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Contents:

RS Releases New Form 990 Organizations
and Tax Return
Preparers Should Consider
Taking Action Now..... 1

RS Changes to Form 990

Annual Filing Requirements 6

FASB's deferral of FASB
Interpretation No. 48,
Accounting for Uncertainty
in Income Taxes (FIN 48) 7

Latest Technical News..... 8

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Nonprofit Standard

IRS Releases New Form 990

Organizations and Tax Return Preparers Should Consider Taking Action Now

The IRS just released the final version of a redesigned Form 990 that will be used for the 2008 tax returns that are filed in 2009. The initial draft was released in the summer of 2007 and was the subject of extensive public comment. The final Form 990 replaces the old Form 990 that has not been overhauled in many years. As a result of these significant changes to the Form 990, organizations must plan and take action to get ready for the 2008 filing. You can find the new Form 990 and related documents at the IRS website www.irs.gov/charities/article/0,,id=176613,00.html

The final Form 990 is very comprehensive and now more logical in order. The form will provide the IRS and the public with a complete view of the financial, governance, and tax positions. The goals motivating the IRS to redesign the form were to promote transparency, improve tax compliance, and ease the reporting burden of organizations. The new Form 990 consists of an 11-page core form and 16 possible schedules. Included in these schedules is Schedule 0, which will allow organizations to provide supplemental information if necessary. IRS plans to release the instructions for Form 990 and the schedules in early 2008.

Highlights of Core Form

Part I — The core Form 990 has been redesigned to summarize key information and provide a snapshot of an organization's key financial and other information, including a two-year comparison of financial data. This section's information is mostly pulled from other parts of the form.

ACTION — An organization should review the new format and questions to become familiar with the summary data and consider how others will view the organization based on this information.

Part II — Signature Block

The IRS has moved the signature block to the first page of Part II.

Part III — Statement of Program Service Accomplishments

This part is similar to the old Part III, but adds specific questions regarding the reporting of changes in activities during the year. While the new form reduces the reporting of the major program service accomplishments to the top three, it now requires an organization to list the related program revenue in addition to the total expenses and grants for each program. A new requirement to use identifying codes for each activity has been deferred for a year until the IRS determines the best series of codes needed for the IRS and other users.

ACTION — An organization should consider the need to modify the organization's existing accounting system to classify revenue by program to match against the program service expenses. Establish a method to determine if there has been a reportable change in program activities that needs to be reported on Form 990.

Part IV — Checklist of Required Schedules

This new section itemizes the additional schedules that must accompany the 990 to help an organization file a more complete return.

ACTION — An organization should review the trigger questions to see which new schedules will apply to their organization.

Part V — Statements Regarding Other IRS Filings and Tax Compliance

This new section captures a variety of tax compliance areas and is intended to ensure an organization is aware of and in compliance with its relevant responsibilities.

ACTION — An organization should review the list to ensure it is in compliance and can adequately capture the information needed to complete the 990.

Part VI — Governance, Management and Disclosure

The IRS has taken the position that a well-governed organization is more likely to be in compliance with the tax laws than one that is not. Although it was questioned whether the IRS had the statutory authority to ask these governance questions, it was ultimately decided that this was an appropriate use of its powers.

The questions cover the composition of the governing body and management and their independence, conflict of interest policies, policies for setting compensation, whistle-blower policies, document retention policies, how the Board of Directors reviews joint ventures between the organization and outside entities, disclosure policies, and whether and how the Board of Directors review the Form 990.

ACTION — An organization should review the items and consider whether or not it should make any changes or additions to its existing policies that would allow them to answer in a manner that reflects well on the organization. Please note that not all good governance policies are statutorily "required," but ultimate compliance would be prudent. The questions regarding family and business relationships require an organization to make a good faith effort to obtain this information on an annual basis.

