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# **Notice of Proposed Rulemaking by Cross Reference to Temporary Regulations**

## **Authority to Charge Fees for Furnishing Copies of Exempt Organizations' Material Open to Public Inspection Under IRC §6104**

**REG-142538-02**

**AGENCY:** Internal Revenue Service (IRS), Treasury.

**ACTION:** Notice of proposed rulemaking by cross reference to temporary regulations.

**SUMMARY:** In this issue of the Bulletin, the IRS is issuing temporary regulations (T.D. 9070) relating to fees for copies of exempt organizations' material available to the public under section 6104 of the Internal Revenue Code (Code). The text of the temporary regulations also serves as the text of the proposed regulations.

**DATES:** Written and electronic comments and requests for a public hearing must be received by November 13, 2003.

**ADDRESSES:** Send submissions to CC:PA:RU (REG-142538-02), Room 5226, Internal Revenue Service, POB 7604, Ben Franklin Station, Washington, D.C. 20044. Submissions may be delivered Monday through Friday between the hours of 8 a.m. and 5 p.m. to CC:PA:RU (REG-142538-02), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W., Washington, D.C. Alternatively, taxpayers may submit electronic comments directly to the IRS internet site at: [www.irs.gov/reg](http://www.irs.gov/reg).

**FOR FURTHER INFORMATION CONTACT:** Sarah Tate, 202-622-4590 (not a toll-free number).

## **SUPPLEMENTARY INFORMATION:**

### **Background**

The IRS' obligation under section 6104 of the Code to make certain information open to public inspection is satisfied by making the information available to the public at such times and places as the IRS shall reasonably prescribe. The existing regulations provide that copies of the information that the IRS must make open to public inspection shall be available to members of the public upon written request. Currently, §301.6104(a)-6(d) provides that the IRS will charge a "fee" for copies of material available to the public under section 6104(a)(1) of the Code, including approved applications for recognition of tax-exempt status and supporting papers. Currently, §301.6104(b)-1(d)(4) provides that the Commissioner of Internal Revenue (Commissioner) may prescribe a "reasonable fee" for copies of material available to the public under section 6104(b) of the Code, including certain information furnished on exempt organization annual information returns.

This notice of proposed rulemaking amends the existing regulations to clarify that any fee assessed by the IRS in the exercise of its discretion, whether in the case of requests for photocopies, or for special media (e.g., computer printouts, transcripts, CD-ROM reproductions), shall be no more than the fee that would be assessed under the fee schedule promulgated pursuant to section (a)(4)(A)(i) of the Freedom of Information Act (FOIA), 5 U.S.C. §552(a)(4)(A)(i), by the Commissioner from time to time (the "IRS' FOIA fee schedule"). For paper copies, the IRS' FOIA fee schedule, at 26 CFR §601.702(f)(3)(iv), grants the first 100 pages free of charge to requesters other than commercial use requesters, but otherwise sets a per-page copying fee applicable to all requesters. The IRS' FOIA fee schedule, at 26 CFR §601.702(f)(5), authorizes fees based on the actual cost of non-paper products, such as computer disks.

Currently, §301.6104(d)-1(d)(3)(i) provides that an exempt organization required to furnish copies to a requester may charge a copying fee corresponding to that which the IRS may charge. This notice of proposed rulemaking amends the existing regulations to make clear that an exempt organization may charge the applicable per-page copying fee under the IRS' FOIA fee schedule. An exempt organization need not provide the first 100 pages of copies free of charge to requesters other than commercial use requesters as the IRS does.

Through December 18, 2002, the IRS' FOIA fee schedule set fees of \$1.00 for the first page and \$.15 for each subsequent page of exempt organization returns and related documents. 26 CFR §601.702(f)(5)(iv)(B). Effective December 19, 2002, the fees are to be established by the Commissioner from time to time. 26 CFR §601.702(f) as updated at 67 FR 69673, 69682. Currently, the Commissioner has established fees of \$.20 per page, up to 8½ by 14 inches, made by photocopy or similar process, and actual cost for other types of duplication. 31 CFR §1.7(g)(1)(i), (ii) and (iii).

### **Special Analyses**

It has been determined that this notice of proposed rulemaking is not a significant

regulatory action as defined in Executive Order 12866. Therefore, a regulatory assessment is not required. It has also been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations, and because these regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, this notice of proposed rulemaking will be submitted to the Chief Counsel of the Small Business Administration for comment on its impact on small businesses.

### **Comments and Request for a Public Hearing**

Before these proposed regulations are adopted as final regulations, the IRS will consider any electronic or written comments (a signed original and eight (8) copies) that the IRS timely receives. All comments will be available for public inspection and copying. A public hearing may be scheduled if requested in writing by a person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

### **Drafting Information**

The principal author of this notice of proposed rulemaking is Sarah Tate, Office of the Associate Chief Counsel (Procedure & Administration), Disclosure & Privacy Law Division.

### **Proposed Amendments to the Regulations**

Accordingly, 26 CFR part 301 is proposed to be amended as follows:

#### **PART 301—PROCEDURE AND ADMINISTRATION**

Para. 1. The authority citation for part 301 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. §7805 \* \* \*

Section 301.6104(a)-6(d) is also issued under 5 U.S.C. §552

Section 301.6104(b)-1(d)(4) is also issued under 5 U.S.C. §552

Section 301.6104(d)-1(d)(3)(i) is also issued under 5 U.S.C. §552 \* \* \*

Par. 2. In §301.6104(a)–6(d), the fourth sentence is amended as follows:

[The text of this proposed revision is the same as the text of §301.6104(a)–6(d)–T published elsewhere in this issue of the Bulletin].

Par. 3. In §301.6104(b)–1(d)(4), the last sentence is amended as follows:

[The text of this proposed revision is the same as the text of §301.6104(b)–1(d)(4)–T published elsewhere in this issue of the Bulletin].

Par. 4. In §301.6104(d)–1(d)(3)(i), the second sentence is amended as follows:

[The text of this proposed revision is the same as the text of §301.6104(d)–1(d)(3)(i)–T published elsewhere in this issue of the Bulletin].

Robert E. Wenzel,  
*Deputy Commissioner of  
Internal Revenue.*

(Filed by the Office of the Federal Register on July 8, 2003, 8:45 a.m., and published in the issue of the Federal Register for July 9, 2003, 68 F.R. 40849)

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