

# IRS FORM 990 WEBINAR

## The New Reporting Requirements

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# Agenda

2

- Introduction and 990 Overview
- New for 2009 IRS Form 990 (for 12/31/09, 6/30/10 and 9/30/10)
- Governance Policies Refresher
- Lessons Learned



# Link to Form 990 and Schedules

3

- We recommend obtaining the Form 990 and related schedules, along with instructions for this seminar:
  - <http://www.irs.gov/charities/article/0,,id=218927,00.html>





# Poll Question

# 990 Overview

5

- Current Form 990 was issued in December 2007 for 2008 tax year and beyond.
- Purpose of revised Form 990:
  - Enhance transparency
  - Improve tax compliance
  - Minimize burden on filing organization
- Included phased-in approach of revisions through 2010.



# Year Two: What's the Big Deal?

6

- 990 vs. 990-EZ Filing Requirements
- Schedule H & Schedule K
- 2009 Form 990 Changes & Clarifications
- Uncertainties Remain



# Form 990 vs. Form 990-EZ

7

<b>File Form 990-EZ for.....</b>	<b>If gross receipts are less than.....</b>	<b>&amp; if total assets are less than.....</b>
2008 (generally filed in 2009)	\$1,000,000	\$2,500,000
2009 (generally filed in 2010)	\$500,000	\$1,250,000
2010 & after	\$200,000	\$500,000



# Form 990 vs. Form 990-EZ

8

- Form 990-EZ
  - Four-page core form
  - Seven potential supplemental schedules
  - Few governance related questions
- Form 990
  - 12-page core form
  - 16 potential supplemental schedules
  - Many governance questions, several requiring “reasonable effort”



# Form 990

9

- Core Form
  - I – Summary
  - II – Signature Block
  - III – Statement of Program Service Accomplishments
  - IV – Checklist of Required Schedules
  - V – Statements Regarding Other IRS Filings and Tax Compliance
  - VI – Governance, Management and Disclosure
  - VII – Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors
  - VIII – Statement of Revenue
  - IX – Statement of Functional Expenses
  - X – Balance Sheet
  - XI – Financial Statements and Reporting



# Form 990

10

- Supplemental Schedules
  - A – Public Charity Status and Public Support
  - B – Schedule of Contributors
  - C – Political Campaign and Lobbying Activities
  - D – Supplemental Financial Statements
  - E – Schools
  - F – Statement of Activities Outside the United States
  - G – Supplemental Information Regarding Fundraising or Gaming Activities
  - H – Hospitals
  - I – Supplemental Information on Grants and Other Assistance to Organizations, Governments, and Individuals in the United States
  - J – Compensation Information
  - K – Supplemental Information on Tax-Exempt Bonds
  - L – Transactions with Interested Persons
  - M – Non-Cash Contributions
  - N – Liquidation, Termination, Dissolution, or Significant Disposition of Assets
  - O – Supplemental Information to Form 990
  - R – Related Organizations and Unrelated Partnerships



# 2009 Form 990 Changes

11

- Core Form, Part III, Statement of Program Service Accomplishment
  - Report changes here rather than in a letter to IRS Exempt Organizations Determinations office. They no longer issue letters.
  - Consider breaking out three largest programs by expense if you have not in the past
  - Carefully review narratives from prior year



# 2009 Form 990 Changes

12

- Core Form, Part IV, Checklist of Required Schedules
  - Line 11 – More detailed trigger questions for Schedule D
    - Added question about FIN 48 Footnote
  - Line 12A – Was organization included in consolidated, independent audited financial statements for tax year?
    - Many organizations will be able to answer this question yes that answered previous question 12  
no



# 2009 Form 990 Changes

13

- Core Form, Part IV, Checklist of Required Schedules (cont'd)
  - Line 28 – Simplified trigger questions for Schedule L
  - Line 38 – Did organization complete Schedule O & provide explanations in Schedule O for Part VI, lines 11 & 19?
  - Imperative to answer checklist questions correctly
  - IRS could assess failure-to-file penalties for failing to complete required schedule



# 2009 Form 990 Changes

14

- Core Form, Part VI, Governance, Management & Disclosure
  - Line 4 – Report significant changes to organizational documents
  - Line 5 – Modified definition of material diversion
  - Lines 9 – 11 reordered
  - Line 11 split



