# Tax *Flash*

## QUESTIONS AND ANSWERS ABOUT THE NEW FORM 990 FOR TAX EXEMPT ORGANIZATIONS

### QUESTION: WHAT HAS CHANGED?

**ANSWER:** The IRS has issued instructions for the redesigned **Form 990, "Return of Organization Exempt from Income Tax**." Because the complex new form is designed to enhance transparency and promote tax compliance, filing it is expected to require greater public disclosure and more preparation time.

Exempt organizations generally are required to use the new Form 990 for fiscal years that end on or after December 31, 2008. Smaller organizations will be allowed to phase into using the new form over a one- to three-year period, depending on annual gross receipts and total assets.

The new Form 990 instructions confirm that a nonprofit must potentially provide information on as many as 20 policies that it may have in place (some apply to only a small number of organizations), or disclose to the IRS — and thus ultimately the public — that it has no policies in these areas. Because of the new form's complexity and significance, nonprofits should begin gathering the information they need now, if they have not started already.

### QUESTION: WHAT ARE THE NEW KEY STEPS?

**ANSWER:** If you are a nonprofit executive or board member, here are two key steps you will need to make sure your organization is taking right now:

1. **Producing newly required information.** This will initially make the Form 990 process more complicated. The information you may want, or need, to provide on your policies could be extensive.

2. **Developing explanations and descriptions required for the form that communicate your organization's mission, operation and activities in the best light.** Your answers to questions about your policies and guidelines will be available for public inspection on websites like www.guidestar.org and to funding sources and others that require submitting Form 990. Many states require the Form 990 to be submitted for charity registration purposes. Many grantors also require the form to be submitted annually.

## QUESTION: WHAT DOES THE NEW REVISED FORMAT LOOK LIKE?

**ANSWER:** The new Form 990 uses a "core form" that all filing organizations must complete. Important new elements — those emphasized by the IRS — include:

- Summaries of your organization's purpose, your board's independence, your organization's staffing and two years of financial information, including major income and expense categories, assets and liabilities,
- Substantial new governance and policy information, as mentioned (see listing below), and
- Greater opportunity to describe programs while disclosing revenue, program by program.

Significant *new* details that may not be readily available without proper planning include information on:

- Specialized assets, including donor-advised funds; conservation easements; tax, escrow and custodial accounts; endowment funds; and investments in land, buildings and equipment;
- Fundraising and gaming activities and events, including amounts paid to professional fundraisers and details about bingo and other games;
- For hospitals, information on charity care and community benefits provided — only a detailed list of "facilities" (a term specifically defined by the final instructions) is required for 2008, but the IRS will expect extensive details moving forward;
- Grants and other assistance provided by the organization to other organizations, governments and individuals in the United States — this includes scholarships, awards, traditional grants, and relief and charitable support for individuals;
- Tax-exempt bond information — limited reporting for 2008, but the IRS will expect extensive details in later years; and
- Activities outside the United States, including expenditures — country-specific information isn't required for 2008, but will be for future years.

Some previously required information simply moves to the new schedule.

## QUESTION: WHAT ABOUT COMPENSATION AND INSIDER TRANSACTIONS?

**ANSWER:** The new Form 990 emphasizes compensation issues and insider transactions, and may require additional information from past years, including:

- Payments to all current *and former* board members, officers, key employees and highest-paid employees;
- Supplemental compensation information for many executives paid more than $150,000, and all former executives and board members regardless of amount — details will include base compensation, bonus/incentives, other current compensation, deferred compensation and nontaxable benefits, whether paid by the organization or a related organization;
- Payments to and from related organizations;
- Identification of, and policies on, executive travel; and
- Identification and descriptions of excess benefit transactions, loans and buying, selling and other business/financial exchanges with insiders.

**QUESTION: WHAT ABOUT GOVERNANCE AND POLICIES?**

**ANSWER:** Governance issues are emphasized by the IRS, as are certain organizational policies common to many nonprofit organizations, including:

- Your board's independence, voting rights and elections,
- Your board's review of Form 990 prior to filing,
- Any conflicts of interest and your compliance-monitoring process,
- Your audit committee,
- Executive compensation, including travel, housing, clubs and discretionary accounts,
- Whistleblower protection,
- Document retention,
- Affiliate chapters,
- Joint ventures,
- Public availability of exemption application and Forms 990 and 990T,
- Gift acceptance,
- Conservation easements,
- Grant funds paid in the United States,
- Grant funds paid in foreign countries,
- Tax-exempt bond policies,
- For *hospitals* — charity care, community benefit and debt-collection policies, and
- For *schools* — racial nondiscrimination.

**QUESTION: WHEN WILL THESE RULES PHASE-IN?**

**ANSWER:** The new Form 990 is being phased in for smaller organizations, which may file the simpler Form 990-EZ during a transition period as follows:

- 2008 — organizations with gross receipts under $1 million *and* assets under $2.5 million
- 2009 — organizations with gross receipts under $500,000 *and* assets under $1.25 million
- 2010 *and after* — organizations with gross receipts under $200,000 *and* assets under $500,000.

**Caution: Even if your organization is eligible to file Form 990-EZ, be aware that the new version incorporates some of the new requirements from the new (regular) Form 990.**

**QUESTION: SHOULD I LOOK AT THIS AS AN OPPORTUNITY FOR IMPROVEMENT?**

**ANSWER:** While gathering and reporting the additional information required by the new form may be a chore, it also has an upside. Preparing the new Form 990 provides an opportunity to:

- **Upgrade your practices and reporting.** The form's questions about policies and practices may result in your organization adopting useful new policies or improving existing ones. It also may be an opportune time to step up weak or questionable reporting.

- **Provide information that is useful to the public in a format that positively highlights your organization.** Grantors and donors are likely to begin using Form 990 data to make funding decisions. The more you can show that your organization is efficiently and effectively run, the easier your fundraising will be.

Whether your organization benefits from the changes depends largely on your readiness. According to the IRS, "minor changes in format and wording" to the new form may follow, but no major changes are expected.

So what do I do now? Don't wait until filing time to start filling in the new Form 990. Call us now to learn what your organization can do to present itself in the best public light. There is also a tutorial on irs.gov/charities/article (Select “Tax Info for Charities” then select “Mini-Courses on Redesigned Form 990”) that is very helpful in explaining the new form. The sooner you act, the more you can make the new requirement a plus rather than a minus for your nonprofit.

Please give us a call if you have questions or concerns regarding the New Form 990.

Best regards,

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