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October 10, 2019

Internal Revenue Service
CC:PA:LPD:PR
(REG-102508-16)
Room 5203
Internal Revenue Service
P.O. Box 7604
Ben Franklin Station
Washington, D.C. 20044

Via Federal eRulemaking Portal

RE: Comments on REG-102508-16: Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations

Dear Sir or Madam:

The U.S. Chamber of Commerce appreciates the opportunity to provide feedback on REG-102508-16: Guidance Under section 6033 Regarding the Reporting Requirements of Exempt Organizations as published in the *Federal Register* on September 10, 2019.

Pursuant to the proposed rules promulgated under REG-102508-16, organizations exempt from tax under §501(a),[1] other than those described in §501(c)(3), would no longer be required to report the names and addresses of their contributors on the Schedule B of their Forms 990 or 990-EZ. The Chamber applauds this guidance and strongly supports the elimination of these superfluous and onerous reporting requirements.

The Chamber has long been a vigorous defender of free speech and robust debate for all individuals and organizations in our society. We are increasingly concerned about Schedule B's ramifications on the vital rights of tax-exempt organizations.

The Constitution clearly establishes the right of individuals to associate with organizations for the "advancement of beliefs and ideas," and this right is fundamental to our

[1] Unless otherwise noted, all section references are to the Internal Revenue Code of 1986, as amended, and the regulations promulgated thereunder.

system of government.[2] Unfortunately, special interests increasingly attempt to silence opposing opinions rather than allow them to compete in the marketplace of ideas. Identifying, harassing, and intimidating the organization's supporters is a chief means of silencing that organization's speech. Congress correctly took important steps to protect sensitive donor information from public disclosure. For example, it imposed severe felony penalties, including loss of employment and up to five years imprisonment, for IRS and government employees who disclose such information to an unauthorized party. However, Congress did not anticipate an increasing threat to the speech rights of tax-exempt organizations – the inappropriate handling of taxpayer information by state government officials.

Under the guise of charitable statutes, some state officials have begun to require that tax-exempt organizations submit an unredacted copy of Schedule B in order to receive or maintain their state registrations. Although these officials purport that they will only use the information for internal purposes and will not publicly disclose it, experience has shown that Schedule B information provided to the states is not secure.

For example, recent litigation revealed that one state inadvertently published more than 1,700 confidential Schedule Bs on its website.[3] As the judge in the case correctly noted, "Once a confidential Schedule B has been publically disseminated via the internet, there is no way to meaningfully restore confidentiality." The judge also found that the organizations in that case "have demonstrated that the Schedule B disclosure requirement places donors in fear of exercising their First Amendment right."

It is now abundantly clear that an organization's list of donors has the potential to be misused and to chill protected First Amendment activity. Eliminating the requirement that exempt organizations provide such information to the IRS would significantly reduce this risk, and, according to former IRS officials, it would do so without compromising the IRS's ability to enforce the federal tax laws.[4] Accordingly, the Chamber strongly supports these proposed rules.

The Chamber appreciates the opportunity to provide this feedback on REG-102508-16. The Chamber applauds the work of Treasury and the Internal Revenue Service (IRS) in eliminating onerous reporting requirements. We look forward to continuing to work with Treasury and IRS on this and other important tax matters. Thank you for your time and attention.

Sincerely,

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[2] *NAACP v. Patterson*, 357 U.S. 449, 460 (1958).

[3] *Americans for Prosperity Foundation v. Harris*, No. CV 14-9448-R (C.D. Cal. filed April 21, 2016). On appeal, the Ninth Circuit Court of Appeals acknowledged that the public disclosure of donor information by California was a "serious concern," but it nonetheless vacated the district court's injunction against the state. The Americans for Prosperity Foundation has filed a petition for certiorari seeking review by the U.S. Supreme Court.

[4] *See, e.g.*, "The IRS's Donor Lists," *Wall Street Journal* (May 15, 2016), *available at* https://www.wsj.com/articles/the-irss-donor-lists-1463346736.

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