomes a reportable event on Schedule L. The AICPA believes that the disclosure of such transactions would not yield any useful information relative to the time and energy exempt organizations will have to spend to identify and disclose them.

This Schedule L disclosure of substantial contributors is similar to the previous disclosure requirements of split-interest trusts on the Form 990, Schedule R, Part IV. The Schedule R instructions originally required the separate reporting of each split-interest trust with their name, address and Employer Identification Number (EIN) on Schedule R. After an outcry from charities regarding the concern that donors may not want to contribute in this manner due to the disclosure requirements, the Schedule R instructions were revised in 2011 to only require the disclosure of the type and number of split-interest trusts rather than all of the donor names.

Recommendations

The AICPA strongly urges you to remove substantial contributors from the list of interested persons in the Schedule L instructions. This change will eliminate the disclosure of substantial contributors, who are considered interested persons, in the current Schedule L instructions and in the questionnaire to meet the reasonable effort requirements.

If you decide not to change the list of interested persons as recommended, we respectfully request a revision to the Schedule L instructions to include alternative methods to achieve reasonable efforts in relation to interested persons who are substantial contributors. For example, redact the substantial contributor names if a disclosure is needed, and narrow the types of transactions from a substantial contributor that would require disclosure. Sample language for reasonable efforts and suggestions to narrow the disclosure requirement are found in the attached Exhibit 1.

We appreciate your consideration of these recommendations and welcome the opportunity to discuss these items further. If you have any questions, please feel free to contact me at (801) 523-1051, or tlewis@sisna.com; or you may contact Elizabeth E. Krisher, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (412) 535 5503, or bkrisher@md-cpas.com; or Ogochukwu Anokwute, Lead Technical Manager – AICPA Tax Policy & Advocacy, at (202) 434-9231, or [oanokwute@aicpa.org](mailto: oanokwute@aicpa.org).

Sincerely,



Troy K. Lewis, CPA, CGMA
Chair, AICPA Tax Executive Committee

cc: Ms. Sunita Lough, Commissioner, Tax Exempt & Government Entities, Internal Revenue Service
Ms. Victoria Judson, Associate Chief Counsel, Tax Exempt & Government Entities, Office of Chief Counsel, Internal Revenue Service
Mr. Tom West, Tax Legislative Counsel, Department of the Treasury
Ms. Elinor Ramey, Attorney-Advisor, Department of the Treasury, Office of Tax Legislative Counsel

Exhibit 1

Recommended Revisions to the Form 990, Schedule L Instructions

Revision to the reasonable efforts:

We recommend adding the following paragraph to the reasonable efforts definition and recommendation in the Schedule L instructions:

It is not recommended to send a questionnaire to substantial contributors. Reasonable efforts may include cross-checking substantial contributors with the accounts payable or other accounting transactions during the year. It may also include an internal inquiry with the top management official, top financial official, and key employees of the organization to determine if they are aware of any transactions between substantial contributors, their families, and controlled entities that may require a disclosure on the Schedule L. If there are potential disclosures, further inquiry may be necessary.

Revision to transactions with substantial contributor which require disclosure:

The Schedule L instructions provide an exception from disclosure on Schedule L for transactions with publicly-traded companies in the ordinary course of the publicly-traded company's business, on the same terms as it generally offers to the public (or more favorable for the exempt organization). We recommend the IRS update the instructions to make the same exception available for transactions with substantial contributors.

If the reporting of a substantial contributor is required in Part III of Schedule L, the disclosure refers to "substantial contributor" or "related to substantial contributor." Parts II and IV of Schedule L require a listing of the actual name of the substantial contributor. We recommend similar disclosure requirements for Parts II and IV as in Part III of the Schedule L instructions. Instead of listing the actual names of the substantial contributor on Parts II and IV, the disclosure should refer to "substantial contributor" or "related to substantial contributor."