

## CLIENT ADVISORY

### IRS ISSUES NEW FORM 990 FOR TAX-EXEMPT ORGANIZATIONS FOR THE 2008 TAX YEAR

On December 20, 2007, the United States Internal Revenue Service (“IRS”) released a new version of the Form 990 (Return of Organization Exempt from Income Tax) to be filed by tax-exempt organizations for tax years beginning in 2008 (returns filed in 2009). This is the first major revision of the Form 990 since 1979. The release of the new Form 990 follows a public commentary period after the IRS issued a draft Form 990 this past June (the “Discussion Draft”). The new Form 990 contains many of the changes contemplated in the Discussion Draft. In particular, it contains a Core Form and a series of schedules to be completed by tax-exempt organizations. The IRS believes this new Form 990 reflects the way the tax-exempt sector operates in the 21<sup>st</sup> century. This Client Advisory provides an overview of the highlights of the new Form 990.

#### Summary Page

The new Form 990 includes a “Summary Page”, which sets forth an organization’s identifying information and an overview of the organization’s key financial, compensation, governance and operational information. In response to public comments regarding the Discussion Draft, the IRS removed the requirement that an organization must set forth financial percentages and ratios on the Summary Page of the new Form 990. The IRS stated that public comments to the Discussion Draft criticized the inclusion of these percentages and ratios on the Summary Page due to the likelihood that such percentages and ratios will be subject to manipulation or misinterpretation by filers and users.

#### Core Form

The Core Form of the new Form 990 has been revised such that the summary section has been moved to Part I. The basis for this reordering of the Core Form is to allow exempt organizations to “tell their story” before reporting other information. Furthermore, the new Form 990 provides more opportunities for an organization to fully explain its activities.

#### Compensation Disclosures

The IRS has increased its focus on compensation issues in the new Form 990. The Core Form requires all organizations to provide information about compensation of current and former officers, directors, trustees, key employees, and their most highly compensated employees and independent contractors. In addition, if certain dollar thresholds are met, the

organization must complete a separate compensation schedule that requires a detailed breakdown of the types of compensation (including base compensation, bonus/incentive compensation and deferred compensation) and asks questions such as whether the organization provides first-class or companion travel; a housing allowance or a residence for personal use; health or social club dues; and tax indemnification or gross-up payments.

The new Form 990 retains the use of Form W-2 and Form 1099-MISC amounts, but provides for separate reporting of other compensation (e.g., contributions to retirement plans and health plans). A new column on Schedule "J" eliminates duplicate reporting of deferred compensation. Schedule "J" will still require detailed reporting of total compensation for the following:

- (1) Former (based on the organization's prior five annual returns) officers, directors, key employees and highly compensated employees whose reportable compensation from the organization and all related organizations exceeds \$100,000;
- (2) Current or former officers, directors, key employees and highly compensated employees whose reportable compensation from the organization and related organizations exceeds \$150,000;
- (3) Current or former officers, directors, key employees and highly compensated employees who have received more than \$250,000 in the aggregate of reportable compensation, plus deferred compensation and other benefits and expense reimbursements not reported on Forms W-2 and 1099; and
- (4) Current or former officers, directors, key employees and highly compensated employees who received compensation for services rendered to the organization from any source other than the organization and related organizations.

Schedule "J" also requests specific information regarding travel and entertainment expenses.

### **Modified Schedules for Hospitals and Tax Exempt Bonds**

In response to numerous comments from health care organizations, the IRS will phase in the requirements of the new Schedule "H" for Hospitals. Hospitals will only be required to complete identifying information about hospital facilities in the first filing year; the remaining questions about charity care, community benefit, bad debt, Medicare, collection practices, and joint ventures need not be answered on the 2008 form. Similarly, schedule "K" pertaining to Supplemental Information on Tax-Exempt Bonds, will also only require identifying information about bond issues for the first filing year; it will not require completing additional questions about proceeds, private use and arbitrage. After the 2008 tax year, however, organizations will be required to complete all questions on these schedules.

Part V of Schedule "H" requires a listing of all hospitals and other medical care facilities operated by the organization, as well as certain identifying information regarding each listed facility (e.g., status as a critical access hospital or a teaching hospital). Part V will be required to be completed by all organizations beginning with the 2008 tax year, and all

other parts will be optional for 2008. All parts of Schedule “H” will be required beginning with the 2009 tax year.

### **Phase-in for Smaller Organizations**

The IRS also announced a graduated transition period for smaller organizations. These organizations will be allowed to file the Form 990-EZ instead of the new Form 990. For the 2008 tax year (returns filed in 2009), organizations with gross receipts over \$1.0 million or total assets over \$2.5 million will be required to file the new Form 990. For the 2009 tax year (returns filed in 2010), organizations with gross receipts over \$500,000 or total assets over \$1.25 million will be required to file the new Form 990. The filing thresholds will be set permanently at \$200,000 gross receipts and \$500,000 total assets beginning with the 2010 tax year. Also, starting with the 2010 tax year, the IRS will increase the filing threshold for organizations required to file Form 990-N (the e-postcard) from \$25,000 to \$50,000.

### **Conclusion**

The new Form 990 can be found at: [www.irs.gov/charities/article/o,,id=171213.00.html](http://www.irs.gov/charities/article/o,,id=171213.00.html). While some of the questions on the new Form 990 are self-explanatory, the instructions will be essential in understanding the scope of the questions and will provide necessary definitions. The IRS has announced that it will release draft instructions for the new Form 990 in early 2008. Meanwhile, if you have any questions regarding the new Form 990, please do not hesitate to contact any of the attorneys at The Rogers Law Firm.

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