Governance

The IRS came out with its Good Governance Policies for **501(c)(3) Organizations**, which are in large part reflected on the new Form 990 for all organizations. The IRS indicated that a well governed organization should have a Code of Ethics and a Whistleblower Policy; directors should adhere to a duty of loyalty; the organization should be transparent and have a fundraising policy, financial audits, fair and written compensation practices, and a document retention policy.

In addition, the Panel on the Nonprofit Sector has released *Principles for Good Governance and Ethical Practice: A Guide for Charities and Foundations* that covers: Legal Compliance and Public Disclosure; Effective Governance; Strong Financial Oversight and Responsible Fundraising. The Guide can be found at:

www.nonprofitpanel.org/report/principles/Principles_Guide.

Part VII -Compensation

One of the most contentious additions to the redesigned form was the compensation section of the core form. Although the information requested, for the most part, was already required to be reported by 501(c)(3) organizations, other organizations were not required to report the five current highest compensated employees and vendors (more than \$100,000 now, previously more than \$56,000). The new form extends more comprehensive compensation reporting requirements to all 501(c) organizations that use the form. The new form also requires the data to be summarized from the Forms W-2 and 1099 on a calendar year basis. A fiscal year organization cannot show compensation here on the fiscal year basis, which may result in some unusual differences in compensation reported under Functional Expenses on Part IX and here.

ACTION — Review the definition of persons listed here and the relationship questions. Section A requires persons to be listed in a specific order and classified as to a specific position category as provided on the form. You should also establish a method of capturing the "estimated amount of other compensation", not reported on the W2/1099. Non 501(c)(3) organizations may need to modify procedures to identify independent contractor information.

Part VIII -Statement of Revenue

The IRS has consolidated the revenue detail of Part I and Part VII onto one page. Revenue lines have been added or consolidated to highlight or summarize certain revenue streams. Exclusion codes and an explanation of the relationship of revenue related to the exempt purpose are no longer required.

Part IX -Statement of Functional Expenses

There are no material changes, but several expense lines have been added, for example, "fees for services" requires a more detailed breakdown and grants are separated between foreign and U.S. to accommodate two new schedules.

ACTION — An organization should review existing expense account groupings to ensure expenses can be properly classified on the Form 990.

Part X — Balance Sheet

There were slight changes to the balance sheet format, but the biggest change is the addition of Schedule D, which eliminates the free-form attachment of unstructured statements and creates a specific structured supporting statement.

Part XI -Financial Statements and Reporting

This new section requires disclosure of additional information about the organization's financial statements.

Highlights of Schedules

Schedule A -Public Charity Status and Public Support

This schedule now summarizes only information on the public charity status and support schedules and eliminates the need to report on cash basis. It requests some additional details and specifically addresses the "facts and circumstances" test. Information formerly on Schedule A is now on Schedules C (lobbying), E (private schools), and R (transfers among related organizations).

ACTION — An organization should review this form. Additionally, an organization with borderline support or that is a supporting organization should review the schedule for additional information that may be required.

Schedule B -Schedule of Contributors

No changes

Schedule C -Political Campaign and Lobbying Activities

This new schedule combines information about lobbying and political activity and is used by all organizations. The schedule describes political activities as including support of section 527 organizations.

ACTION — An organization should review Parts 1-A and 1-C for the additional information that will need to be captured.

Schedule D -Supplemental Financial Statements

This schedule puts the balance sheet details in one place instead of requiring various attachments and is the new location for the reconciliation of revenue and expenses from the financial statements to the 990. Schedule D also Provides for disclosure of conservation easements, museum type collections, trust/ escrow accounts and endowments and donor advised funds. Finally, Schedule D requires that any FIN 48 footnotes to the financial statements be disclosed on this schedule. **ACTION** — An organization should review the new structured statement formats to ensure appropriate information is available from the accounting system. Review the FIN 48 requirements and have a plan in place to document this information for the financial statement audit.

