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Complying With the New Form 990 and Governance Guidelines - Best Practices for Nonprofits

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Background

Why Redo The 990?

- Ad hoc revisions over the years
- Not in logical sequence
- “Attachments” make for inconsistency
- Unclear questions often not applicable to many nonprofits
- Failure to get complete picture of the organization



Guiding Principles of IRS in Redesign

- Enhancing transparency both for IRS and stakeholders
- Promoting compliance by accurately reflecting organization's operations and use of assets, so IRS can efficiently assess risk of noncompliance
- Minimizing burden on filing organizations (you be the judge!)



Overview of the New Form 990

- New 11 page Core form
- 16 possible schedules to be attached for organizations conducting particular activities
- Form 990-EZ and Form 990-N applicability



Highlights of Core Form:

- A revised summary page that:
 - eliminates the ratios, percentages, and other metrics included in the draft, and
 - incorporates a two-year summary of financial information comparing the current and prior years;
- A reordered core form that moves the organization's description of its program service accomplishments to page 2, immediately after the summary



Highlights of Core Form:

- Part I—Summary
- Part II—Signature
- Part III—Program Service Accomplishments
 - Mission
 - Changes in Activities
 - Program description requires more detail



Part III- Action Items

- Identify revenue associated with activities
- Identify activities that have begun or ceased
- Identify Code #s of activity (instructions not yet issued)



Highlights of Core Form:

- Part IV—Checklist of Required Schedules
- Part V—Other IRS Filings & Tax Compliance
 - Action Items — Review questions regarding:
 - Employment returns
 - Forms 8282
 - Back up withholding
 - Foreign bank accounts



Highlights of Core Form: Part VI –*Governance Management and Disclosure*

- Governing body and management
- Policies
- Disclosure
- Governance
 - SOX
 - IRS Good Governance
 - Independent Sector



Part VI – *Governance Management and Disclosure*

- Authority to Request Governance Information on the Form
- Conflict of Interest Policy Questions
- Material Diversion of Assets
- Voting Members and Independence
- Board Review of the Form 990
- Whistleblower and document retention (SOX required items)
- Disclosures of financials and tax returns—how done



Part VI – *Governance Management and Disclosure*

- ACTION ITEMS
 - Conflict of Interest
 - Document Retention
 - Whistleblowers
 - Joint Venture Review Policy
 - Rebuttable Presumption



Part VII --*Compensation*

- List current directors, officers, key employees
- Five **current** highest compensated employees (other than an officer, director, trustee or key employee) who received more than \$100,000 from the organization and any related organizations
- All **former** officers, key employees, or highest compensated employees who received more than \$100,000 from the organization and any related organizations.
- **Former directors or trustees** that received, in the capacity as a former director or trustee of the organization, more than \$10,000 from the organization and any related organizations.



Highlights of Core Form: Part VIII –*Statement of Revenue*

- Action Items
 - Classification of contribution revenue
 - Income from investment of tax exempt bond proceeds
 - Separation of gaming



Highlights of Core Form: Part IX –*Statement of Functional Expenses*

- Action items
 - Break down by category
 - Fees for services require further breakdown
 - Certain new expense line items that had been in “other expenses”



Highlights of Core Form: Parts X and XI

- Part X- Balance Sheet
 - Further detail and additional Schedule D
- Part XI- Financial Statements and Reporting



And Now, the Schedules.....

Schedule A and B

- **Schedule A**
 - Required of 501(c)(3) Charities only (just like prior 990s)
 - Now only contains reason for public charity status and support schedules
 - Now a separate support schedule for 509(a)(1) and (a)(2) orgs
 - Support schedules now have box to check if organization is in first 5 years; also box for 509(a)(1) “facts and circumstances”
- **Schedule B**
 - Stays the same



And Now, the Schedules.....

Schedule C

Political Campaign and Lobbying Activities

- Combines information reported in several places on old form
- New description of political activities and listing of support to 527 organizations
- Same lobbying information for charities (both electing and non electing under 501(h))
- New Part II – Lobbying questions for all organizations
- Same proxy tax questions and calculation for non 501(c)(3) organizations



And Now, the Schedules.....

Schedule D – Supplemental Financial Statements

- Puts balance sheet detailed schedules in one place instead of requiring various attachments
- New disclosures for conservation easements, museum type collections, trust/escrow accounts, endowments
- Includes donor advised fund information required on 2006 return
- Reconciliations of net assets and revenue/ expenses (audited financials only) moved to this schedule
- FIN 48 Disclosure



And Now, the Schedules.....

FIN 48 – Disclosure of Uncertain Tax Positions

- Requires audit recognition of Uncertain Tax Positions, i.e., those not more likely than not to be sustained if organization audited
- All material positions taken or expected to be taken on any income tax return
 - Filed returns or returns that should have been filed
 - Local, state, federal and international
- Action Items- Inventory Tax Positions
 - Exemption Issues
 - UBIT Issues
 - State Issues



And Now, the Schedules.....

Schedules E and F

- Requires audit recognition of Uncertain Tax Positions, i.e., those not more likely than not to be sustained if organization audited
- All material positions taken or expected to be taken on any income tax return
 - Filed returns or returns that should have been filed
 - Local, state, federal and international
- Action Items- Inventory Tax Positions
 - Exemption Issues
 - UBIT Issues
 - State Issues



And Now, the Schedules.....

Schedules G and H and I

- Schedule G—Supplemental Fundraising Information
 - Expands disclosures to increase transparency and to improve noncompliance in the gaming and fundraising area
 - Sections on fundraising, events and gaming
 - Additional breakdown and disclosure of expenditures
 - Adds questions regarding professional fundraising, compensation to workers and promoters, state gaming requirements
- Schedule H—Hospitals
- Schedule I—Supplemental Information on Domestic Grants
 - Only required if grants totals were >\$5,000
 - Grant selection procedures and monitoring use of funds



And Now, the Schedules.....

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And Now, the Schedules.....

Schedule J

Supplemental Compensation Information

- Triggered by questions in Part VII of core 990
 - New questions on:
 - Written reimbursement policy
 - Manner in which CEO's compensation determined
 - First-class or charter travel
 - Travel for companions
 - Tax indemnification and gross-up payments
 - Discretionary spending account
 - Housing allowance or residence for personal use
 - Payments for business use of personal residence
 - Health or social club dues or initiation fees
 - Personal Services, e.g. maid chauffeur, **chef**



And Now, the Schedules.....

Schedule K Tax Exempt Bonds

- Part I Information about outstanding bond issues with an outstanding principal amount of greater than \$100,000;
- Part II Use and investment of bond proceeds;
- Part III Private Use
- Part IV Compensation of third parties who provide services to bond issuances.
- Only Part I will be required for 2008
- All parts must be completed for 2009 tax years.
- Only bonds issued after 2002.
 - Action items —begin collecting information



And Now, the Schedules.....

Schedule L

Transactions with Interested Persons

- **Excess Benefit Transactions**
- **Loans**
- **Grants or Assistance Benefiting Interested Persons**
- **Business Transactions Involving Interested Persons**



And Now, the Schedules.....

Schedules M, N and O

- Schedule M— Non-cash contributions
- Schedule N— Liquidation, Termination, Dissolution or Significant Disposition of Assets
- Schedule O—Supplemental Information



And Now, the Schedules.....

Schedule R—Related Organizations and Unrelated Partnerships

- Disregarded entities
- Related
- Tax exempt organizations
- Taxable Partnerships
- Corporations or trusts
- Transactions with related organizations
- Unrelated organizations taxable as partnerships
- Action items – Identify and classify all related and unrelated organizations



Questions and Answers

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