THE KRESGE FOUNDATION

August 26, 2025

Mr. Andres Garcia
Internal Revenue Service
Room 6526
1111 Constitution Avenue NW
Washington, DC 20224

Via pra.comments@irs.gov

Re: The Kresge Foundation Comments with respect to OMB Control No. 1545-0047
Specifically Forms 926, 8865, and 5471 related to direct and indirect investment vehicles

Dear Mr. Garcia:

The Kresge Foundation ("the Foundation") is responding to the above referenced request for comment with respect to forms filed by tax-exempt organizations. This letter is being submitted by the management of the Foundation. The Foundation was founded in 1924 to promote human progress. Today, the Foundation fulfills that mission by building and strengthening pathways to opportunity for low-income people in America's cities, seeking to dismantle structural and systemic barriers to equality and justice. Using a full array of grants, loans, and other investment tools, the Foundation invests more than $160 million annually to foster economic and social change. For more information visit kresge.org.

Our comments are focused on the areas of federal tax compliance related to reporting direct and indirect foreign investments. The Foundation finds certain foreign filings are redundant and provide little or no substantive additional information to the U.S. Treasury. These filings are submitted as attachments to the Form 990-T, Exempt Organization Business Income Tax Return; specifically, the following forms:

926	Return by a Transferor of Property to a Foreign Corporation
8865	Return of US Persons with Respect to Certain Foreign Partnerships
5471	Information Return of US Persons with Respect to Certain Foreign Corporations.

The administrative cost of creating the information that does not assist in ensuring income tax is properly reported and / or redundant information is significant. For example, for each tax year 2022 and 2023, the Foundation incurred approximately 200 hours of internal time gathering and reviewing data and incurred over $100,000 in fees for tax experts to analyze that information and prepare approximately 200 forms, resulting in approximately 1,100-1,200 pages of information. We do not believe these forms are necessary for the proper

performance of the functions of the agency, and they do not provide practical utility. We believe these filing obligations arose as a result of a lack of an exception to the filing requirements for tax-exempt organizations. We also believe these forms, with respect to investments in foreign corporations and partnerships, are not of use to the IRS but are currently collected due to a perceived mandate to collect such information. Regulatory changes could be made in order to streamline reporting for tax-exempt organizations.

Please note that there is precedence for exceptions made for exempt organizations from filing certain informational forms. Most notably, Form 8621 for the reporting of passive foreign investment corporations ("PFICs"). IRC Sec. 1298(f) was amended effective March 18, 2010, to provide the Secretary with regulatory authority to provide exceptions to reporting with respect to PFICs. Regulations under IRC Sec. 1298(f) provided an exception to the PFIC annual filing requirement for certain exempt organizations.[1] According to Treasury Decision 9650, the exception applies when the PFIC investment does not result in taxation under Subchapter F of Subtitle A. Further exceptions for small investors are also provided even if there is no income to report under Section 1291.

Further, IRC Section 6046 itself already provides some exceptions that were not outlined in the statute. Section 6046A(b) states: Form and Contents of Return:- Any return required by subsection (a) shall be in such form and set forth such information as the Secretary shall by regulations prescribe.

- Treas. Reg. 1.6046A-1(b)(1) provides for exceptions in paragraph (f) of that section. Subsection (f) provides for three exceptions from filing the Form 8865 for a situation not provided for in the statute itself.

Since Treasury has the authority to modify the reporting requirements via regulations under each IRC Section 6038B, 6046, and 6046A, we are making a number of suggestions to eliminate unnecessary tax forms and / or to streamline reporting that can benefit many taxpayers, not just non-profits. These changes would result in streamlined operations of the IRS so that they can be more effective with respect to international investment reporting.

Background

Investors who are diversified will often have an investment portfolio that includes various asset classes, including foreign assets which may be invested in both public and private

[1] Treas. Reg. Section 1.1298-1(c)(1).

equity, fixed income credit, real estate and natural resources. Foreign investments[2] can be held directly or indirectly via either a domestic or foreign partnership or corporation. An investment may hold a broad spectrum of underlying investments which creates complexity in reporting pertaining to investments held via a partnership which requires looking through to lower-level underlying holdings.

