

Current Issues Surrounding Form 990

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2008 Form 990

- Significant redesign
 - Redesigned form scheduled to take effect for the 2008 tax year.
 - Designed to influence and modify exempt organizations' behavior
 - Sarbanes-Oxley Act

IRS Redesign Guiding Principles

- *Enhancing transparency* means providing the IRS and the public with a realistic picture of the organization and its operations, along with the basis for comparing the organization to similar organizations.
- *Promoting compliance* means the form must accurately reflect the organization's operations and use of assets, so the IRS may efficiently assess the risk of noncompliance.
- *Minimizing the burden on filing organizations* means asking questions in a manner that makes it relatively easy to fill out the form, and that do not impose unwarranted additional recordkeeping or information gathering burdens to obtain and substantiate the reported information.

Core Form

- Part I - Summary page
 - Brief description of the organization's mission or most significant activity for the year
 - Various information on financial activities, compensation, governance, and operations
 - Number of voting members of governing body
 - Number of independent voting members of governing body
 - Total number of employees
 - Total number of volunteers
 - Year of formation
- Part II is the signature block (Signature has been moved to the front page)

Part III Program Service Accomplishments

- Concept of program service accomplishments
- New and changed services
- Description of mission
- Grants and allocations to others

Part IV Checklist of Required Schedules & Part V Activities and IRS filings

- Checklist of Required Schedules
- Questions regarding other IRS filings and tax compliance
 - # of 1099's, W-2's and W-2G's filed
 - Various other filings which may be required
 - Notification to donors of value of goods or services if the amount received was \$75 or more
 - Personal benefits contracts

Part VI - Governance

- Three main parts
 - Governing body and management
 - Policies
 - Disclosers

Section A: Governing Body and Management

- An Independent director
 - Not compensated by the organization or a related organization
 - Did not receive > \$10,000 as an independent contractor (other than reimbursed expenses)
 - Does not receive material financial benefit
 - Does not have compensated family member
 - IRS “Gold Standard” is an active, independent and engaged board of directors

Governing Body and Management(cont.)

- Number of voting members and independent members on board
- Business and family relationships among directors and officers
- Delegation of control to a management company
- Changes to organizational documents
- Became aware of a material diversion of assets
- Whether organization has members or stockholders and their power to elect directors and approve other transactions

Governing Body and Management(cont.)

- Whether organization keeps minutes of board and committee meetings
- Whether there are local chapters, branches or affiliates
- Whether a copy of 990 is provided to governing board before it is filed
- Whether any director or officer can't be reached through organization's mailing address

Section B: Policies

- Policies mentioned here
 - Conflicts of Interest Policy
 - Written Whistleblower Policy
 - Written Document Retention and Destruction Policy
 - Executive compensation policy
 - Investments in Joint Ventures policy

Rebuttable Presumption for compensation of CEO, top management, and other officers and key employees

- Process for determining compensation includes all of the following elements:
 - Review and approval by a governing body or compensation committee
 - No conflict of interest involved.
 - Use of comparable compensation data
 - similarly qualified persons in functionally comparable positions at similarly situated organizations.
 - Contemporaneous documentation
 - deliberations and decisions
 - Description of the process

Other policies and procedures mentioned or implied in the new Form 990

- Mission statement adopted by the board (Part III)
- Audit committee (Part XI)
- Policy regarding tax exempt bond compliance (Part IV)
- Community benefit report (Schedule H – Hospitals)
- Charity care policy (Schedule H – Hospitals)
- Debt collection policy (Schedule H – Hospitals)
- Reimbursement of travel & entertainment expenses (Schedule J)
- Gift acceptance policy (Schedule M)
- Procedure for 990 review (Part VI)
- Conservation easement policy (Schedule D)

Section C: Disclosures

- States 990 required to be filed
- Name address & telephone # of person who possesses books & records
- How the organization makes the following documents available to the public
 - Form 1023/1024
 - Form 990
 - Form 990-T (501(c)(3) only
 - Governing documents
 - Conflict of interest policy
 - Financial statements

Governance – Year end planning

- Evaluate board size and independence
- Adopt policies before year end
- Distribute annual questionnaire to officers, directors & key employees
- Have process for reviewing 990
- Distribute 990 to entire board before filing
- Take minutes at board & committee meetings
- Use rebuttable presumption for executive compensation
- Determine what disclosure practices will be

Part VII – Compensation

- Compensation for the following:
 - All officers, directors & trustees regardless of compensation
 - All key employees
 - \$150,000 Test
 - Responsibility Test
 - Top 20 Test
 - 5 Highest compensated employees with compensation > \$100,000
 - 5 Highest compensated independent contractors with compensation > \$100,000
 - All former directors & trustees with compensation >\$10,000 in capacity as former director from organization & related organizations
 - All former officers with compensation > \$100,000 from organization & related organizations
- Based on Calendar year data (W-2/1099-MISC)

Parts VIII, IX & X – Revenue Statement, Functional Expense Statement and Balance Sheet

- Revenue Statement
 - Contributions, gifts, grants and similar amounts
 - Program service revenue
 - Other revenue
- Functional Expense Statement
- Balance Sheet

Part XI – Financial Statement Reporting

- Accounting method
 - If other than cash or accrual or a change in accounting method will need a description
- Question as to whether the financial statements were compiled, reviewed or audited by an independent accountant
- Whether there is an audit or similar committee
- Whether an audit was required under OMB Circular A-133 and if the required audit was completed

