

IRS Issues Instructions for Redesigned Form 990

December 23, 2008

Revenue Service (IRS) has released final instructions for completing the Form 990, the annual information return filed by most non-profit entities, which has undergone its first major redesign in almost 30 years. The new Form 990 will be phased in over three years, starting with fiscal years beginning on or after January 1, 2008. The old Form 990 will not be accepted beginning with the 2008 tax year.

Changes to the Form

Format:

Eleven-page core form to be completed by all filing organizations plus 16 schedules to be completed as appropriate based on the organization's particular activities.

Focus:

Emphasis on compliance with good governance practices, with more probing disclosures in areas of governance policies, compensation practices, and foreign activities.

Critical Areas

1. Governance

Part VI: This part asks about the organization's governance structure and policies (sometimes requiring narrative descriptions), including questions on:

■ *Board composition*

- ▶ How many members of the organization's governing body are "independent"?
- ▶ Do members of the governing body have business or family relationships with each other?
- ▶ Does any person or organization have the power to elect members of the governing body?
- ▶ Does the governing body delegate any of its duties to outside consultants?

■ *Corporate actions*

- ▶ Have there been any changes to the organizational documents? (If so, a narrative is required.)
- ▶ Does the governing body contemporaneously document its actions?
- ▶ Did the governing body review the organization's Form 990 before filing?
- ▶ How does the organization make its Form 990 and other documents available to the public?

■ *Policies*

- ▶ Does the organization have policies addressing conflicts of interest, whistleblowers, document retention, and compensation?

■ *Conflict of interest*

- ▶ Does the policy require annual disclosure of conflicts by insiders?
- ▶ How does the organization enforce the policy? (A narrative is required.)

■ Compensation

- ▶ Does the policy require the collection and use of comparability data when setting compensation amounts?
- ▶ Is there review and approval of compensation decisions by independent persons?
- ▶ Is there contemporaneous documentation of the deliberation and decision?

2. Compensation

Part VII & Schedule J: Part VII features new definitions of “officer” and “key employee,” and requires all filing organizations to report compensation paid to their top five highest compensated employees, a requirement that used to be limited to 501(c)(3) organizations and Section 4947(a)(1) nonexempt charitable trusts that qualify to file Form 990 or Form 990-EZ. Schedule J requires more extensive reporting of deferred compensation packages, fringe benefits, and other compensation arrangements.

3. Auditing

Part XI: This part asks for details on the organization’s accounting methods, including whether its financial records were reviewed by an independent accountant and whether the organization’s governing body has an audit committee.

4. Museums / Endowments

Schedule D: Contains new reporting requirements for organizations maintaining endowments, donor advised funds or custodial arrangements such as museums, conservation organizations and credit counseling organizations.

5. Foreign Activities

Schedule F: In contrast with the old Form 990, which had a single question regarding foreign bank accounts and offices, this new schedule requires information about any foreign grants, fundraising, trade or business, program services, offices, employees, or agents overseas.

6. Gaming / Fundraising

Schedule G: Asks for more information on gaming activities and arrangements with professional fundraisers, including compensation to workers, unit accounting, promoters, gaming operations, backup withholding and state law required distributions of proceeds.

7. Hospitals

Schedule H: Certain portions of Schedule H will be optional for 2008, but by 2009 the entire schedule will need to be completed, including questions on community benefit, bad debt, Medicare and collection practices. An organization that operates multiple hospitals will file a single Schedule H, but must provide information about each of its facilities, including those operated through disregarded entities or joint ventures.

8. Tax-Exempt Bonds

Schedule K: Organizations now need to keep and provide significantly more detailed records of any tax-exempt bonds with principal amounts in excess of \$100,000 issued after December 31, 2002, including the use and investment of bond proceeds, any private use, and any compensation of third parties that provide services relating to bond issuances. Certain portions of this schedule remain optional for 2008 but will be mandatory in 2009.

9. “Interested Parties”

Schedule L: Any payments of more than \$100,000 in a taxable year, or \$10,000 in a single transaction, between the organization and its current or former officers, directors, trustees, key employees, their family members or affiliated entities must be reported on Schedule L.

Schedule N: This new schedule attempts to capture life events of an organization to ensure that it continues to qualify for exempt status. Reporting is required following a sale or exchange of more than 25 percent of an organization's net assets but not with respect to an organization's change of the composition of its passive investment portfolio.

11. No Advance Rulings

Because the IRS is no longer issuing advance rulings on publicly supported charity status, organizations will no longer file Form 8734 at the end of a five-year advance ruling period. Instead, beginning with the sixth tax year following IRS recognition of tax-exempt status, all publicly supported organizations will need to use a five-year computation period on their Forms 990 to show that they are not private foundations.

Transition Relief

The requirement to file the new Form 990 will be phased in over a three-year period, permitting smaller organizations to file the simpler Form 990-EZ under the following thresholds:

- 2008: Gross receipts < \$1.0 million; total assets < \$2.5 million
- 2009: Gross receipts < \$500,000; total assets < \$1.25 million
- 2010 - onward: Gross receipts < \$200,000; total assets < \$500,000

Also, the filing threshold for the Form 990-N (e-postcard) will increase from \$25,000 in gross receipts to \$50,000 in gross receipts, beginning with the 2010 tax year. Note that there are no immediate plans to revise the Form 990-PF filed by private foundations and Section 4947(a)(1) nonexempt charitable trusts treated as private foundations.

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