As a result of foreign domiciled investments (referred to herein as "investment vehicles"), investors, including tax-exempt organizations, are required to complete and attach various forms to their income tax return (Form 990-T in the case of a tax-exempt organization). The information reported may be just cash transfers if the U.S. person either owns (directly or indirectly) more than 10% of the vote or value of the foreign corporation immediately after the contribution **or** contributes over $100,000 in a 12-month period ending on the date of the transfer. Please note that the $100,000 threshold dates back to at least 1997 and has not been modernized since then. In addition, non-cash transfers in certain nonrecognition transactions of *any* amount can require a filing obligation (Forms 926 and 8865). Further, there may be more extensive information reporting (Forms 8865 and 5471) such as when direct or indirect ownership of a foreign partnership or corporation, respectively, are owned 10% or more by vote or value. The filing requirements are greater in the case of a controlled foreign corporation ("CFC") (i.e., one that is controlled by U.S. shareholders).

In some cases, the investment vehicle manager provides the necessary information with the Schedule K-1 issued to the investor or otherwise. In other cases, the exempt organization has to seek out the information for each investment vehicle, obtain financial statements to analyze the information, and in some cases, look through to the underlying investments to determine if they (the investor) have a filing requirement.

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[2] Please note that the purpose of these investments is to maximize return on investment while managing the risk of the overall portfolio. The investment activities are wholly separate from the Foundation's grant making activities other than the higher the return the Foundation has from its investments, the more it can devote to its charitable purpose.

Although the investment manager makes the decisions on underlying investments, the investment manager is bound by the investment strategy and restrictions on investments that are detailed in the private placement memorandum (PPM). The PPM is a key part of the due diligence that the Foundation conducts before making a commitment to invest.

(a) Whether the collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility.

We understand that the main objective of these forms may be to help the IRS gather information about U.S. taxpayers' investment into and ownership in foreign partnerships and corporations and to ensure compliance with U.S. tax laws. We would surmise that the data collected and reported on these foreign investment forms rarely provides any practical utility to the taxpayer or IRS and that there is a redundancy of information being prepared and submitted for the reasons noted below. Further, we believe the IRS is collecting this information with respect to tax-exempt organizations due to a perceived mandate to do so. The IRS has not provided any clarity as to what the IRS might use this information for, if at all.

Utility to the IRS

Tax-exempt organizations are taxed on their unrelated business taxable income ("UBTI") and private foundations are additionally subject to a 1.39% excise tax on their net investment income ("NII"). Thus, not all income received from these investments is subject to tax for many tax-exempt organizations. Additionally, the foreign reporting forms do not report UBTI or NII, except in the case of Subpart F (IRC Section 951(a)) or GILTI (IRC Section 951A) income. Therefore, the forms provide no utility as a cross reference for proper reporting of either income tax or excise tax in the case of tax-exempt investors. The basis for our comment with respect to the utility of Forms 926, 8865, and 5471 for tax-exempt organizations is as follows.

1. For public charities and private foundations, the information gathered on these forms is not necessary for determining the tax liability of the exempt organization as the forms do not report UBTI. The forms also do not report income, other than for Subpart F income which is only in the case of a controlled foreign corporation (and Form 5471) for private foundations who are subject to the NII excise tax. Therefore, a majority of the information on these forms is not relevant for purposes of tax calculations nor does it result in a tax liability for the tax-exempt investor, as such the data appears to be informational only. Further, for domestic partnerships and foreign partnerships with U.S. source income, the investor and the IRS receives a copy of the Form 1065 Schedule K-1 which reports all the necessary information to determine the investor's tax liability as well as any capital contributions made during the year. The foreign filings are fully redundant.