FIN 48 -Disclosure of Uncertain Tax Positions

FIN 48 requires audit recognition of material uncertain income tax positions, i.e., those not more likely than not to be sustained if the organization were audited by IRS or another taxing authority. A tax position is any position taken or expected to be taken on any income tax return and includes filed returns or returns that should have been filed at the local, state, federal or international level. Exemption itself is a tax position and, if in issue, will almost always be material, especially if there is a large amount of investment income. Other significant income tax positions for exempt organizations include whether a stream of income is unrelated business income and whether an expense allocation or allocation of a net operating loss to the unrelated business income is proper.

Schedule E -Schools

No changes -this is the new location for the information from the old Schedule A.

Schedule F -Statement of Activities Outside the United States

Significant additional information is added regarding activities outside the United States. Grant listings for organizations and entities differ from those of individuals. For safety and security, regional location information is allowed instead of specific addresses,

ACTION — All organizations with foreign activities should review the new schedule and ensure the necessary information is captured regarding the organizations foreign activities. Significant changes in the accounting and recordkeeping for the organization may be required for large organizations with complex foreign activities.

Schedule G -Fundraising and Gaming

This new schedule replaces the unstructured statements for reporting special events and gaming activities and has additional questions regarding the organization's gaming activities. A \$15,000 threshold for filing each section of this schedule was added. There is a \$5,000 threshold for itemizing individual fundraisers and events.

ACTION — An organization with significant activities in this area should plan for the additional work that will be required to complete the information on fundraising activities. This schedule may be reviewed by state charitable registration authorities and may require input from the organization's staff that manages these functions.

Schedule H — Hospitals

This is an entirely new schedule and its subject matter has been very controversial in the healthcare industry. New disclosures will require quantifying charity care and community benefit, policies regarding billing and collections, use of management companies, joint ventures, emergency room policies and information about facilities. In 2008, only information identifying facilities will need to be provided, with the rest of the information being required for 2009.

ACTION — An organization in the healthcare industry should review this schedule carefully as significant additional work will be required. IRS is expected to release the instructions for this schedule early this year and has indicated they will provide additional guidance.

Schedule I -Grants and Other Assistance (U.S.)

This new structured attachment schedule includes detailed listings of U.S. grant recipients and adds questions regarding grant making procedures. Grants to individuals may be listed by type and number of recipients. Payments to governments and other organizations will require more identifying details.

Schedule I-Supplemental Compensation Information

More detailed information about the individuals whose compensation is listed in the core form will be required in this schedule. Although one of the most contentious requirements was dropped, i.e., information about reimbursed business expenses, the schedule now provides questions that were not vetted during the draft process. There are now new questions on first-class or charter travel; travel for companions; tax indemnification and gross-up payments; discretionary spending accounts; housing allowances or residences for personal use; payments for business use of personal residences; health or social club dues or initiation fees and personal services, e.g. maid, chauffeur, or chef.

ACTION — An organization may have to modify its recordkeeping to capture the necessary information. Also, an informed person will need to review the questions to ensure the responses are complete and accurate.

Schedule K -Tax Exempt Bonds

For the 2008 tax year only information about outstanding bonds issued after 2002, with an outstanding principal amount of greater than \$100,000, must be reported. Starting with the 2009 tax year, information on use and investment of bond proceeds and private use and compensation of third parties who provide services to bond issuances will also have to be reported.

ACTION — An organization should prepare to gather the necessary information for the 2009 disclosure and make sure bond funding is in compliance.

Schedule L -Transactions with Interested Persons

On this new schedule information will be reported by 501(003) and 501(c)(4) organizations on excess benefit transactions. Also all other organizations will report transactions with Interested Persons involving loans, grants and other business transactions.

ACTION — An organization should ensure they can capture the new information required on grants or assistance benefiting Interested Persons in Part III and review the current disclosures of information now reported on Parts I, II and IV.

Schedule M -Non-cash Contributions

Significant new information will now be requested regarding non-cash contributions.

ACTION—An organization with significant non-cash donations should implement procedures to capture the necessary information and coordinate this with any 8283 filings.