# 2009 Form 990 Changes

15

- Core Form, Part VI, Governance, Management & Disclosure (cont'd)
  - Line 18 – Only check box for “Another’s website” if you provide another party with copy of Form 990, 990-T or 1023/1024
  - 990 may be provided to board by email or portal
  - IRS continues to focus on governance





# Poll Question

# Governance Check Sheet

17

- Released December, 2009
- Used by IRS agents to capture data about governance practices during examination
- Available for viewing on IRS website at [http://www.irs.gov/pub/irs-tege/governance\\_check\\_sheet.pdf](http://www.irs.gov/pub/irs-tege/governance_check_sheet.pdf)



# Governance Check Sheet

18

- Governing body & management
  - Mission
  - Bylaws
  - Level of engagement by board
- Compensation
  - Compensation determination process
- Organizational control
  - Family & business relationships



# Governance Check Sheet

19

- Conflict of interest
  - Require written disclosure of conflicts?
  - Policy adhered to?
- Financial oversight
  - Systems in place to ensure proper use of assets?
  - 990 review
  - Management letter
- Document retention
  - Written policy?
  - Policy adhered to?



# 2009 Form 990 Changes

20

- Part VII, Compensation
  - Key employee clarifications
  - Report compensation from Form 1042-S, box 2, if individual is foreign person who received U.S. source income
  - Clarification on compensation paid by unrelated organizations, leased employees & common paymasters



# 2009 Form 990 Changes

21

- Part VII, Compensation (cont'd)
  - Report employee deferrals to 401(k) & 403(b) plans in Part VII, columns (D) & (E) & in Schedule J, column B(i)
  - Uncertainties still remain after 2009 changes
    - Determination of who is listed
    - Management company & common paymaster arrangements still cause confusion



# 2009 Form 990 Changes

22

- Core Form, Part VIII, Statement of Revenue
  - Lines 2 & 11 – Report business codes from Appendix J (derived from NAICS)
  - Clarification on reporting revenue from donated goods sold at auction
- Core Form, Part IX, Statement of Functional Expenses
  - Report information technology employees on lines 5 – 10
  - Report related depreciation/amortization on line 22
  - If preparing internally, consider mapping general ledger to group consistently with Form 990 line items



# 2009 Form 990 Changes

23

- Part X, Balance Sheet
  - Line 5 – Clarifies that receivables from highest compensated employees should be reported
  - Line 12 – Report publicly traded stock in corporation that comprises more than 5% of total assets
- Part XI, Financial Statements & Reporting
  - Check boxes added to indicate consolidated audited financial statements were issued



# 2009 Form 990 Changes

24

- Schedule A, Public Charity Status & Public Support
  - IRS does not update records on filer's public charity status based on change made on Schedule A
  - May want to consider formal determination in certain cases
  - Still find many organizations are not completing public support test correctly



# 2009 Form 990 Changes

25

- Schedule B, Schedule of Contributors
  - Filer should identify donor, rather than reporting as anonymous, if identity is known
  - Names & addresses of donors are not required to be made available to public
  - Schedule B has been an issue for some organizations when conducting board review



# 2009 Form 990 Changes

26

- Schedule D, Supplemental Financial Statements
  - Required to complete Part X, Other Liabilities, if financial statements included footnote addressing its liability for uncertain tax positions
  - Parts X – XIII are optional if filer is included in consolidated financial statements
  - Consider voluntary disclosure of Parts X - XIII



# 2009 Form 990 Changes

27

- Schedule F, Statement of Activities Outside the United States
  - Part I – Explains types of activities & types of expenditures to be reported
  - Part III – Grants or assistance reported should also include amounts paid to U.S. individuals for foreign activity
  - May be difficult to track these expenses if no tracking mechanisms are in place



# 2009 Form 990 Changes

28

- Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities
  - Required to report food & beverage expenses & entertainment expenses relating to fundraising events
  - Only report that portion of gaming manager's compensation allocable to gaming management



# 2009 Form 990 Changes

29

- Schedule G, Supplemental Information Regarding Fundraising or Gaming Activities (cont'd)
  - Educate development/fundraising personnel
  - Information can be difficult to gather after the fact
  - Consider state charitable solicitation registration requirements



