
HOWE & HUTTON SPECIAL REPORT

ANALYZING LEGAL NEWS OF IMPORTANCE TO THE NONPROFIT COMMUNITY

SPECIAL REPORT

“WAIT UNTIL NEXT YEAR” -- REVISED FORM 990 FOR TAX YEAR 2008

Those words ring dear to Chicago Cubs fans, and reflect the coming changes to IRS Form 990 for tax year 2008 filings due in 2009. While much has been written about the major redesign of this form, not much has been written about actually complying with the changes when filing the tax year 2008 Form 990 next year. Organizations will not be able to use the current Form 990 after the tax year 2007 Form 990 is filed in 2008. *Associations and other tax-exempt nonprofit organizations should be working with their Boards of Directors, accountants and legal counsel this year to make changes in reporting procedures in order to have the necessary information available for 2008 tax filings, including an expanded governance paper trail. The revised Form 990 core and each of the new schedules with explanatory highlights can be seen at the following link: www.irs.gov/charities/article/0,,id=176637,00.html.*

Some Basic Points To Keep In Mind

In order to allow smaller exempt organizations time to adjust to the new form, the IRS has stated that organizations with gross receipts equal to or less than \$1 million and total assets up to \$2.5 million will be able to use Form 990-EZ instead of the new Form 990 for 2008 returns filed in 2009. For the 2009 tax year filing due in 2010, organizations with gross receipts less than \$500,000 and total assets less than \$1.25 million will still be able to use Form 990-EZ. Thereafter, the Form 990-EZ maximums will be gross receipts of \$200,000 and \$500,000 in total assets.

The redesign of Form 990 was based on three principles. The first principle is to enhance transparency by providing the IRS with a realistic snapshot of the organization and its operations as well as a basis for comparison to similar entities. The second principle is to promote tax compliance by accurately reflecting the organization's operations and use of assets so that the IRS may assess the risk of noncompliance. The final principle is to minimize the burden on the filing organization by asking questions in a manner that makes it relatively easy to complete the form while not imposing unwarranted burdens in recording and documenting the information. However, for organizations with complicated structures or compensation arrangements, the new Form 990 may be significantly more complicated to complete.

Howe & Hutton, Ltd.:

20 N. Wacker Dr., Suite 4200 • Chicago, IL 60606 • 312/263-3001 • Fax: 312/372-6685

Washington Office:

1901 Pennsylvania Avenue, NW, Suite 1007 • Washington, D.C. 20006 • 202/466-7252 • Fax: 202/466-5829

St. Louis Office:

1421 Buckhurst Ct. • Ballwin, MO 63021 • 636/256-3351 • Fax: 636/256-3727

E-Mail: hh@howehutton.com

© Copyright 2008. Howe & Hutton, Ltd. Chicago, Illinois, Washington, D.C., and St. Louis, Missouri, U.S.A.

All Rights Reserved. Republication with Credit to Howe & Hutton, Ltd. and “The Howe & Hutton Report”

is allowed. Please provide us a copy of your use.

Form 990 Core

The revised Form 990 starts with an 11-page “core” form in eleven parts and contains 15 schedules in place of the two schedules and unstructured attachments currently used. It divides the current Schedule A into four schedules; puts unstructured attachments into schedules; and requires much additional information. An organization will have to determine which of the 15 schedules apply, as described below in Part IV.

Part I is the summary/snapshot page which provides identifying information and a snapshot of key financial, governance and operating information including a summary of mission or activities, number of directors and staff, and a current and prior year comparison of operating revenues and expenses, assets and liabilities. **Part II** is the signature area where an authorized officer of the organization attests to the correctness and completeness of the Form 990. **Part III** is the statement of program service accomplishments, including new, discontinued and changed programs, and the three largest programs by expenses.

Part IV is a question and answer checklist of activities. Answers to the questions of Part IV will determine which of the 15 schedules apply. Most will not for the majority of organizations. (*See the description of Schedules below.*) **Part V** addresses any other IRS filings and tax compliance issues.

Part VI addresses governance and transparency issues. It begins with questions about the governing body (typically the board of directors or trustees) as well as questions regarding an organization’s internal governance and financial statement practices. While the IRS acknowledges that Part VI asks for information on practices and policies *not* mandated by federal law, the IRS asserts that good governance and accountability practices are likely to lead to ensuring the organization’s assets will be used for exempt purposes. Part VI requires a detailed review of the Articles of Incorporation, bylaws and applicable nonprofit corporation statute, and any governance policies adopted by the organization. ***Organizations should be working with their Boards of Directors, accountants and legal counsel this year to prepare the information required to answer Part VI and adopting the policies asked about in Section B if these policies are not already in place and followed.*** Section A asks for the number of voting directors, and of those how many are independent (definitions for these terms will be in the instructions to Form 990 expected out soon), and about any delegation of powers by the directors; about chapters and affiliates and policies relating to them; and directors’ review of Form 990 filings. Section A also asks about meeting minutes for the board and committees.

