

# Panel on the Nonprofit Sector

Convened by INDEPENDENT SECTOR

## Work Group Recommendations to the Panel on the Nonprofit Sector Posted for Public Comment January 24, 2005

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### #15: Information Sharing between Federal and State Officials

#### I. Government Oversight and Self-Regulation Work Group Recommendations

##### A. Statement of Problem

Because existing law prevents the IRS from disclosing information to state charity officials about ongoing investigations, enforcement of charitable regulations is constrained and more costly. Organizations under investigation may be burdened by having to provide duplicate or similar information to federal and state officials. Organizations or individuals who are abusing state or federal laws and regulations governing charitable organizations may be able to continue bad practices for a longer period or escape punishment for wrongdoing altogether.

##### B. Recommendations

Congress should authorize the Internal Revenue Service to disclose to state attorneys general and any other state official charged with overseeing charitable organizations or charitable solicitations:

1. A notice of proposed refusal to recognize an organization as one described in Internal Revenue Code § 501(c)(3);
2. A notice of proposed revocation of an organization's recognition as one described in § 501(c)(3);
3. A letter of proposed deficiency of tax imposed under § 507, Chapter 41, or Chapter 42;<sup>1</sup>
4. The name, address, and taxpayer identification number of an organization that has applied for recognition as an organization described in § 501(c)(3); and
5. Returns and return information of an organization with respect to which information is disclosed under 1, 2, 3, or 4.

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<sup>1</sup>Final notices of deficiency of tax imposed under these rules are currently disclosable under § 6104(c). Section 507 imposes tax on certain organizations terminating their status as private foundations. Chapter 41 imposes taxes on excess lobbying expenditures and disqualified lobbying expenditures by public charities. Chapter 42 imposes taxes on private foundations for violations of restrictions on their operations, a tax on certain nonexempt trusts, taxes on certain foreign organizations, taxes on black lung benefit trusts, and taxes on political expenditures by § 501(c)(3) organizations.

Note: These recommendations have not yet been reviewed by the Panel on the Nonprofit Sector. They will be part of the deliberations by the Panel as it prepares its interim report.

### **C. Rationale**

The IRS currently may disclose only final, not proposed, actions. This recommendation would allow disclosure of proposed denials and revocations and proposed notices of deficiency, as does CARE Act § 205. That provision was strongly supported by the National Association of State Charity Officials, INDEPENDENT SECTOR, and the Joint Committee on Taxation of the United States Congress when it was written, and it was cited with approval by IRS Commissioner Everson in written testimony before the Senate Finance Committee in June 2004.

### **D. Other Considerations**

Some members of the Work Group are concerned about disclosure of IRS revenue agents' conclusions and interpretations that have not been sufficiently reviewed. This recommendation assumes that the documents referenced here and in CARE Act § 205 have been issued pursuant to existing IRS procedures that require appropriate internal review and approval of such proposed actions before issuance.

Current law protects donor lists from public disclosure, except for private foundations described in § 509(a) and political organizations exempt from tax under § 527.<sup>2</sup> The Work Group is concerned that donor lists remain confidential and would oppose any effort to authorize the IRS to disclose donor lists to state officials.

Some members of the Work Group are concerned about improper public release of protected material and want to reinforce existing Internal Revenue Code penalties for unauthorized disclosure.<sup>3</sup> Additional protection could be achieved by expanding the scope of those liable for civil damages in the event of an unauthorized disclosure to all those with a material involvement and adding the concept of joint and several liability to ensure that state officials at all levels pay close attention to securing taxpayer information.<sup>4</sup>

## **II. Expert Advisory Group Comments**

The Expert Advisory Group agrees with the Work Group that the IRS should be allowed to disclose proposed denials and revocations and proposed notices of deficiency, as recommended by the Senate Finance Committee. The Expert Advisory Group would go further, however, to give state attorneys general and any other state official charged with overseeing charitable organizations or charitable solicitations the same access that state revenue officers have under present law.

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<sup>2</sup> § 6104(b).

<sup>3</sup> See § 6103(p).

<sup>4</sup> See § 7431.