# 2009 Form 990 Changes

30

- Schedule H, Hospitals
  - Required to complete all parts
  - Additional guidance on reporting indirect interest in joint ventures
  - **Recommendation** – Do not wait to start on Schedule H! **Begin gathering data now**



# 2009 Form 990 Changes

31

- Schedule H, Hospitals (cont'd)
  - Will be one of most widely viewed schedules
  - IRS will be required to review Schedule H for all hospitals in future
  - Consider other potential viewers
    - Congress
    - Attorney General
    - Taxing authorities
    - Other hospitals



# 2009 Form 990 Changes

32

- Schedule H, Hospitals (cont'd)
  - Part I – Charity Care and Certain Other Community Benefits at Cost
  - Part II – Community Building Activities
  - Part III – Bad Debt, Medicare, & Collection Practices
  - Part IV – Management Companies and Joint Ventures
  - Part V – Facility Information
  - Part VI – Supplemental Information



# 2009 Form 990 Changes

33

- Schedule J, Compensation Information
  - Part I, Line 9 – If filer paid or accrued amounts pursuant to a contract subject to initial contract exception, did organization also follow rebuttable presumption procedures?
  - Another widely viewed schedule
  - Focus on narratives to make sure unusual items are adequately explained



# 2009 Form 990 Changes

34

- Schedule K, Supplemental Information on Tax-Exempt Bonds
  - All parts are required
  - **Recommendation** – consult with a qualified advisor
  - Many organizations are adopting internal bond compliance policies



# 2009 Form 990 Changes

35

- Schedule K, Supplemental Information on Tax-Exempt Bonds
  - Purpose of the form is to report on compliance with tax exempt bond issuance requirements
  - Will be time consuming.
  - IRS believes there is significant noncompliance.



# 2009 Form 990 Changes

36

- Schedule K, Supplemental Information on Tax-Exempt Bonds
  - Part I – Bond Issues – multiple entity filers report loan issue only once, either at parent level or at each separate filer, if allocated.
  - Part II – Proceeds
  - Part III – Private Business Use – quantify private use and beware of management or service contracts. **May need expert counsel to assist!**
  - Part IV – Arbitrage – IRS views this area to be an area of non-compliance.





# Poll Question

# 2009 Form 990 Changes

38

- Schedule L, Transactions With Interested Persons
  - Part III – Clarification on how colleges, universities, primary & secondary schools should report grants or scholarships to interested persons
  - Part IV – Report joint ventures with interested persons if organization has invest \$10,000 or more (cumulative)
  - Part IV – Governmental units & instrumentalities are not interested persons



# 2009 Form 990 Changes

39

- Schedule L, Transactions With Interested Persons (cont'd)
  - “Reasonable effort”
  - Difficult to gather all information with many existing conflict of interest questionnaires



# 2009 Form 990 Changes

40

- Schedule N, Liquidation, Termination, Dissolution or Significant Disposition of Assets
  - Report in Part I, rather than in a letter to EO Determinations
  - Consider consulting with internal or external legal counsel when completing Schedule N



# 2009 Form 990 Changes

41

- Schedule O, Supplemental Information
  - Use Schedule O, not separate attachments, to respond to specific questions
  - Use separate attachment to explain late filing
  - Do not use social security numbers on Schedule O
  - Closely review narratives from 2008 to make necessary additions or deletions for 2009



# 2009 Form 990 Changes

42

- Schedule R, Related Organizations
  - Clarification & new examples of control
  - Part II – Treat governmental units as tax-exempt organizations, if applicable
  - Confusion over completion of Part V



# Recommendations for 2009

43

- Learn from 2008 lessons
- Start early
- Develop detailed timeline
- Identify roles & hold personnel accountable
- Closely review governance & policy issues
- Focus on narratives
- Focus on new schedules



# Other Recent Developments

44

- Revocation of tax-exempt status for some that failed to file three consecutive years
- Interim Report on Colleges & Universities
- Hiring Incentives to Restore Employment (HIRE) Act
- *Patient Protection & Affordable Care Act and Health Care & Education Reconciliation Act of 2010*



# Questions?

**Thank you!**

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