NONPROFIT ORGANIZATIONS

Update

WINTER 2008

Update on the Revised Form 990

Our last issue summarized the redesigned Form 990 that the IRS was proposing to introduce for the 2008 tax year. The IRS released the final "draft" of the redesigned form on December 19, 2007.

While the final draft will not satisfy all those who submitted comments, it addresses many of the concerns that were raised over the initial draft. The IRS is currently working with representatives of the nonprofit sector to draft instructions for the new 990.

Overview of Changes

The draft core Form 990 was 10 pages long and had 15 schedules. The final version has one extra page and a new schedule. Since many of the 16 schedules are new and the process of selecting the correct schedules may be confusing, the IRS has added a checklist to help organizations determine which schedules they need to file.

- The IRS received many complaints about the analytical information that had appeared on the new summary page in the first draft. It was a well intentioned effort by the IRS to make the first page of the 990 a "snap shot" that could be used to quickly analyze an organization's financial effectiveness and compare it to other organizations. Critics complained that it was too confusing and presented information in a vacuum, without the opportunity to explain unusual expenditures. The revised first page now contains key financial, governance and operating information, including a summary of mission activities and a two-year summary of revenues and expenses.
- The summary of the organization's exempt programs has been moved to page two. This provides an opportunity for organizations to report on new, discontinued or altered program services.
- The new page and schedule that have been added provide a greater opportunity for reporting organizations to provide explanations of their activities. There are also more areas throughout the form to provide supplemental information.
- The section on governance was also revised in reaction to the many comments that were received. Organizations are asked to report on the composition of their governing body and on certain governance and disclosure policies and practices.
- Compensation remains a hot issue for the IRS and the new Schedule J seeks more information on how board members, key employees, and certain highly compensated employees are compensated. Organizations will have to report on a calendar year basis for Schedule J, as the IRS ties the compensation reporting on the 990 to the Form W-2 and Form 1099-MISC amounts reported by the organization.

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IN THIS ISSUE

If you have any suggestions about topics you'd like to see addressed in future issues, please contact Editor Mary Claire Chesshire at mchesshire@wtplaw.com. We look forward to hearing from you.

- The new form also addresses privacy and security concerns for officers and directors who work abroad in unsafe foreign areas, balancing the need for disclosure of information with the real security concerns that some volunteers and staff face around the world.
- Electronic filers will find the new form more user friendly. The IRS has heard their complaints, and they will now have additional space to provide the same expanded information as other filers. This is important as the Service is pressing more organizations to file electronically each year.

Core Form

Part III, ***Statement of Program Service Accomplishments***, leads off with a description of the organization's mission. It then requires the filer to describe the achievements of its three largest programs' services measured by expenditures. Significant space is allocated for this information to be reported, and additional information can be included on the new Schedule O.

Part IV, ***Statement of Functional Expenses***, is applicable to all organizations, but organizations that are exempt under Sections 501(c)(3) or (c)(4) have to provide additional information on their program service expenses, management and general expenses, and fundraising expenses. The IRS decided not to utilize the FASB reporting requirements so organizations will still have the problem of information reported on their Form 990 not matching their financial statements due to the different reporting requirements of the IRS and FASB.

Part V, ***Statements Regarding Other IRS Filings and Tax Compliance***, requests information on unrelated business income reporting, payments to foreign organizations, and other issues that may trigger additional tax compliance requirements.

Part VI, ***Governance, Management, and Disclosure***, generated much discussion in the first draft, including questions as to whether the IRS had the statutory authority to request this information. The IRS has said that the instructions will make clear which questions are currently outside of its authority where information is requested on a voluntary reporting basis. Examples of "voluntary" information disclosures are the request for a list of states where the Form 990 is required to be filed by the organization and whether the organization makes its governing documents, conflict of interest policy, and financial statements available to the public. The IRS has been moving toward an increase in its review of the governance of exempt organizations on the theory that good governance leads to better tax compliance. This increased focus on governance is evident in the information that is requested in this part of the form.

