December 16, 2015

CC:PA:LPD:PR (REG-138344-13)
Internal Revenue Service
Room 5203
POB 7604
Ben Franklin Station
Washington, DC 20044


**Docket Number: IRS-2015-0049**

Re: Substantiation Requirement for Certain Contributions (REG-138344-13)

I submit this statement on behalf of the League of American Orchestras (the League) in response to the request by the Internal Revenue Service (80 Fed. Reg. 55802) for comments regarding proposed regulations to implement the exception to the “contemporaneous written acknowledgement” requirement for substantiating charitable contribution deductions of $250 or more. The League appreciates this opportunity to raise serious concerns regarding the proposed regulations due to the potential for declines in charitable giving and increased administrative burdens.

The League of American Orchestras leads and supports America’s orchestras and the vitality of the music they perform. Founded in 1942 and chartered by Congress in 1962, the League links a national network of thousands of instrumentalists, conductors, managers, board members, volunteers, and business partners. Its diverse membership of approximately 800 nonprofit orchestras across North America ranges from world-renowned symphonies to community groups, from summer festivals to student and youth ensembles. Orchestras unite people through creativity and artistry, fuel local economies and civic vitality, and educate young people and adults – all with essential and substantial support from private contributions.

The regulations propose to establish a new voluntary process for nonprofits to file an information return regarding charitable contributions to the Internal Revenue Service (IRS) by February 28 each year. By the same date, a copy of the portion of the form recording each donation would be provided to each contributor of $250 or more to substantiate the
contribution. The return submitted to the IRS would require the nonprofit to collect donors' Social Security numbers or tax identification numbers, names, and addresses.

Under current law, nonprofits must provide donors written documentation regarding receipt of donations of $250 or more, such as "the amount of cash and a description of any property other than cash contributed" and "whether any goods and services were provided by the donee organization in consideration for the contribution."

Orchestras across our diverse membership have indicated that the new proposal would be costly to administer and would reduce charitable donations. The League opposes implementation of the proposal and registers the following serious concerns:

- **Donors will be discouraged from making charitable contributions if they may risk identity theft.** The IRS currently advises individuals to protect their tax identification numbers from fraud by providing them only when "absolutely necessary." The public has been widely cautioned to regard requests for tax identification numbers as a sign of potential fraudulent activity. In an era of anxiety over cyber-security, identity theft, and highly-publicized attacks on public databases, requests for tax payer identification numbers should not be a factor in charitable giving.

- **Nonprofit organizations may increasingly become the target of cyber attacks, whether or not they opt into the proposed voluntary substantiation process.** If orchestras and other nonprofit organizations are known to potentially store sensitive personal identifying information for thousands of donors, they may rapidly become a specific target for criminal attacks on their data systems. This vulnerability would compromise not only donor information, but other highly sensitive financial and personal information for nonprofit organizations and the people they serve.

- **The costs associated with implementing the proposed procedures would take essential resources away from orchestras' artistic missions and service to their communities.** Collection of tax identification numbers would impose new legal requirements on nonprofits to retain and protect those numbers from identity theft, and require costly data protection measures and additional staff time. The proposed substantiation process would needlessly direct already-scarce resources away from mission delivery and toward meeting an increased administrative burden.
Even under a voluntary system, donors will be less likely to make charitable contributions – or may reduce their contributions – if there is the possibility that they will be expected to disclose Social Security numbers or tax identification numbers. A patchwork of nonprofits opting in or out of the voluntary system will add an element of uncertainty as donors consider their giving options. Verifying to donors whether or not they will be required to supply their tax identification number for each donation will be an impediment to charitable giving. Orchestras, like other nonprofit organizations, rely on contributions from donors from across the economic spectrum. Under the proposed regulations, donors may be inclined to reduce their giving to below the $250 threshold to avoid potential disclosure of tax identification numbers.

Orchestras are concerned that what is currently proposed to be a voluntary process would later become a requirement. The IRS is urged to reverse course immediately on the proposal and reassure nonprofit organizations and their donors that tax identification numbers will not be required to be disclosed in the process of making a charitable contribution.

Given the costs, risks, and diminished giving that may result, it is unnecessary and harmful to put such a new system in place, even on a voluntary basis. In the draft rules, the IRS states that the current disclosure process "works effectively, with the minimal burden on donors and donees" and predicts that the newly proposed "donee reporting will be used in an extremely limited number of cases."

We urge the IRS to support the vital work of nonprofit organizations in communities nationwide by using the utmost caution when considering any policy changes that may deter donors from making charitable contributions. Orchestras, as tax-exempt organizations, are partners in the nation’s nonprofit charitable sector working to improve the quality of life in communities nationwide. Individual contributions are a critical source of support that enables orchestras to broaden public access to the arts, nurture cultural diversity, spur the creation of new artistic works, and foster a sense of cultural and historic pride, all while supporting countless jobs in communities nationwide.

Ticket sales and admission fees alone do not come close to subsidizing the artistic presentations, educational offerings, and community-based programming of nonprofit arts organizations. In fact, total private contributions represent roughly 47% of the revenue that makes the work of U.S. orchestras possible. Should individual donations decline, the capacity of orchestras to provide educational programs and widely accessible artistic events, and to boost the civic health of communities and the artistic vitality of our country, would be diminished at a time when the services of all nonprofits are most in demand.
America’s orchestras promote access to the arts, are important participants in education for children and adults, and support jobs and economic growth – all with the support of charitable contributions and in partnership with other community-based nonprofit organizations. On behalf of the full array of American orchestras, I urge the Internal Revenue Service to withdraw the proposed substantiation regulations.

Sincerely,

Jesse Rosen
President & CEO