



Client Advisory Redesigned Charity and Tax-Exempt Organization Form (IRS Form 990) Proposed for 2008 Tax Year

General announcement. The Internal Revenue Service (IRS) recently released a discussion draft of Form 990, *Return of Organizations Exempt from Income Tax*. This is the first major redraft of the form since 1979, and the IRS intends to use the form for returns filed in 2009 (applicable to the 2008 tax year).

Call for public comment. Public comment on the draft is welcome until September 14, 2007. One area on which the IRS specifically requests feedback is the structure of reporting of community benefit by hospitals in Schedule H (Schedule H is based on the Catholic Health Association's reporting format). The draft of Schedule H is available at <http://www.irs.gov/pub/irs-tege/form990scheduleh.pdf>. The draft of Form 990, its instructions, and other additional information are available at www.IRS.gov/eo. Questions and concerns may be emailed to Form990Revisions@irs.gov or mailed to Form 990 Redesign, ATTN: SE:T:EO, 1111 Constitution Ave., N.W., Washington, D.C. 20224.

Who does this affect? The redesign applies to public charities, non-charitable tax-exempt organizations, and private foundations. The new form is intended to be less or no more burdensome than past forms to most filing organizations.

Summary of the Redesigned Form 990. Form 990 will consist of a ten-page form used by all filers. Furthering the IRS's stated goals of transparency and compliance, the universal form includes a summary page "snapshot" of the organization generated from information provided elsewhere in the form, and Part III of the universal form requires reporting of governance and financial statement practices. Serving the IRS's stated goal of burden minimization, each filer will select from among fifteen schedules designed to elicit only the reporting requirements specific to the type of organization doing the filing, although an organization of the size of most health care providers will have to complete more than one schedule. Each of the fifteen schedules will focus on areas such as types of charitable contributions received or type of filing organization. Schedule H introduces a schedule specific to hospital facilities. The following explains the redesigned Form 990 by section:

- **Part I: Summary.** The summary page reports highlights such as the size and key financial measures of the filing organization (including the percentage of net assets expended on behalf of all operations and the percentage of fundraising expenses in relation to all contributions or expenses).

- **Part II: Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees, and**

Independent Contractors. Part II, consistent with the existing Form 990, requires the filing organization to list any compensation to key individuals and also asks about business relationships that may affect continued tax-exempt status. Unlike the existing Form 990, Part II asks for only a summary of each individual's compensation; employees' W-2 forms and Form 1099s for directors and independent contractors provide the detail.

- **Part III: Statements Regarding Governance, Management, and Financial Reporting.** Part III requires each filing organization to supply information on governance and financial statement practices. The draft form now asks about whistleblower policies, conflict of interest policies, and document retention and destruction policies.
- **Parts IV, V, and VI: Statements of Revenue, Functional Expense, and Balance Sheet.** These parts generally reflect the existing Form 990 with the following exceptions: no exclusion codes; all supplemental financial information found in the current Parts I, VII, and VIII will be moved to Schedule D; and, the requirement of additional reporting of actual and contingent tax liabilities as well as other amounts not typically reported on a filing organizations balance sheet (including museum collections, conservation easements, and escrow accounts).
- **Parts VII and VIII: Statements Regarding General Activities; Statements Regarding Other IRS Filings.** These parts reflect reporting of filing obligations and compliance with filing requirements. Some questions trigger completion of other schedules, e.g., political contributions by the organization requires completion of Schedule C, and tax exempt bond-financing debt requires completion of Schedule K.
- **Parts IX and X: Statement of Program Service Accomplishments and Signature Block.** Part IX requires a description of the organization's service, exempt activities, and most significant annual accomplishment.
- **Summary of schedules.** The fifteen schedules are alphabetized and listed in Appendix A. Like the existing Form 990, Schedules A and B, *Public Charity Status and Contributors*, will generally be completed by public charities. Most filing organizations will also complete Schedule D, *Supplemental Financial Statements*. Four schedules are completely new, including Schedule F, *Foreign Activities*; Schedule H, *Hospitals*; Schedule K, *Tax Exempt Bonds* (applicable to organizations with tax-exempt bond issues of greater than \$100K); and Schedule M, *Noncash Contributions* (applicable to organizations that receive more than \$5,000 worth of noncash contributions).

Schedule H, Hospitals, must be completed by organizations that operate one or more hospitals or medical care facilities (whether or not they are part of a hospital system or university). Hospital reporting will include aggregate

community benefit of all facilities (including charity care); information pertaining to billings, collections, and joint ventures; and, a list of facilities and services provided. Additionally, hospitals must briefly describe the process of assessing the community's healthcare needs, ways of educating patients about eligibility for financial assistance, emergency room policies and procedures, hours of operation, and any other activities that further the filing organization's tax-exempt purpose.

Schedule J, *Supplemental Compensation*. The IRS estimates that less than five percent of filing organizations will require the more detailed compensation reporting of Schedule J; however, more than 95% of all hospitals will likely need to complete this schedule. The compensation triggers are very low compared to hospital executive salaries and may impose significant additional recordkeeping for some tax-exempt organizations that share employees.

Schedule K, *Tax Exempt Bonds*, will need to be completed by virtually all hospitals. Bonds are a typical source of financing. The schedule asks for information about management contracts entered into by the organization and about other joint venture properties financed with tax exempt bonds.

Impact of new reporting requirements. Both nonprofit and for profit organizations will likely find the new reporting requirements useful in obtaining information about competitors. If not substantially changed, the new forms will likely increase the paperwork burden for hospitals.

This information is provided as a public service to Mellette PC clients. Should you have further questions, please contact Peter Mellette at (877) MELLETTE – (877) 635-5388. This advisory is not intended to provide legal advice about a specific issue; please contact your attorney for more information.

Mellette PC acknowledges with appreciation the assistance of Kelly Pereira, '08, Marshall-Wythe School of Law, in preparing this advisory.