Schedule N -Liquidation, Termination, Dissolution, or Significant Disposition of Assets

This new schedule provides a structured format for this area and expands reporting of significant disposition of assets for which consideration is received.

Schedule O -Supplemental Information to Form 990

This new schedule provides an opportunity for organizations to provide additional narrative information corresponding to specific questions within the Form 990. This supplemental information will be cross-referenced to the form. Also, this schedule incorporates the general explanation attachments that have been available under electronic filing.

ACTION — An organization should consider any areas of the form for which the organization might wish to provide supplementary explanations to a Form 990 response. Also consider providing additional details on the organization's activities.

Schedule R -Related Organizations and Unrelated Partnerships

This schedule will require information about disregarded entities, related tax exempt organizations and corporations, and trusts (those where the organization has a greater than 50% interest). Also, the schedule asks for information regarding investments in partnerships through which the organization conducts activities constituting at least 5% of its total activities, measured by revenues or assets. Various transactions with the listed organizations will have to be reported.

ACTION — An organization with related organizations and unrelated organizations taxable as partnerships should review this new schedule to ensure they can summarize the necessary information.

As you can see, there have been significant changes to Form 990 and related schedules. We recommend that you review the changes that affect your organization the most and devise a plan along with your tax preparer to manage these changes. Please feel free to contact us if you have any questions. We could also arrange to meet with you and your board to discuss the new Form 990 changes and implementation issues and provide sample policies for review. We will keep you apprised when the IRS releases the new instructions and on other related matters through our newsletters and seminars.

IRS Changes to Form 990 Annual Filing Requirements

By Joyce Underwood, CPA

Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard)

Beginning for tax years 2007 (to be filed in 2008 and later), small tax-exempt organizations that previously were not required to file returns may be required to file an annual electronic notice, Form 990N, Electronic Notice (e-Postcard) for Tax-Exempt Organizations not Required To File Form 990 or 990-EZ. This filing requirement applies to tax periods beginning after December 31 , 2006. Organizations that do not file the e-Postcard or a return for three consecutive years will lose their tax-exempt status. Information needed to file the e-Postcard includes the FIN, tax year, legal name, mailing address, any other names the organization uses, the name and address of a principal officer, and their website address, if applicable. Excluded from this requirement are organizations included in a group return, as well as, churches. See the IRS 'website for further guidance and a link to the 990:N site -<http://epostcard.forkn990.org/>

Other Current Filing Requirements

Organizations generally file Form 990 or 990-EZ based on their gross receipts for the tax year. A 990 or 990-EZ is generally filed when gross receipts are normally more than \$25,000. When gross receipts are less than \$100,000 and total assets are less than \$250,000, an organization may file 990-EZ. When gross receipts are normally more than \$100,000 and assets \$250,000 or more, an organization must file a 990. If the organization is a controlling organization within the meaning of section 512(b)(13), or a supporting organization described in section 509(a)(3), it generally must file Form 990 even if its gross receipts are normally \$25,000, or less.

Form 990 Redesign for Tax Year 2008 (Filed in 2009)

<http://www.irs.aup/charities/cutic1e/0,,id=I76637,00111m>

On December 20, 2007, the IRS released a redesigned Form 990, Return of Organization Exempt from Income Tax, for tax year 2008 (to be filed in 2009 and later years). The redesign of Form 990 is based on three guiding principles: enhancing transparency, promoting tax compliance, and minimizing the burden on the filing organization.

Phase-in of Filing Requirement for small organizations

To address transition concerns expressed by the sector, the IRS will phase in the new form over a three-year period. This will be accomplished by increasing filing thresholds for the Form 990-EZ to allow smaller organizations the option to file either the new Form 990 or the Form 990-EZ for 2008 and 2009 tax years. For those years, an organization may opt to file a Form 990-EZ if it satisfies both the gross receipts and assets tests in the table below.

