

The New Form 990

(life under the microscope...)

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Course Objectives

- > Provide an overview of the new form
- > Identify additional information required to complete form
- > Identify non-profit best practices (implied by IRS in form questions) for consideration

IRS Goals in Revising Form 990

- > Enhance transparency and comparability
- > Promote organization tax compliance
- > Improve governance

Form Basics

- > Effective for calendar 2008 year-ends
- > Applies to non-profits with gross revenues > \$1 million
- > Form 990 EZ for 2008 can be filed if gross revenues < \$1 million and total assets < \$2.5 million

Form Structure

- > Core form which must be completed by all filers
- > Key summary information on page 1
- > 16 schedules which apply to specific items or specific types of organizations
- > Free form schedule where additional information can be presented

Core Form

- > Summary page
- > Program accomplishments
- > Checklist of required schedules
- > Tax compliance
- > Governance and management
- > Compensation
- > Financial reporting

Core Form – Summary (Page 1)

- > Summary of detailed information contained elsewhere
 - Governance
 - Program accomplishments
 - Revenue and expense
- > Signature block

Form 990 Schedules

- A. Public charity status and public support
- B. Schedule of Contributors
- C. Political campaigns and lobbying activities
- D. Supplemental financial statements
- E. Schools
- F. Statement of activities outside the U.S.
- G. Supplemental information regarding fundraising or gaming activities
- H. Hospitals
- I. Grants and other assistance to organizations, governments and individuals in the U.S.
- J. Compensation information
- K. Supplemental information on tax-exempt bonds
- L. Transactions with interested persons
- M. Non-cash contributions
- N. Liquidation, termination, dissolution or significant disposition of assets
- O. Supplemental information
- R. Related organizations and unrelated partnerships

New Governance Questions

- > Are written minutes maintained for the board of directors and each committee with authority to act on behalf of the board?
- > Are there written policies and procedures to ensure chapters, affiliates or branches are operating consistent with the organization?

New Governance Questions (continued)

Form 990

- Submitted to the board before it was filed?
- Describe the process used to review Form 990

New Governance Questions (continued)

Conflict of Interest

- Is there a written policy?
- Are board members required to disclose conflicts annually?
- Is compliance with COI policies monitored and enforced?
 - If so, how?

New Governance Questions (continued)

Sarbanes Type Items:

- Is there a written whistle blower policy?
- Is there a written document retention and destruction policy?

(Note: destruction of documents when under investigation is illegal for all organizations, including non-profits under the Sarbanes Oxley Act)

New Governance Questions (continued)

Compensation Policies:

- Does the compensation determination process include all of the following:
 - Review and approval by independent persons?
 - Comparability data
 - Contemporaneous documentation of deliberations and decisions
- Was this process done for:
 - Top executive?
 - Other officers and key employees?

New Governance Questions (continued)

Investments in or joint ventures with for-profit entities:

- Is there a written policy requiring the organization to monitor such arrangements to ensure they don't endanger the organization's tax-exempt status?

New General Questions

- > Number of voting board members that are independent
- > Estimated number of volunteers
- > Number of 1099s issued
- > Number of W-2s issued
- > Material diversion of organization assets

New Tax Compliance Questions

- > Were quid pro quo contributions received?
- > Was required deductibility disclosure made?
- > Was Form 1098C filed for vehicle contributions received?
- > How does the organization make available the following to the public?
 - Form 1023 – (exempt application)
 - Form 990
 - Form 990T (recently added to public disclosure requirement)

New Tax Compliance Questions (continued)

Does the organization make the following available for the public?

- Governing documents
- Conflict of interest policy
- Financial statements

If so, how?

Basic Compensation Reporting

- > Under prior 990, non-charities only disclosed compensation of directors and key employees
- > Under new 990, all non-profits have uniform disclosures

Basic Compensation Reporting (continued)

Disclosures:

- All current officers, directors, trustees and key employees, regardless of compensation
- Five highest compensated employees (in addition to above) who received > \$100k
- All former officers, key employees or highest compensated employees who received > \$100k
- Former directors or trustees that received > \$10k

Basic Compensation Reporting (continued)

Compensation reported:

- From Organization
 - W-2, box 5 (calendar year ending in fiscal year)
 - 1099, box 7 (calendar year ending in fiscal year)
- From Related Organizations
 - W-2, box and 1099 (same as above)
- Estimated other (non-taxable) compensation from organization and related organizations

Expanded Compensation Reporting – Schedule J

Additional Reporting for each of the following:

- Former officer, director, key employee or highest compensated that received > \$100k
- Any individual whose compensation from organization and related organizations > \$150k

Expanded Compensation Reporting - Schedule J (continued)

Indicate if any of following benefits were provided:

- > First-class or charter travel
- > Travel for companions
- > Tax indemnification payments
- > Discretionary spending account
- > Housing allowance or housing
- > Payments for business use of residence
- > Health or social club dues or fees
- > Personal services (e.g., maid, chauffeurs, chef, etc.)

Expanded Compensation Reporting - Schedule J (continued)

- > For previously listed benefits, did the organization follow a written policy regarding payment or reimbursement or provision of all of these benefits?
- > If no, must explain

Expanded Compensation Reporting - Schedule J (continued)

- > For CEO/Executive Director
(if compensation > \$150k), indicate which method used (if any) to determine compensation
 - Compensation committee
 - Independent compensation consultant
 - Form 990 of other organizations
 - Written employment contract
 - Compensation study or survey
 - Approval by board or committee

Expanded Compensation Reporting - Schedule J (continued)

For public charities only:

- Any compensation contingent on revenues?
- Any compensation contingent on net earnings?
- Any non-fixed payments other than above?