Part VII, ***Compensation*** is reported in both Part VII and on Schedule J as the IRS seeks expanded reporting on compensation to officers, directors, trustees, key employees, highly compensated employees, and independent contractors. Information is also requested on payments to former officers, directors, and trustees in keeping with the five-year look back rule for the imposition of intermediate sanctions on transactions with disqualified persons.

Schedules

There are 27 questions on the core form to guide preparers to select the correct schedules to complete for their organizations. The questions would have been better placed at the end of the core form, since preparers must complete the rest of the form before they can answer the questions on pages 3 and 4. But it is a step in the right direction as the IRS tries to simplify the reporting process for exempt organizations.

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AttorneySpotlight

Allison Brill Wettlaufer

Located in our Baltimore office, **Allison Brill Wettlaufer** recently joined our firm as an associate in our firm's Business and Corporate and Nonprofit Organization sections. While she currently handles mainly taxation matters and corporate transactions, Allison brings a detailed knowledge of nonprofits and their operations to her new position.

Prior to attending the University of Maryland School of Law, Allison served as an AmeriCorps VISTA member and worked as a program manager for *Reading is Fundamental*, the nation's oldest and largest nonprofit children's literacy organization. Helping to foster a life-long love of reading in others was an incredible experience, according to Allison. But as she learned more about the "operational side" of tax-exempt organizations, she found herself developing a greater interest in business law. So she opted to take on more of an advisor role to for-profits and nonprofits, and enrolled in law school. She earned her J.D. from the University of Maryland School of Law in 2007 and her A.B. in anthropology from Hamilton College in 1999.

Outside of the firm, Allison, a former triathlete, is an avid runner and swimmer. She and her husband, Dale, enjoy traveling and working on the restoration of their home in Baltimore County. Within the local community, Allison is an active member of the Bryn Mawr School's Alumnae Association.

New Schedules:

Schedule A:	Public charity status and public support
Schedule B:	Schedule of contributors
Schedule C:	Political campaign and lobbying activities
Schedule D:	Supplemental financial information
Schedule E:	Schools
Schedule F:	Statement of activities outside of the United States
Schedule G:	Supplemental information regarding fundraising or gaming activities
Schedule H:	Hospitals
Schedule I:	Supplemental information on grants and other assistance to organizations, governments, and individuals in the United States
Schedule J:	Compensation information
Schedule K:	Supplemental information on tax-exempt bonds
Schedule L:	Transactions with interested persons
Schedule M:	Non-cash contributions
Schedule N:	Liquidation, termination, dissolution, or significant disposition of assets
Schedule O:	Supplemental information to Form 990
Schedule R:	Related organizations and unrelated partnerships

All organizations should consider how to make the best use of Schedule O to provide information on their new program initiatives and achievements or to explain any setbacks the organization encountered. The Form 990 (except for Schedule B) is available online, often within only months of filing with the IRS, and it is a useful tool for potential donors as they assess which organizations to support. The new Schedule O provides an opportunity for organizations to expand on the information typically provided in their 990s and truly use it as a marketing tool.

New 990-N

The threshold for filing Form 990-N (the new e-postcard) will increase in 2010. Currently, organizations with gross receipts under $25,000 must file Form 990-N for tax years 2007 and later. That will increase to $50,000 in gross receipts beginning in 2010. This means that more organizations will be able to file Form 990-N and not use the more detailed Form 990-EZ or the full Form 990. The 990-EZ will be phased out as the filing threshold for the 990-N increases.

Transition Period

There will be a transition period for smaller organizations. Depending on the amount of their gross receipts and assets, they may have up to three years before they are required to file using the new form. Organizations that have been required to file the Form 990 in the past may file the Form 990-EZ during this transition period. Organizations with over $1 million in gross receipts or total assets of more than $2.5 million must file the new 990 for 2008. For 2009, organizations with gross receipts of more than $500,000 or total assets of more than $1.25 million will have to file the new 990. The filing threshold for the new form will be permanently set in 2010 at $200,000 in gross receipts or $500,000 in total assets.

Hospitals that file Schedule H and organizations that file Schedule K to report on tax-exempt bonds used to finance programs will not have to complete those schedules in their entirety until 2009.