May file 990-EZ for: If gross receipts are: If assets are:

2008 tax year (filed in 2009) > \$25,000 and < \$1 million < \$2.5 million

2009 tax year (filed in 2010) > \$25,000 and < \$500,000 < \$1.25 million

2010 and later tax years > \$50,000 and < \$200,000 < \$500,000

The IRS also intends to increase the Form 990-N (e-postcard) filing threshold from \$25,000 in gross receipts

FASB's Deferral of FASB Interpretation No. 48 Accounting for Uncertainty in Income Taxes (FIN 48)

By Scott Woodbury

The FASB decided January 23, 2008 to defer FIN 48 by one year for nearly all standalone nonpublic companies. This deferral would also generally apply to all nonprofit organizations. The decision ties down some loose ends since the FASB first proposed the deferral in November 2007. Note that the deferral is not effective until the final Financial Statement Position is issued.

To qualify for the deferral, a nonprofit organization must meet the definition of a nonpublic enterprise. The glossary in Statement 109 defines what situations would make a company public and thus ineligible for the deferral.

- The organization's debt or equity securities are traded in a public market, including a stock exchange or over-the-counter market on which securities are traded only locally or regionally,
- The organization is a conduit bond obligor for conduit debt securities that are traded in a public market; The organization's financial statements are filed with a regulatory agency in preparation for the sale of any class of securities, or
- The organization is a subsidiary of a public company.

Therefore, qualifying nonpublic enterprises which include nonprofit organizations may defer the effective date of FIN 48 to annual periods beginning after December 15, 2007, providing that they have not issued a full set of financial statements incorporating FIN 48. Consequently, calendar-year nonprofit organizations that elect the deferral are required to adopt as of January 1, 2008, but those organizations issuing interim statements will not have to reflect the adoption in first quarter 2008 financial statements. Early adoption of FIN 48 for 2007 is acceptable.

ACTION — Determine if your organization is eligible for the deferral of FIN 48 and then decide whether you will elect to defer or adopt currently. In any case, additional work and documentation will be required at some point to implement FIN 48 for the financial statements. The most critical areas that will need to be examined will be the organization's exemption and its determination of unrelated business income. The sooner organizations start planning for implementation, the better.

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Latest Technical News

FASB Reconsiders Accounting for Mergers of Not-for-Profit Organizations

Based on many comments received on its October 2006 Exposure Draft, *Not-for-Profit Organizations: Mergers and Acquisitions*, the Financial Accounting Standards Board has decided to reconsider accounting for mergers of not-for-profit organizations. So far, it has tentatively decided that a 'merger' differs from an 'acquisition' and, therefore, different accounting for mergers would be appropriate. The feature that distinguishes a merger is control—in a true merger, the governing bodies of two or more not-for-profit organizations cede control of those organizations to create a new organization, whereas in an acquisition, one organization obtains control over another.

The Board reaffirmed that acquisitions by not-for-profit organizations should be accounted for as originally proposed—essentially record the assets and liabilities of the acquired entity at their fair value at the date of the acquisition.

However the 'carryover' method of accounting (commonly called 'pooling-of-interests accounting' or just 'pooling') should be retained for true mergers between not-for-profit organizations. This method carries forward the recorded values on the books of both merger partners to the books of the merged entity.

The Board intends to issue a limited revision of the Exposure Draft to address only this one issue in January; a final statement is expected in mid-2008.

FASB Staff Position (FSP) SOP 94-3-a and AAG HCO-a

The FASB has issued proposed FASB Staff Position (FSP) SOP 94 -3-a and AAG HCO-a, "*Omnibus Changes to Consolidation and Equity Method Guidance for Not-for-Profit Organizations* ". The proposed FSP would make several changes to the consolidation and equity method guidance included in *AICPA Statement of Position No 94-3, "Reporting of Related Entities by Not Organizations"* and *AICPA Audit and Accounting Guide, Health Care Organizations*, as follows,

- ✦ Eliminate the 'temporary control exception to consolidation for certain relationships between not-for-profit organizations;
- ✦ Amend the definition of 'majority voting interest in the board of another entity',
- ✦ Confirm continued applicability to not* organizations of several EITF issues; and
- ✦ Require application of the equity method of accounting to investments in for profit partnerships, limited liability companies, and similar entities, unless such investments are reported at fair value.

