

# 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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### #16: Public Disclosure of IRS Determinations

#### I. Transparency and Financial Accountability Work Group Recommendations

##### A. Statement of Problem

Senate Finance Committee staff has proposed requiring that closing agreements and other audit results be disclosed to the public without redaction, except that the exempt organization's identity could be deleted if the audit were initiated pursuant to information volunteered by the organization.

A closing agreement is an agreement in writing between the IRS and any person (including an organization), finally determining tax liability for a previous tax period and/or settling for a particular taxpayer the treatment of a specific item for future tax periods. Closing agreements are authorized where it is in the interest of both parties to have the issue of tax liability permanently and conclusively determined.<sup>1</sup>

Internal Revenue Code section 6103 provides the general rule that returns and return information are confidential, unless disclosure is otherwise authorized by the Code. Section 6110 authorizes disclosure to the public of "written determinations," defined as rulings, determination letters, technical advice memoranda, or chief counsel advice. Certain information, including identifying details, is exempt from disclosure and is deleted before a determination is released.<sup>2</sup> Section 6110 covers letters denying or revoking tax-exempt status,<sup>3</sup> and the IRS is also authorized to publish a notice when tax-exempt status is revoked. Section 6110 does not cover closing agreements and other audit results.<sup>4</sup> These documents therefore remain confidential.

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<sup>1</sup> See IRC § 7121; Treas. Reg. § 301.7121-1.

<sup>2</sup> IRC § 6110(c) exempts from disclosure: (1) names, addresses, and other identifying details of the person to whom the written determination pertains and of other persons; (2) certain information relating to national defense or foreign policy; (3) information exempted from disclosure by a statute other than the Code that is applicable to the IRS; (4) trade secret information; (5) information the disclosure of which would constitute a clearly unwarranted invasion of personal privacy; (6) certain reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions; and (7) geological and geophysical information.

<sup>3</sup> *Tax Analysts v. Internal Revenue Service*, No. 02-5278 (D.C. Cir. Dec. 2, 2003).

<sup>4</sup> See IRC §§ 6103(b)(2)(D), 6110(b)(1).

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.

## **B. Recommendations**

The IRS should not be required to disclose closing agreements or other audit results, with or without redaction.

## **C. Rationale**

The IRS and a charitable organization must have the latitude to discuss the scope and terms of an agreement without the added concerns of disclosure. Requiring that closing agreements be made public in any form may inhibit the fair and effective resolution of disputes. Moreover, because they are fact specific but may not contain all relevant information, their disclosure might mislead the public as to an organization's actions.

## **D. Other Considerations**

None.

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

The Expert Advisory Group agrees with the Work Group that disclosure of unredacted closing agreements may deter resolution of some disputes, but believes that, in general, disclosure of closing agreements and other audit results is most consistent with the notion of public accountability and protection of charitable assets. The Expert Advisory Group thus strongly recommends that the IRS be authorized to disclose to the public closing agreements and other audit results, but only if that authorization is coupled with a requirement that identifying information be redacted before disclosure if the audit was initiated pursuant to information volunteered by the organization.