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Overview of New IRS Form 990 and Related Disclosure Requirements

Charities now starting to prepare their 2008 federal returns will encounter a newly revised, and greatly expanded, IRS Form 990. The new form represents a wholesale revision of the basic information return most charities and other exempt organizations file each year instead of a tax return. It asks for more detail about more aspects of the charity's operations than any prior form. Completing it properly will require a greater expenditure of time, effort and care than before. Transitional rules may allow smaller charities to file a simpler return for up to three years, but all charities should prepare for greater IRS scrutiny.

Expanded Form 990 Information

Return. Through 2007, Form 990 had consisted of nine pages, supplemented by a seven-page schedule of general questions. Filers also could submit supplemental information in whatever format they thought appropriate. The 2008 return is much more structured. An 11-page "core" form asks for basic information about the charity's structure revenues, expenses and activities, as well as its governance and its transactions and relationships with board members, contributors and related entities. Sixteen additional specialized schedules call for details about subjects ranging from public charity status and contributions to tax-exempt financing and compensation arrangements.

The front page of the new Form 990 asks for a summary of the filer's mission, board structure, size and finances. This single page is intended to provide the IRS and the public with a "snapshot" of the filer's operations. As in prior years, the 2008 return also requires a description of the charity's significant accomplishments, confirmation that it has complied with other tax filing obligations, descriptions of compensation arrangements, revenue and expense details and a balance sheet. Each section, however, asks for more information about more topics than in prior years.

To complete the expanded section on compensation, for example, the charity must list (1) all current officers, directors and key employees, regardless of compensation level, (2) the five other employees who received the highest compensation (more than \$100,000), (3) all former officers, key employees and other highly compensated employees who received more than \$100,000, and (4) all former directors who received more than \$10,000. In each case the return must show not only compensation the charity and all related organizations paid to the individual and reported to the IRS on Form W-2 or 1099, but also estimated amounts of other compensation from those sources (e.g., housing, education assistance, insurance). The compensation of persons who

are no longer affiliated with the charity must be detailed on a separate schedule, as must any current compensation that exceeds \$150,000 per person.

A new section adds detailed questions about the charity's governance structure, corporate policies and financial review procedures. Even though the form expressly acknowledges that the IRS has no legal authority over such matters, it asks whether the charity has written policies on compensation, conflicts of interest, document retention, whistleblower protection, recording decisions, reviewing Form 990 and public disclosure.

Another new section inquires about specific topics, such as fundraising, lobbying, overseas activities, charitable gaming, tax-exempt bonds, financial arrangements with current and former insiders (directors, officers, contributors, key employees and their relatives), and relationships with other organizations, exempt and non-exempt. Each of these questions is linked to one of the sixteen specialized schedules on which the charity must describe the particular activity or arrangement in detail.

Transitional Filing Rules. Charities generally must use new Form 990 for fiscal years ending on or after December 31, 2008. Due to the extra resources required to complete the new return, however, the IRS is allowing small and medium-sized

organizations to file the shorter Form 990-EZ for up to three more years. To be eligible in a particular year, the charity must meet both a receipts test and an assets test, as follows:

Filing year	Gross receipts less than	Total assets less than
2008	\$1,000,000	\$2,500,000
2009	\$500,000	\$1,250,000
2010	\$200,000	\$500,000

IRS officials have suggested that it may eventually seek to phase out both Form 990-EZ and group returns, leaving all but the smallest charities obligated to file individual returns on the expanded Form 990.

E-Filing for the Largest Charities.

Most organizations that file more than 250 total returns each year (including Forms W-2 and other employment tax returns) must file their 2008 Forms 990 electronically. IRS has said it will not accept paper returns from those organizations.

"Postcard" Filing for the Smallest Charities.

Charities whose annual receipts normally are \$25,000 or less are not required to file Form 990 or 990-EZ; but they must continue to file an annual "electronic postcard" (Form 990-N), which was introduced in 2007. This brief filing confirms to the IRS that the organization still exists and is operating for charitable purposes. An organization

will forfeit its tax-exempt status if it fails to file an information return, whether on Form 990-N or another form in the 990 series, for three successive years. A recent article estimates that failing to file returns could cause as many as 500,000 small charities to lose their exempt status in May 2010.

Disclosure of Unrelated Business Returns.

An exempt organization must file Form 990-T to report taxable income from a business that is unrelated to its charitable purposes. This return has always been protected from public disclosure under the same rules that protect the tax returns of individuals and for-profit businesses. For returns filed after August 17, 2006, though, Section 501(c)(3) charities — but not other types of exempt organizations — must make their Form 990-T tax returns available for public inspection on the same basis as their Form 990 information returns.

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The expanded Form 990 filing and disclosure requirements will give both the IRS and the interested public a better overview of what charities are doing and how they are organized. All Form 990 filers should update their procedures for gathering the necessary information and preparing the returns to ensure that the picture they present is complete and accurate and that it makes the best possible case for continued public support.

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