2. Certain of these forms (926 and 8865) provide information with respect to cash and non-cash transfers (e.g., original or additional investment) to foreign organizations. These capital transactions do not create any tax liability in and of themselves.
3. Domestic partnerships do not include any Subpart F or GILTI inclusions in their computation of taxable income.[3] Instead, a partnership discloses the necessary information for a partner to determine if it has an inclusion under either Subpart F or GILTI.
4. A Form 8865 is also required when the investor has a 10% or greater interest by vote or value, direct or indirect, in a foreign partnership controlled by U.S. persons with a 10% or more ownership interest. As noted above, a foreign partnership with U.S. sourced income is required to file a Form 1065 with the IRS and provide each of its partners with a Schedule K-1 that includes all information necessary to determine the partner's income tax liability, ownership in the investment and any capital contributions made. For other foreign partnerships, the partners receive capital account statements (usually monthly or quarterly) with respect to their investments that allow them to calculate their income for inclusion for the year. Also, the exempt organization tracks all cash transfers as they occur on their books and records. In this case, it is this information that is used to prepare the exempt organization's tax returns. These statements from the investment partnerships often do not readily include all of the information required on a Form 8865 so additional time must be spent to gather financial statement data which is not used to generate any additional tax revenue for the U.S. Treasury.
5. A Form 5471 filing requirement is triggered when a U.S. shareholder owns a 10% or greater direct or indirect interest in a foreign corporation by either vote or value of all classes of stock. To the extent that U.S. shareholders control the foreign corporation, its income is only then subject to the anti-deferral rules of Subpart F[4] or GILTI[5]. If U.S. shareholders do not control the foreign corporation, then there is no Subpart F income inclusion but there is still a Form 5471 filing requirement.
    a. A further complication of the Form 5471 filing requirement[6] is that to know if one has a Subpart F income inclusion, a shareholder needs to know if there

[3] Under Treas. Reg. Section 1.958-1(d)(1), a domestic partnership is not considered to own shares of a foreign corporation as defined in IRC Section 958(a) solely for purposes of determining an income inclusion under IRC Sections 951, 951A, and 956(a).
[4] IRC Sections 951 and 952. Please note that Subpart F changes the timing of when allocable income is reported by the investor.
[5] IRC Section 951A.
[6] IRC Section 6046.

are any other U.S. shareholders and track whether their ownership is with voting or non-voting stock as CFC and U.S. shareholder determinations are based on U.S. persons ownership looking at vote or value. This applies not only at the top-tier investment but could also apply to the underlying investments as well (which could also be owned by more than one investment vehicle). This information has to be collected annually as ownership can fluctuate.

b. Thus, the only utility of the completion of the Form 5471 to the IRS in the administration of tax may be in the event the corporation is controlled by U.S. shareholders and Subpart F is applicable. But then, is this similar to other information used to prepare the tax return in that the necessary information for determining the amount of the income inclusion could be gathered and reported on the organization's tax return but not require a specified form that requires significantly more information to be reported to the IRS? In other words, the calculations can be made without the need for the form itself (which is quite lengthy and requires considerable information gathering, time and expertise to prepare).

Redundancy

1. Partnerships that file a Form 1065 include domestic partnerships as well as any foreign partnerships with U.S. sourced income. Schedule K-1s filed by partnerships and provided to each of its partners are required to include the tax-exempt partner's share of UBTI and NII as needed by an exempt organization to properly complete their Form 990-T or 990-PF, as applicable. Form 1065 also reports partner ownership and capital contributions received by the partnership from the partner during the year. In addition, Schedule K-3 provides partners with information to make a determination of whether they must include income under Subpart F or GILTI.
2. Domestic partnerships report capital contributions of their partners on Schedule K-1 and are required to file Forms 8865 for its holding in foreign partnerships, Forms 926 and Forms 5471 for its holdings in foreign corporations. Thus, direct and indirect interests in a foreign investment through a domestic partnership are already being reported and therefore reporting by the investing partner duplicates this information.

3. For private foundations, the Form 990-PF Part II balance sheet requires a list of all securities held at year end and also shows the security balance at book value and end-of-year market value.

(b) The accuracy of the agency's estimate of the burden of the collection of information

The Foundation is unable to analyze this other than with respect to our burden as already noted above. To reiterate, for each tax year 2022 and 2023, the Foundation incurred approximately 200 hours of internal time gathering and reviewing data and incurred over $100,000 in professional fees to analyze that information and prepare approximately 200 forms, resulting in approximately 1,100-1,200 pages of information. The amount of time and the cost associated with these foreign filings is significant, and the resources could be spent on programmatic activities and furthering the Foundation's mission.

(c) Ways to enhance the quality, utility, and clarity of the information to be collected.

