

**DESCRIPTION OF H.R. 5053,
THE PREVENTING IRS ABUSE AND PROTECTING
FREE SPEECH ACT**

Scheduled for Markup
by the
HOUSE COMMITTEE ON WAYS AND MEANS
on April 28, 2016

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION



April 27, 2016
JCX-41-16

CONTENTS

	<u>Page</u>
INTRODUCTION	1
A. Prohibition on Requiring that Identity of Certain Contributors to Section 501(c) Organizations be Included on Annual Returns	2
B. Estimated Revenue Effect of the Proposal.....	5

INTRODUCTION

The House Committee on Ways and Means has scheduled a committee markup of H.R. 5053, the Preventing IRS Abuse and Protecting Free Speech Act of 2016, on April 28, 2016. This document,¹ prepared by the staff of the Joint Committee on Taxation, provides a description of the bill.

¹ This document may be cited as follows: Joint Committee on Taxation, *Description of H.R. 5053, the Preventing IRS Abuse and Protecting Free Speech Act* (JCX-41-16), April 27, 2016. This document can also be found on the Joint Committee on Taxation website at www.jct.gov.

A. Prohibition on Requiring that Identity of Certain Contributors to Section 501(c) Organizations be Included on Annual Returns

Present Law

In general, organizations exempt from taxation under section 501(a) are required to file an annual return (Form 990 series), stating specifically the items of gross income, receipts, disbursements, and such other information as the Secretary may prescribe.² An organization that is required to file an information return, but that has gross receipts of less than \$200,000 during its taxable year, and total assets of less than \$500,000 at the end of its taxable year, may file Form 990-EZ. Section 501(c)(3) private foundations are required to file Form 990-PF rather than Form 990. An organization that has not received a determination of its tax-exempt status, but that claims tax-exempt status under section 501(a), is subject to the same annual reporting requirements and exceptions as organizations that have received a tax-exemption determination.

On the applicable annual information return, organizations are required to report their gross income, information on their finances, functional expenses, compensation, activities, and other information required by the IRS in order to review the organization's activities and operations during the previous taxable year and to review whether the organization continues to meet the statutory requirements for exemption. Examples of the information required by Form 990 include: (1) a statement of program accomplishments; (2) a description of the relationship of the organization's activities to the accomplishment of the organization's exempt purposes; (3) a description of payments to individuals, including compensation to officers and directors, highly paid employees and contractors, grants, and certain insider transactions and loans; and (4) disclosure of certain activities, such as expenses of conferences and conventions, political expenditures, compliance with public inspection requirements, and lobbying activities.

Form 990-PF requires, among other things, reporting of: the foundation's gross income for the year; expenses attributable to such income; disbursements for exempt purposes; total contributions and gifts received and the names of all substantial contributors; names, addresses, and compensation of officers and directors; an itemized statement of securities and other assets held at the close of the year; an itemized statement of all grants made or approved; and information about whether the organization has complied with the restrictions applicable to private foundations (secs. 4941 through 4945).

An organization that files Form 990, Form 990-EZ, or Form 990-PF and receives during the year \$5,000 or more (in money or property) from any one contributor generally must report such contributions on Schedule B ("Schedule of Contributors").³ The Schedule B is open to public inspection for an organization that files Form 990-PF (private foundations) or a section

² Sec. 6033(a).

³ Certain section 501(c)(3) organizations that meet a 33-1/3-percent public support test of the regulations under sections 509(a)(1) and 170(b)(1)(A)(vi) generally must report contributions totaling \$5,000 or more from a single contributor only to the extent that such contributions exceed two percent of the organization's total contributions. Additional special reporting rules apply to organizations described in sections 501(c)(7), (8), or (10).

527 political organization that files Form 990 or Form 990-EZ. For all other Form 990 and Form 990-EZ filers, the names and addresses of contributors are not required to be made available for public inspection. All other information, including the amount of contributions, the description of noncash contributions, and any other information, is required to be made available for public inspection unless it clearly identifies the contributor. As a matter of practice, the IRS does not include schedule B on the CD sets or any other form of media made available to the public. Instead, on a case-by-case basis, when an individual makes a request for a specific organization's Schedule B, the IRS reviews and redacts the schedule in an effort to avoid divulging information that would identify any contributor.

The requirement that an exempt organization file an annual information return (Form 990 or Form 990-EZ) does not apply to certain exempt organizations, including organizations (other than private foundations) the gross receipts of which in each taxable year normally are not more than \$50,000. Organizations that are excused from filing an information return by reason of normally having gross receipts below such amount must furnish to the Secretary an annual notice (Form 990-N), in electronic form, containing certain basic information about the organization.⁴

Other organizations exempt from the annual information return requirement include: churches, their integrated auxiliaries, and conventions or associations of churches; the exclusively religious activities of any religious order; certain State institutions whose income is excluded from gross income under section 115; an interchurch organization of local units of a church; certain mission societies; certain church-affiliated elementary and high schools; and certain other organizations, including some that the IRS has relieved from the filing requirement pursuant to its statutory discretionary authority.⁵

Description of Proposal

The proposal limits the contributor information that must be reported by an organization described in section 501(c) on its annual information return. Under the proposal, except as described below, the Secretary may not require an organization to report the name, address, or other identifying information of any contributor to the organization with respect to any contribution, grant, bequest, devise, or gift of money or property, regardless of amount.

The proposal provides two exceptions to this prohibition. First, the Secretary is not prohibited from requiring the information described in section 6033(a)(2) relating to prohibited tax shelter transactions. Second, the Secretary is not prohibited from continuing to require reporting of contributions, grants, bequests, devises, or gifts of money or property in excess of \$5,000 made by an officer or director of the organization (or an individual having powers to responsibilities similar to those of officers or directors) or by a covered employee. Covered employee means any employee (including any former employee) of the organization if the employee is one of the five highest compensated employees of the organization for the taxable year. For this purpose, an employee's compensation includes compensation from the

⁴ Sec. 6033(i).

⁵ Sec. 6033(a)(2)(A); Treas. Reg. secs. 1.6033-2(a)(2)(i) and (g)(1).

organization as well as any compensation paid with respect to the employment of such employee by any related person or governmental entity. A person or governmental entity is treated as related to the organization if it: (1) controls or is controlled by the organization; (2) is controlled by one or more persons that control the organization; (3) is a supported organization (as defined in section 509(f)(3) during the taxable year with respect to the organization; (4) is a supporting organization described in section 509(a)(3) with respect to the organization; or (5) in the case of an organization that is a voluntary employees' beneficiary association described in section 501(c)(9), establishes, maintains, or makes contributions to such voluntary employees' beneficiary association.

The proposal makes a conforming amendment to section 6033(b), which describes certain information that a section 501(c)(3) organization must include on its annual information return.

Effective Date

The proposal is effective for returns required to be filed for taxable years ending after the date of enactment.

B. Estimated Revenue Effect of the Proposal

Fiscal Years												
[Millions of Dollars]												
<u>2016</u>	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>	<u>2025</u>	<u>2026</u>	<u>2016-21</u>	<u>2016-26</u>
---	-1	-2	-2	-2	-2	-2	-2	-2	-2	-2	-7	-16

NOTE: Details do not add to totals due to rounding.