The proposed guidance would apply to fiscal years beginning after June 15, 2008. In general, early adoption is not permitted. Comments on the proposed FSP were due last November.

Comment Period to Partially Defer SFAS 157

FASB has exposed for comment a draft staff position that will partially defer the effective date of SFAS 157 (*Fair Value Measurements*) for one year to fiscal years beginning after November 15, 2008—essentially calendar 2009.

The deferral applies only to nonfinancial assets and liabilities except it will not apply to those that are recognized or disclosed at fair value at least annually. It also does not apply if SFAS 157 has already been adopted in issued financial statements

The draft gives examples of items to which the deferral would apply (in other words, items that are not premeasured at fair value annually) as those involved in business combinations, assets used in the calculation of the goodwill and certain other impairment tests (SFAS 142 & 144), asset retirement obligations (SFAS 143), and liabilities for exit or disposal activities (SEAS 146).

Examples of items to which the deferral would not apply (in other words, items that are re-measured at fair value annually) are: those listed in paragraph 7 of SFAS 159 for which that statement has been elected, derivatives (SFAS 133), servicing assets and liabilities (SFAS 156), and impaired loans (SEAS 114).

Although not mentioned in the draft, a key item for NFPs would be real estate and other alternative investments that are carried at fair value under one of the options in the Audit Guide. The deferral would not apply to these assets.

The draft is available on the FASB website:

http://www.fasb.org/fasb_staff_position_proposal_fas157-b.pdf

The comment period ended January 16, 2008

This will not affect the effective date of SFAS 159, which remains for years beginning after November 15, 2007.

FIN 48 Accounting for Uncertainty in Income Taxes

Although it will likely not have a major effect on many non-profits, FIN 48 must be considered by almost all. Note also that the recently issued draft of a revised Form 990 requires submission of the FIN 48 footnote (Schedule D, Part X)

In November 2007, the Board decided to delay the effective date of FIN 48 for one year to calendar 2008 for non-public entities, but see the next item.

FASB Staff Position 126-1 -Definition of a Public Entity: Conduit Bond Obligors

FASB issued the above document in October 2006, which will affect many nonprofit organizations that are obligors on municipal bonds issued by a state or local government, however, it applies only when the bonds are publicly traded. If the bonds are held privately by one or more institutional investors, the FSP does not apply. Thus, in all cases where an organization has such bonds outstanding, a determination is required as to whether they are publicly traded.

The key part of the FSP that might affect nonprofit organizations is:

5 An entity that is an obligor for conduit debt securities that are traded in a public market (a domestic or foreign stock exchange or an over-the-counter market, including local or regional markets) meets the definition of a public entity or enterprise

FASB GAAP Codification

The FASB is in the process of 'codifying—reorganizing all of GAAP, including SFASs and interpretations, EITF consensuses, APB opinions, AICPA SOPs and Audit Guides, etc. Some minor GAAP changes may be made. The FASB plans to issue a draft in 2008 with a one-year comment period for technical matters only, such as internal consistency, clarity, etc., but not for substantive changes to GAAP), and has targeted early calendar 2009 to issue the codification in final form.

Material discussed is meant to provide general information and should not be acted on without obtaining professional advice appropriately tailored to your individual needs

To ensure compliance with Treasury Department regulations, we wish to inform you that any tax advice that may be contained in this communication (including any attachments) is not intended or written to be used and cannot be used, for the purpose of (i) avoiding tax related penalties under the Internal Revenue Code or applicable state or local tax law provision or PP promoting, marketing or recommending to another party any tax-related matters addressed herein.

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