To enhance the utility of information reported by exempt organizations with respect to their foreign investments, the Foundation recommends the following changes. By making these changes, the information provided can be focused on what is essential to the collection of information necessary for the proper performance of the functions of the IRS, including only gathering information with practical utility rather than being inundated with a lot of unnecessary data.

Currently, a taxpayer is required to file Form 926[7] to report cash or non-cash transfers of more than $100,000 or if immediately after a transfer holds, directly or indirectly, at least 10% of the total voting power or the total value of the foreign corporation. A taxpayer is required to file Form 8865[8] to report cash or non-cash transfers of more than $100,000 or if at any time during the tax year owned 10% or greater interest in the foreign partnership. Regulatory authority to modify the filing requirements is provided by IRC sections 6038B (certain transfers to foreign persons), 6046 (transfers to foreign corporations in acquisition of their stock), and 6046A(a) (transfers to foreign partnerships in acquisition or disposition

[7] Required by IRC Section 6038B.
[8] IRC Section 6046A.

of a partnership interest).

1. **Modernize the reporting thresholds**

For Forms 926 and 8865, regulatory authority to modify the filing requirements is provided by IRC sections 6038B and 6046A(b), respectively.

Simple changes to reporting thresholds, which have not been updated at least since 1997, could address both the burden for many taxpayers and for the IRS.

- Modifying the filing requirement by changing the conjunction from an "or" to an "and" so that it reads, "10% or more ownership by vote or value AND a transfer of $100,000 or more of cash or non-cash"
- Modifying the transfer threshold to a level higher than $100,000 would also reduce the compliance burdens for both taxpayers and the IRS. For example, raising the filing threshold to transfers of $10 million or more would significantly reduce the number of filings and allow the IRS to focus its efforts on larger transactions.

To accomplish this, modify regulations as follows:

Change: 1.6038B-1(b)(3)(i) from "or" to "and" at the end of the sentence and 1.6038B-1(b)(3)(ii) from $100,000 to a much higher amount.

Similar change to 1.6038B-2(a)(1).

2. **Narrow the field of required filers**

Exempting tax-exempt organizations from requirements for cases in which there is no income tax consequence

IRC Section 6038B(a) flush language states that a US person who transfers property to a foreign corporation or partnership "shall furnish to the Secretary, at such time and in such manner as the Secretary shall by regulations prescribe….." IRC§ 6038B(b) provides an exception to reporting for transfers of less than $100,000. This effectively said to Treasury they cannot require information for ownership of less than 10% or transfers of less than $100,000. Regulations under IRC Sections 6046 (for corporations) and 6046A (for partnerships) used the threshold provided in this exception. IRC Section 6046 provides that the required information be in such form and shall set forth, in respect of the foreign

corporation, such information as the Secretary prescribes by the forms or regulations "**as necessary for carrying out the provision of the income tax laws**" . If there are no income tax consequence being reported on these forms, they may not be necessary for tax-exempt organizations. Similar language appears in IRC Section 6046A for investments in foreign partnerships.

Amending regulations under Sections 6046, 6046A, and 6038B to provide for such an exception for tax-exempt organizations could be made by making the following regulatory changes:

To accomplish this, modify regulations as follows:

> **Add: 1.6046A-1(f)(5) Exclusion for tax-exempt organizations. The return requirement of Section 6046A does not apply to 501(c)(3), 501(c)(4) and 501(c)(5) organizations that invest in foreign partnerships that are investment partnerships as defined in IRC section 731(c).**
>
> **Insert new and renumber rest: 1.6046-1(a) Exception from filing for certain tax-exempt organizations. IRC section 501(c)(3), 501(c)(4) and 501(c)(5) organizations are not required to file the form and information described in Section 6046.**
>
> **Change: 1.6038B-1(b)(3)(i) from "or" to "and" at the end of the sentence and 1.6038B-1(b)(3)(ii) from $100,000 to a much higher amount.**
>
> **Similar change to 1.6038B-2(a)(1).**

If Treasury requires a Form 5471 when Subpart F income is applicable (excise tax impact, no income tax liability) for private foundations, then the language for 6046 could include the following additional sentence:

", except in the case of a private foundation for an investment that generates Subpart F income."

