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## Public Charities To See Filing Changes On Revised Form 990

In an effort to promote tax compliance and transparency by public charities, the Internal Revenue Service (IRS) recently published a redesigned Form 990 that significantly affects the filing requirements for non-profit organizations.

Beginning with the 2008 tax year, organizations with greater than \$1,000,000 in gross receipts or \$2,500,000 in total assets will be required to file the revised form. These thresholds will decrease in the 2009 tax year (greater than \$500,000 in gross receipts or \$1,250,000 in total assets) and 2010 tax year (greater than \$200,000 in gross receipts or \$500,000 in total assets) as the form is fully implemented.

### Good Governance Practices Sought

The redesigned form poses various questions regarding the internal governance of public charities, including whether the organizations have implemented certain governance, management and disclosure policies and procedures. While the IRS generally does not require public charities to adopt such policies and procedures, their implementation illustrates good governance practices. In all likelihood a public charity's failure to affirmatively respond to questions on such policies and procedures results in a greater chance the organization will be more closely scrutinized, or even formally audited, by the IRS. While the recommended governance practices mentioned in the new Form 990 may not be appropriate or applicable for every public charity, it will be important for an organization to clearly articulate a legitimate reason for not implementing the recommendations published by the IRS.

Some of the internal governance policies listed on the redesigned Form 990 include:

#### •Conflict of Interest Policies

A conflict of interest policy ensures that the individuals charged with governing a public charity do not benefit financially by holding such position with the organization. While the implementation of a conflict of interest policy is important, it is crucial to ensure that directors, officers and key employees of the organization annually disclose any potential financial or other type of interest that might give rise to a conflict of interest. If potential conflicts of interest are not appropriately addressed by the organization, there is a greater opportunity for excess benefit transactions to occur, resulting in the imposition of monetary sanctions on both the individual and the organization, and potentially the loss of tax-exempt status.

#### •Whistleblower and Document Retention Policies

Whistleblower and document retention policy questions now appear on Form 990. While the Sarbanes-Oxley Act generally does not apply to public charities, criminal sanctions may be imposed on such organizations for retaliation against whistleblowers and the intentional destruction of records to obstruct a federal investigation.

By referencing these types of policies, the IRS has formally recommended their adoption as a good governance practice.

#### •Joint Venture Policies

Public charities that engage in joint ventures with for-profit or other non-profit organizations should adopt a joint venture policy to ensure the organization continues to operate exclusively for its enumerated charitable purposes. The new Form 990 includes examples of various safeguards that should be included.

#### •Compensation Review Policies

A formal compensation review policy is also encouraged. Such a policy should include the review and approval of compensation by either the governing body or a compensation committee that has been properly delegated its authority by the governing body. Organizations may also find it appropriate to hire a consultant to evaluate compensation packages.

The IRS has recommended that public charities maintain records that memorialize decisions made by the governing body regarding compensation packages. This recordkeeping requirement is a good example of the importance of adopting and following a document retention policy. In addition, the IRS has suggested that organizations should review comparable data "for similarly qualified persons in functionally comparable positions at similar situated organizations." If public charities follow these guidelines when determining compensation packages, then the IRS will presume that such compensation packages are reasonable unless other evidence is presented to the contrary.

### A Tool for Charitable Donors

As Form 990 is available for public inspection, it offers potential donors the opportunity to more closely scrutinize the activities and structures of a public charity. To encourage high-level review of this important information, the revised form asks whether a copy of the prepared form was provided to each voting member of the governing body prior to its filing and asks for a description of the review process "or lack thereof" of the prepared return. So whether serving on a public charity's governing body or representing the organization as its legal counsel, it is important to be aware of these new recommendations and ensure they are addressed in a timely manner.

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