

### Tax Exempt Organizations Prepare Themselves for Heightened Regulatory Scrutiny: An Overview of the Redesigned 2008 IRS Form 990

The IRS Form 990 is the principal channel of communication between nonprofit organizations and the federal government. In December, 2007, after a lengthy period of deliberation and public comment, the IRS released the long-awaited final draft of the 2008 Form 990. Prior to this redesign, the 990 form had not been revised in any significant way for nearly 30 years. The 2008 Form 990 will apply to fiscal years that begin in 2008, meaning that organizations which operate on a calendar year will be required to file the new form by May 15, 2009.

The IRS developed this new form with three principles in mind: to enhance transparency, to promote tax compliance and to minimize the reporting burden on filing organizations. However, this new form clearly takes the IRS into a position that transcends taxation. The obvious question is how will the IRS enforce and promote greater compliance within the nonprofit sector when it clearly has insufficient resources to undertake its current responsibilities?

The following are just some of the highlights of the new form. Nonprofit organizations should now be reviewing the 2008 Form 990, and discussing the changes with their legal and accounting professionals, in order to get a handle on how their organization can make the best use of the new form to appeal to donors and comply with the new requirements. Organizations that fail to do so risk IRS scrutiny as well as negatively affecting their public perception and jeopardizing future fund raising efforts.

**Part I – Summary.** A summary of the organization’s activities will remain, but it has been re-designed to capture a snapshot of the organization’s revenues, expenses and balance sheet totals for both the current year and the previous year. Part I also contains some governance and general questions, and a spot for a brief description of the organization’s mission.

**Part III – Statement of Program Service Accomplishments.** Moved forward to the second page of the form, the filing organization can now explain “what it does” before accounting for “how it does it”. This section requires the filer to describe its 3 largest program services, providing the total amount of expenses, the amount of grants included in that total, and the amount of any direct revenue generated by the activity.

**Part VI – Governance, Management and Disclosure.** Adhering to the IRS philosophy that good governance leads to good tax compliance, this is a completely new section containing questions about governance and management. This was a controversial section because many of the questions asked pertain to the disclosure of matters which are not required by the Internal Revenue Code. Tax exempt organizations must now describe the composition of their boards of directors, governance practices and policies, and management structure.

**Part VII – Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors.** All tax exempt organizations, not just 501(c)(3) entities, must now report the five highest employee salaries. The threshold for that reporting requirement has been raised from \$50,000 to \$100,000. When accounting for executive compensation, filers will now use Form W-2 and Form 1099 information as a starting point, but must also provide an estimate of nontaxable fringe benefits (such as retirement plan contributions and health and welfare benefits). Nonprofit officers, directors or employees who earn more than \$150,000 in reportable compensation (as reflected on Form W-2 or 1099) or \$250,000 in total compensation (including non-taxable fringe benefits) are required to provide more detailed reporting in a redesigned **Schedule J** (see below). Part VII also asks for the 5 highest paid independent contractors who receive more than \$100,000. It is no longer limited to professionals.

**Part VIII – Revenue Statement.** This part contains detailed revenue reporting and categorizes the income as exempt function income, unrelated business income, or unrelated income exempt by statute. The exemption codes utilized in the previous Form 990 have been eliminated.

**Schedule C – Political Campaign and Lobbying Activities.** The redesigned form incorporates expanded questions about lobbying and political expenditures and activities. Non-501(c)(3) tax exempt entities will now be required to provide more extensive reporting of lobbying and political campaign activities.

**Schedule F –Statement of Activities Outside the United States.** In order to provide a more complete picture of an organization’s international activities, Schedule F now requests information about tax-exempt organizations that raise funds, make grants, or conduct business outside the United States. Organizations with more than \$10,000 of aggregate expenses or revenues from foreign activities will be required to describe their operations on a region by region basis, and to provide information regarding grants or assistance made to foreign governments, organizations or individuals. These reporting requirements are expected to result in new recordkeeping practices for entities with substantial overseas activities.

**Schedule J – Compensation Information** — Another area of focus for the IRS in recent years has been in the area of executive compensation. This schedule expands the reporting with questions related to executive perquisites and details of compensation packages. This schedule requires the reporting of compensation paid to a former officer or highly compensated employee greater than \$100,000, or compensation paid to a former director or trustee greater than \$10,000.

**Schedule L: Transactions with Interested Persons** — This schedule provides for more prominent reporting of transactions between the organization and “insiders,” including officers, directors, and substantial contributors, as well as family or business relationships. Transactions include known excess benefit transactions, loans, grants, and other business transactions with interested persons.

**Schedule M – Noncash Contributions.** The old Form 990 failed to capture an accurate picture of the non-cash contributions received by exempt organizations, even when these contributions provided substantial benefit to the organization. The IRS added Schedule M to collect information about non-cash donations ranging from clothing and household goods to intellectual property and real estate.

**Schedule O – Supplemental Information.** One of the primary criticisms of the old 990 was its inability to depict the full scope and impact of an organization’s activities. The new Form 990 contains a new Schedule O, allowing electronic filers up to two pages to respond to each question on the form, and an additional two pages to present any other information it might want to include in the overall report.

For additional information, please contact the Tax Exempt Organizations Group at Duval & Stachenfeld.

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