3. **<u>Exempting tax-exempt organizations from requirements for cases in which investments are for investment rather than trade or business purposes</u>**

In cases where there are no income tax consequences, tax-exempt organizations with only passive investments need not file these forms.

Amending Sections 6046, 6046A, and 6038B to provide for such an exception for tax-exempt organizations. IRC Section 731(c) provides a relevant definition for partnerships to assist in defining which investors could be excluded from these filing requirements.

4. **Creating a simplified Form 8865**

For tax-exempt organizations that are still required to file Form 8865, create a new Form 8865A that requests only the information needed from the exempt organization as opposed to those that invested for operational purposes. The current form is complex and requires a deep knowledge of tax law in order to answer all the questions, many of which would not apply to investment partnerships. This would reduce the compliance burden on tax-exempt organizations and allow perhaps more tax-exempt organizations to prepare this form without having to engage a tax professional.

5. **Providing a table alternative for Form 926 transfers**

Currently a separate Form 926 is required for each transfer of $100,000 or more. However, for cash transfers, many of the questions do not apply. It would be much easier for tax-exempt organizations to provide a table of all such transfers and for the IRS to review the table instead of having to sort through hundreds of pages.

As such, a table for Form 926 could exclude the following questions from the current form: Section B, 11-13, Section C, 14-15, 17-21.

6. **<u>Collecting relevant information closer to the source</u>**

If Treasury still feels the collection of this information is necessary, instead of requiring the partners of a domestic partnership to file Forms 926 and 8865, require the domestic partnership that holds the foreign investments to file these forms on behalf of all domestic partners with enough detail reported on the Schedule K-1 that no duplicate reporting is required on the tax returns filed by the partners/members. [9]

7. **<u>Exemption from the filing of Form 5471</u>**

Exemption for tax-exempt organizations from filing Form 5471 for investments that

[9] See also Treas. Reg. Sections 1.721(c)-1(b)(18) and 7701(a)(30).

are not for operational purposes. If this cannot be fully accomplished, consider only requiring a Form 5471 when there is a Subpart F income inclusion for private foundations. That said, and as noted above, the Foundation does not feel it is necessary to the proper administration of the tax laws to require completion of Form 5471 if the only relevant information with respect to the exempt organization, is proper inclusion of Subpart F income. Just like other items (e.g., reporting dividend income), foundations do not attach third party verification or supplemental filings (e.g., Schedules K-1, bank statements, Forms 1099, etc.) to its return to show the support of the income items included in the return. It does not seem necessary to complete a Form 5471 to provide support for Subpart F income that a foundation is properly reporting on the Form 990-PF. The information is available in the foundation's workpapers.

a. Alternatively, and still in lieu of a Form 5471 filing requirement, consider a simpler way to break out a private foundation's Subpart F income such as the desired Subpart F detail on Form 990-PF.

(d) Ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology

As noted above, there are opportunities to reduce the burden through the modernization of the thresholds, narrowing the field of required filers, simplified forms and reporting by investors, and collecting relevant information closer to the source.

Please note that for private foundations, investments are already individually listed in Form 990-PF, Part II, Balance Sheet.

In the event a Form 926, 8865, or 5471 is still required, allow for the amended form or missing form to be attached to the Form 990-T in the year of discovery rather than amending for the year of the original filing requirement. Since these forms are informational only, they will not have any tax implications.

Lastly, in light of the fact that Forms 926 and 8865 do not include any information with respect to income or excise tax liability for a tax-exempt organization, we would recommend that these filing requirements be eliminated for tax-exempt organizations. This could be similar to the PFIC carve out from filing and the exceptions from filing that already exist in regulations under Section 6046A as mentioned on page 2 above.

(e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information

For each tax year 2022 and 2023, the Foundation incurred approximately 200 hours of internal time gathering and reviewing data and incurred over $100,000 in professional fees to analyze that information and prepare approximately 200 forms, resulting in approximately 1,100-1,200 pages of information with respect to Forms 926, 8865, and 5471.

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Thank you in advance for this opportunity and your consideration of reducing this financial and administrative burden so that the Foundation can better direct resources toward fulfilling the Foundation's charitable mission. If you should have any questions about these comments, please contact us.

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