

New Disclosure Rules For Private Foundations

How “private” is a private foundation? You may be surprised to learn the amount of information about your private foundation that is available for public consumption. While tax laws provide generous deductions for contributions made to private foundations, the law also requires disclosure of financial and operating information about private foundations. For example, the private foundation’s initial application for a tax exemption and determination letter [the document in which the Internal Revenue Service (IRS) recognizes the tax-exempt status of the organization] must be available for inspection by the public at the appropriate IRS office. New rules will soon expand the disclosure requirements for private foundations.

Every private foundation is required to file with the IRS an annual information return (on IRS Form 990PF). This return includes the foundation’s annual gross income, its expenses and the names of the charities to which it has made distributions. In addition, the return includes a balance sheet showing the foundation’s assets, liabilities and net worth. The annual information return also shows the names and addresses of all “substantial contributors” (individuals who have contributed at least 2% of the foundation’s total receipts, with a minimum contribution of \$5,000) and the names, addresses and compensation of the managers and highly compensated employees.

Public Inspection Requirements

Most tax-exempt organizations are obligated to permit public inspection of their returns for the three most recent tax years and comply with requests for such information when the request is made. Private foundations have been exempted from these requirements. Instead, private foundations have been required to publish notice of the availability of the return for inspection and make the current year’s annual information return available for inspection to anybody requesting it within 180 days after publication. This publication of notice was often costly, and deadlines were often missed.

The Change

As a result of recent legislation, private foundations will, in the future, be subject to the same public inspection requirements that have applied to other tax-exempt organizations filing annual information returns. Thus, private foundations will not have to publish a notice that their annual information return is available for inspection. But now, as is the case with other tax-exempt organizations, private foundations have to comply with requests for copies of the information return for any of its three most recent years.

Timing of New Rules

These new provisions will be applicable to private foundations two months after the IRS issues regulations explaining the provisions. As of this writing, however, these regulations have not yet been issued. If you have any questions about private foundations and the appropriate disclosure requirements, please call us. We would be glad to discuss the new rules, or any other tax and estate planning issues, with you and help you comply with IRS requirements.