

Internal Revenue Service
Memorandum
DL-116054-97
Br4:JJUrban

date: August 21, 1997

to: Special Assistant to the Assistant Commissioner CP:E

from: Chief, Branch 4 (Disclosure Litigation) CC:EL:D:Br4

subject: Disclosure of Form 990 When Exempt Status Not Established

This is in response to your oral request for advice on whether the Service must make a Form 990 available to the public when the exempt status of the organization has not yet been established.

Pursuant to I.R.C. § 6033(a), organizations exempt under section 501(a) must, with certain exceptions, file annual information returns:

stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe...

This requirement is generally met by filing Form 990.

~~Pursuant to Treas. Reg. § 1.6033-2(c), applicable to tax years beginning after~~
December 31, 1969, an organization claiming exempt status under section 501(a) shall file the annual information return required under section 6033 in accordance with the instructions applicable to such returns. The organization must also indicate on the information return that the return is filed in the belief that the organization is exempt under section 501(a), but that the Service has not yet recognized such exemption.¹

The Form 990, and accompanying instructions, provide that if an organization's application for exemption is pending, the organization must check the "application pending" box in the heading of the return (Block F) and complete the return.

¹ The Regulation was a change from prior practice. For taxable years beginning before January 1, 1970, the regulations provided that the Form 990 was not required to be filed by an organization claiming exempt status. Instead, if the date for filing an income tax return and paying the tax occurred before the tax exempt status of the organization was established, the organization was required to file an income tax return and pay the tax. Treas. Reg. § 1.6033-1(c). See, Rev. Rul. 79-30, 1979-1 C.B. 454.

Section 6104(b) provides that the Service must make available for public inspection the information required to be furnished under section 6033.² Since an organization claiming exempt status under section 501(a) is required by section 6033 to file a Form 990, that form must be made available to the public under section 6104(b).

/s/ Joseph J. Urban
JOSEPH J. URBAN

cc: National Director for Legislative Affairs M:L
Director, Freedom of Information Act CP:EX:GLD:F

² Names and addresses of contributors to organizations are not disclosable except in the case of private foundations. Section 6104(b); Treas. Reg. § 301.6104(b)-1(b).