Expanded Compensation Reporting - Schedule J (continued)

For persons subject to expanded reporting, report compensation as follows:

- A. Base Compensation
- B. Bonus and incentive pay
- C. Other taxable benefits
- D. $A+B+C = W-2$ or 1099
- E. Deferred compensation
- F. Non-taxable fringes
- G. Deferred compensation previously reported

Public Charity Status and Public Support – Schedule A

- > Expanded information required on supporting organizations
- > 2 support schedules
 - 509 (a) (2)
 - All other
- > Support schedule
 - Accrual basis now
 - Includes column for current year
- > New section on results of computed public support percentage
 - 33 1/3% test
 - 10% facts and circumstances

Schedule of Contributors – Schedule B

> No change

Political Activity and Lobbying – Schedule C

- > Required if organization engaged in any political activity or lobbying
- > Consolidated all political and lobbying disclosures for all non-profits
- > Covers political campaign activities, excise taxes paid, lobbying activities
- > Additional disclosures required for organizations that have not made the 501 (h) election

Supplemental Financial Statements – Schedule D

Part I – Donor Advised Funds

Part II – Conservation Easements

Part III/IV – Collections, Historical Treasurers

- If not reported on financial statements (as permitted by SFAS 116) must attach text of note to financials describing the items

Supplemental Financial Statements – Schedule D (continued)

Part V – Custodial Arrangements

- Annual reconciliation of these amounts

Part VI – Endowment Funds

- Annual reconciliation of these amounts

Part VI – X – Similar Schedules

- As required before in attached statements

Supplemental Financial Statements – Schedule D (continued)

- > Reconciliation of 990 with financial statements
 - Part XI – Net Assets
 - Part XII – Revenues
 - Part XIII – Expenses
- > Requires reporting text of note to financials on FIN 48

Activities Outside the U.S. – Schedule F

- > IRS obligated to collect information to fight war on terrorism
- > Unsure what information is valuable
- > Schedule required if aggregate revenues or expenditures > \$10k for activities outside U.S.
 - Grant making
 - Fundraising
 - Business activities
 - Program service activities
- > Information required
 - Description of activities by geographical area
 - Detailed information for each grant or other assistance recipient of over \$5k

Fundraising or Gaming Activities – Schedule G

- > If professional fundraiser paid > \$5k, required to provide detailed information on fundraiser
- > If aggregate gross receipts from special events or gaming exceed \$15,000, must disclose detailed information on each event

Grants and Assistance – Schedule I

- > Required if grants > \$5k made in total
- > Detailed reporting of each grant or assistance > \$5k to a
 - government
 - organization
 - individual
- > Does the organization maintain records to substantiate grantees' eligibility for grants and the selection criteria used?
- > Describe the organization's procedures for monitoring the recipients' use of grant funds

Tax-Exempt Bonds – Schedule K

- > Schedule required if organization has tax-exempt bonds:
 - With balance exceeding \$100k at year-end and the bonds were issued after 2002
- > Only basic bond information required for 2008
- > Remainder of schedule required beginning in 2009:
 - Use of proceeds
 - Private business use
 - Arbitrage
- > This information may be difficult to gather

Transactions with Interested Parties – Schedule L

Loans to and from interested persons

- Name, purpose
- Original amount, current balance
- In default?
- Approved by board or committee?
- Written agreement?

Transactions with Interested Parties – Schedule L (continued)

Grants benefitting interested parties

- Name
- Relationship
- Amount and type of grant

Transactions with Interested Parties – Schedule L (continued)

Business transactions involving interested persons

- Name
- Relationship
- Amount
- Description
- Sharing of organization revenues?

Non-cash Contributions Received – Schedule M

Required if

- Organization received > \$25k of non-cash donations (of assets)
- Organization received contributions of
 - Art, historical treasures, etc.
 - Qualified conservation contributions

Non-cash Contributions Received – Schedule M (cont.)

- > Identify type of property received
- > For each type (as a whole)
 - Number of contributions
 - Total amount included in revenue
 - Method of determining revenues
- > Does the organization have a gift acceptance policy that requires the review of any non-standard contributions?
- > Does the organization have or use third parties or related organizations to solicit, process or sell non-cash contributions?
 - If yes, describe

Related Organizations and Unrelated Partnerships – Schedule R

- > Requires identification of
 - Disregarded entities (e.g., single member LLCs)
 - Related tax-exempt organizations
 - Related organizations taxable as a partnership
 - Related organizations taxable as a corporate or trust

Related Organizations and Unrelated Partnerships – Schedule R (continued)

- > Requires reporting of the following types of transactions with related organizations or unrelated partnerships
 - Revenues received
 - Grants or capital contributions
 - Loans or guarantees
 - Sales, purchases or exchange of assets
 - Lease of facilities or assets
 - Performance of services or membership or fundraising solicitations
 - Sharing of facilities, assets or employees
 - Reimbursement of expenses
 - Transfer of cash or property

Planning for Filing on New Form

- > Identify sources of newly required information
 - Assign responsible employees
 - Consider establishing new procedures to gather and maintain new information
- > Identify new disclosure areas that could cast a negative light on the organization
- > Consider making changes or implementing new governance policies to remedy potential negative disclosures