2008 Tax Year Preparation

Organizations that do not qualify for the transition period will need to submit the new 990 for their 2008 tax year. If they have not already done so, they should sit down with their accountants and walk through the new form to become familiar with it. This will enable them to prepare for the new form and make any adjustments to their recordkeeping or other processes that may be needed. As they review the form, they should make a note of any issues or questions that should also be discussed with their attorneys.

Take the time now to prepare for the new 990 by reviewing the organization's governance, management and disclosure policies and procedures, and any other issues that are flagged by a review of the new 990.

Eileen M. Johnson

Q&A

Q: What plans does the IRS have for the regulation of tax-exempt organizations in 2008?

A: The IRS is continuing its efforts to ensure that the tax laws applicable to exempt organizations are being enforced. The IRS recently released its "EO Implementing Guidelines" for fiscal year 2008. Those guidelines contain plans for implementing a number of new initiatives. New programs for 2008 include: a broad-based research and compliance initiative aimed at reviewing the operations and activities of tax-exempt colleges and universities; a national research program focused on measuring compliance with employment tax rules in the exempt organization sector; a compliance review of supporting organizations and transactions with their donors; a study of donors' valuations of gifts made to charitable remainder trusts; and the redesign of the Form 990. Also, compliance projects relating to investigations of political activity, executive compensation, community foundations, and organizations that conduct gaming activities will be continued in 2008.

Political Activities by Tax-Exempt Organizations

Whether it's at the start of a mayoral race or the final heat of a presidential race, the 2007 charitable reforms regarding political intervention have huge implications for nonprofit organizations. A 501(c)(3) tax-exempt organization may not participate in, or intervene in any political campaign on behalf of, or in opposition to, any candidate for public office. Intervention or participation includes the publication or distribution of written statements by print or via the web or any oral statements on behalf of, or in opposition to, a candidate for public office. However, there are certain activities your nonprofit organization may perform without intervening with an individual candidate for public office including voter education, issue advocacy, candidate appearances, and other business activities.

Voter Education

Your organization may hold public forum presentations, publish voter education guides, organize "get out the vote" drives, or register voters. These education activities must be conducted in a nonpartisan manner. It is acceptable to stress the importance of voting and help people register to vote. It is not acceptable to tell people who to vote for, or to wear campaign clothing or post any signs for a specific candidate while helping people to register to vote.

Candidate Appearances

A candidate for public office may attend or speak at your events, but make sure you also invite his or her opponent(s). Do not show any bias in the introduction or communications with the candidate. The candidate may not participate in any political fundraising while attending your event. If you are planning a public forum with all candidates for a specific office, make sure the forum questions are nonpartisan by covering a variety of issues and allowing all candidates to answer all questions presented. If a candidate declines to attend your event, simply announce that the candidate declined to attend.

A candidate may be invited to an event as an individual. If the candidate is speaking at such an event, there may be no mention of his or her campaign. Your organization may not mention the candidacy in its introduction or written materials. Furthermore, make sure there is no campaign activity during the event.

If the event is open to the public, your organization may introduce public officials in a nonpartisan way without intervening in the political campaign. For example, requesting support for a candidate in the introduction is intervening, but merely mentioning the office held is not.

Issue Advocacy

Your organization may participate in issue advocacy. However, you must carefully avoid any issue advocacy that appears to be political campaign intervention. When advocating an issue, avoid any message that may favor or disfavor a political candidate. Consider the following several factors: how close the communication is to the election, if it makes reference to the election, and if the issue is a topic used to distinguish candidates. It is acceptable if your communication relates to a current vote for legislation, or if it is an issue that has been historically advocated by your organization independent from any election.

Business Activity

Your organization may participate in business activities such as selling or renting mailing lists, leasing office space, renting function space, or accepting paid advertising. These business activities are acceptable if all candidates are able to participate in the buying or renting at your organization's customary rates and if the service is also available to the general public.

Mary Claire Chesshire

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Understanding the business of nonprofits

Whiteford, Taylor & Preston LLP is a limited liability partnership. Our Delaware office is operated under a separate Delaware limited liability company, Whiteford Taylor & Preston LLC.

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