IRS Rule Change Could Endanger Charities and Donors

Nonprofit and charitable organizations are raising alarm bells over a proposed Internal Revenue Service (IRS) regulatory change that they say could have a "chilling effect" on donations, leading some in Congress to introduce measures to prevent the agency from proceeding.

The IRS wants to give 501(c)(3) organizations the option of reporting to the agency all their donors who contribute more than $250, supposedly to improve the "timely reporting" of tax-deductible donations. Under this proposal, the organization would file a donor disclosure form with the IRS and provide a copy to the donor. That form, however, would include not just the donor's name and address but also his Social Security number (SSN) — and that is what has nonprofits in an uproar.

"Under current law," reported the *Wall Street Journal*, "nonprofits must report only donors who give more than $5,000 a year, and then only names and addresses. Donors who give less than $5,000 to (c)(3) charities, and who want to claim a tax deduction, must obtain a 'receipt' from the charity — to furnish to the IRS if they are audited or examined. This process has been in place for years, and even Treasury and the IRS acknowledge in their new rule that it 'works effectively, with the minimal burden on donors and donees.'"

If the proposed rule becomes law, charities could choose to provide a list of all their significant donors to the IRS; but to do so, they'd have to obtain each donor's SSN. Potential donors, however, might well be reluctant to do so and thus choose not to give.

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"This will alienate large numbers of donors," Steve Taylor, head of government relations at United Way Worldwide, told *The Hill*. "The charity is already asking for their hard-earned money, and on top of that they say, 'Oh, by the way, we need your Social Security number, too.'"

Donors have good reason to be skittish about giving their SSNs to charities. For one thing, having one's SSN floating around opens one up to identity theft. That's true whether the SSN is in the hands of a charity — often staffed largely by volunteers — or the IRS. Consumer advocate Clark Howard lists "government at all levels and volunteer charity organizations" among his top 10 places not to give out one's SSN.

The IRS is hardly immune to data theft. Just last year, hackers stole information on more than 100,000 taxpayers, including their SSNs. Other federal agencies have also been targeted.

"The federal government's repeated failures to protect personal information from hackers and identity thefts are one reason this proposal should be rejected," former Texas congressman Ron Paul, founder and president of the Foundation for Rational Economics Education, a 501(c)(3) organization, wrote in his comments on the proposed rule.

Even if the IRS' information security weren't lacking, it would still be dangerous to enable the agency to associate individual taxpayers with their giving. The IRS has been repeatedly used by presidents to target their political opponents, and the agency has even (allegedly) taken it upon itself to harass disfavored groups.

"This latest proposed rule aimed at non-profits is extremely concerning not only to the conservative grassroots but to every American who believes in contributing to charities and non-profits," FreedomWorks Foundation CEO Adam Brandon said in a statement. "The information the IRS is asking for would provide bureaucrats, the Lois Lerners of this corrupt agency, with a treasure trove of information that could be used to target those who contribute to non-profits that promote a message they disagree with."

Donors aren't the only ones with something to fear from the proposed rule. Charities, too, are at risk, and they are making their concerns known. Among the nearly 38,000 comments on the proposal was "a letter signed by 215 charitable organizations that warns they cannot possibly safeguard the Social Security numbers of their donors," penned *The Hill*.

"Nonprofits say they will be forced to invest in expensive cyber security defenses to ward off hackers, but any breaches would open them up to lawsuits," the paper added. What's more, the "associated liabilities could hamper the recruitment of board members," Tim Delaney, president and CEO of the National Council of Nonprofits, told the *NonProfit Times*.

Even if all nonprofits could guarantee the security of their donors' SSNs, the rule would still threaten their fundraising, Delaney said.

"As soon as this thing hits the books, it's dangerous," he asserted. "Even if not one nonprofit does it, it creates danger. Suddenly, the scam artists can use it [by posing as charities and obtaining people's SSNs]. That, then, creates the identity-theft opportunity. As soon as that happens and news gets out, it will have a further chilling effect on nonprofits. People will say 'I don't want to go anywhere near that.'"

Ostensibly the rule change was proposed because, according to *Forbes*, "Some big donors made gifts, and on audit they didn't have a receipt (no receipt, no deduction), so they invoked a never-enacted regulatory exception to the receipt rule: a receipt isn't required if the charity files a return to the IRS listing the donation on a special form. Who cares that no such form exists!"

Unfortunately for the IRS, the Government Accountability Office (GAO) looked into mandating donor reporting back in 2009, when the IRS first proffered a rule change similar to the current proposal, and found that doing so "may not be an effective way to improve compliance" but could impose "substantial costs and burdens" on charities and inhibit donations because of fears of identity theft or loss of privacy. At the time, the IRS concurred with these findings and withdrew its proposal.

The *Journal*, therefore, suggests that the agency may have an ulterior motive this time around: "This year [2015] the IRS was forced by public outrage to shelve a different regulation that sought to limit the amount of political activity social-welfare organizations can engage in. The new rule looks like an attempt to achieve a similar result by drying up contributions."

The IRS insists that there is nothing to fear from the rule change because submitting a donor report would be strictly voluntary. But as Paul, among many others, pointed out, the IRS could in the future make “a simple one-word change” to the rule to mandate donor reporting.

The hue and cry raised by charities has not fallen on deaf ears. Legislation has been introduced in both houses of Congress to put a stop the proposed rule. On December 8, Senator Pat Roberts (R-Kan.) introduced a