Schedules – The Less Common Ones and schedules not requiring discussion

- Less common schedules
 - Schedule C – Political Campaign and Lobbying Activities
 - Schedule E – Schools
 - Schedule F – Statement of Activities Outside the United States
 - Schedule H – Hospitals
 - Schedule K -Supplemental Information on Tax-exempt Bonds
 - Schedule N – Liquidations, Terminations, Dissolutions, or Significant Disposition of Assets
- Discussion not needed
 - Schedule B – Schedule of Contributors
 - No change from 2007
 - Schedule O – Supplemental Information to Form 990



Schedule A – Public Charity Status & Public Support

- All organizations exempt under section 501(c)(3)
- Reason for public charity status
- Supported organizations
- Public Support
- Facts and Circumstances Test

Schedule D – Supplemental Financial Statements

- Consolidates in a single schedule
 - Detailed information on donor advised funds and other similar accounts
 - Detailed information on conservation easements
 - Detailed information on other assets, other liabilities
 - Detailed information on endowment funds
 - Detailed information on investments
 - Reconciliation of revenue and expense per audit to tax
 - Text of the footnote of the organization's financial statements that reports the organizations liability for uncertain tax positions under FIN 48

Schedule G - Fundraising activities

- Professional fundraising services, fundraising events, and gaming
- Thresholds
 - More than \$15,000 in professional fundraising expense
 - More than \$15,000 in contributions and gross income from fundraising events
 - More than \$15,000 gross income from gaming activities

Schedule I - Grant and other assistance programs

- Only US grants & other assistance
 - Foreign grants reported on Schedule F
- Description of the organizations procedures for monitoring the use of grant funds
- Non individuals (new information required)
 - Only those who received total > \$5,000
 - Report EIN
- Individuals (new information required)
 - Grouped by type of grant (no names disclosed)
 - For each type, number of grants made

Schedule J - Compensation

- Who must be included
 - Former officer, key employee or highest paid employee > \$100,000
 - Former director or trustee (in role of former director or trustee) over \$10,000
 - Current officer, director or key employee > \$150,000 form organization AND related organization
 - Receives or accrues compensation from an unrelated organization for services to the organization

Schedule J – Compensation (cont.)

- Required disclosures
 - Certain fringe benefits (1st class travel, companion travel, gross up payments, discretionary spending accounts, housing allowance or use of residence, payments for business use of personal residence, health or social club dues or initiation fees, personal services)
 - If there is an expense reimbursement policy & whether substantiation is required
 - CEO compensation
 - Determined by board or committee
 - Based on comparable data
 - Written employment agreement
 - If organization provided
 - Severance payments
 - Supplemental nonqualified deferred compensation
 - Equity based compensation

Schedule J – year end planning

- Identify related organizations
- Identify key employees
- Identify compensation paid from related organizations
- Identify compensation from unrelated organizations
- Identify former officers, directors and key employees who receive compensation
- Adopt a travel reimbursement policy
- Identify accountable plans
- Identify revenue sharing and non-fixed income
- Trace various forms of nontaxable compensation including deferred compensation and benefits
- Review fringe benefits
- Consider additional direct compensation in lieu of benefits

Schedule L – Transactions with Interested Persons

- Excess benefit transactions
 - Identify the disqualified person(s) that received an excess benefit in the transaction
 - Identify the organization manager(s), if any, that participated in the transaction, knowing that it was an excess benefit transaction
 - Describe the transaction; and
 - State whether the transaction has been corrected.
- Loans
 - Only loans between the organization and interested persons that are outstanding as of the year end
 - Report each loan separately, regardless of amount.
 - Interested persons
 - Current or former officers, directors, trustees, key employees, and five highest compensated employees
 - Disqualified persons
 - Family members

Schedule L – Transactions with Interested Persons (cont.)

- Grants
 - Examples of grants are scholarships, fellowships, internships, prizes, and awards. A grant includes the gift portion of a part-sale, part-gift transaction.
 - Interested person
 - Current or former officer, director, trustee, key employee or 5 highest compensated
 - A substantial contributor
 - A person that contributed at least \$5,000 and is required to be reported by name on Schedule B for the current year.
 - If organization not required to file Schedule B then not required to report transactions with substantial contributors
 - A related person
 - Member of the organization's grant selection committee,
 - Family member of any of the above
 - A 35% controlled entity of any of the above
 - Employee of a substantial contributor or 35% controlled entity (or the employee's child)

Schedule L – Transactions with Interested Persons (cont.)

- Business Transactions
 - Contracts for sale
 - Leases & licenses
 - Performance of services
 - Joint ventures if each own > 10%
 - \$10,000 reporting threshold (aggregate payments)
 - Interested persons
 - Current or former officer, director, trustee, key employee or 5 highest compensated
 - Former officers , key employees highly compensated (> \$100,000)
 - Former directors or trustees (> \$10,000)
 - Compensation includes related organizations

Schedule L – Transactions with Interested Persons – Year End Planning

- Identify related organizations
- Work on planning to avoid attribution
- Identify transactions with related exempt organizations
- Identify compensation paid from multiple entities

Schedule M

Noncash contributions

- > than \$25,000 in total non-cash contributions
- Museums and other organizations that maintain collections, and organizations that receive conservation easements, must complete Schedule M for contributions even if they do not report revenue for such contributions
- Questions
 - Report the number of Forms 8283 received
 - If they have a gift acceptance policy
 - If they use third party to solicit, process or sell non-cash contributions
 - A description of non-cash contributions for which revenue was not reported

Schedule R – Related Organizations and Unrelated Partnerships

- Identification of Disregarded Entities
- Identification of Related Tax-Exempt Organizations
- Identification of Related Organizations Taxable as a Partnership
- Identification of Related Organizations Taxable as a Corporation Trust
- Transactions with Related Organizations
- Unrelated Organizations Taxable as a Partnership (new)



Thank You!



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