Section B covers policies including a written conflict of interest policy and how the policy is implemented and monitored; a written whistleblower policy; and document retention and destruction policy (including electronic records). If organizations do not have these written policies now, they should prepare them this year. We can provide model forms and assist in preparing such policy directives. Section B also addresses oversight of executive and key employee compensation, including information many organizations may not routinely maintain, and refers to Schedule O for an expanded explanation. Joint ventures are also addressed in Section B. **Section C** addresses an organization’s public disclosure policy including how it discloses its original Form 1023 or Form 1024 filing and latest Form 990 as required by law; whether and how the organization’s conflicts policy is disclosed (this is not a mandatory disclosure); and the name, physical address and telephone number of the person in possession of the organization’s books and records.

Part VII addresses in more detail than the current Form 990 the compensation of officers, directors, key and highly compensated employees, and independent contractors. This subject matter has become an area of interest to Congress and the IRS due to some widely reported instances of excessive compensation of executives and others, leading to demands for reform. **Section A** requires an organization to list all of its *current* officers, directors, trustees and key employees (without regard to their compensation) and asks questions about the compensation and other financial arrangements between the organization and its officers, directors, trustees, key and highly compensated employees, and certain *former* officers, directors, trustees and employees receiving compensation. The IRS is still working to define “key employees” and this information is expected in draft instructions due out in April 2008 to accompany the revised form. This information also requires disclosure of income from related and unrelated organizations. Part VII requires Schedule J to be filled out, requiring even more disclosure of compensation-related issues. **Section B** seeks information on an organization’s top five independent contractors that received compensation over \$100,000, and the total number of independent contractors that received more than \$100,000.

Parts VIII and IX ask for much of the same data as the current Form 990 including revenues by source and a breakout of functional expenses including fees for non-employee management, legal, accounting, lobbying, professional fundraising and investment services, and pension contributions. **Part X** is a balance sheet. If an organization has investments in real property, equipment, reserves, etc., it is directed to Schedule D. **Part XI** is new and addresses financial statement compilations, reviews or audits, and the use of independent accountants and oversight of the audit process by an independent committee.

Schedules

Most of the 15 schedules are specific to particular types of entities or specific functions, and therefore will not apply to most organizations. For example Schedule A applies to public charities; and Schedule B seeks information about contributors to charities, private foundations, 527 political organizations and other such organizations. Schedule C addresses political campaigns and lobbying activities. Schedule D addresses a number of specific activities such as donor-advised funds, conservation easements and other specialized activities, as well as more general financial information on investments generally applicable to a much broader group of organizations. This part of Schedule D will apply to many organizations. Schedules E, F, G and H are specific to schools, activities outside the United States, fundraising and gaming activities, and hospitals respectively. Schedule I addresses grants to others within the United States.

Schedule J seeks compensation information for officers and others receiving more than \$150,000 compensation and other compensation benefits, highly compensated employees (those earning more than \$100,000), former officers and key employees receiving more than \$100,000, and former directors receiving more than \$10,000. This schedule also asks for information about who determines executive compensation and what information is considered. Travel and other personal expenses are addressed, specifically including expenses for first class travel, expenses for travel companions, health club and other dues, and other benefits; and expense substantiation policies. This schedule will be required for many organizations.

Schedule K addresses tax exempt bonds. Schedule L addresses transactions with interested persons. Schedule M addresses non-cash contributions. Schedule N addresses liquidation, termination, dissolution or significant disposition of assets. Schedule O is a supplemental information sheet, and is used to expand on answers or explanations elsewhere in the Form 990 or schedules. As such it is likely to be used by many organizations. Schedule R addresses related organizations and unrelated partnerships,

Conclusion

This report is an overview of compliance issues with the revised Form 990 but as always the devil is in the details. It would be more prudent to undertake the necessary review of activities, policies and financial oversight this year to prepare for filing the revised Form 990 in 2009. Draft instructions expected from the IRS in April 2008 will provide more detailed guidance and should be carefully scrutinized to facilitate any changes in processes or information needed to prepare the new Form 990. While much criticism has been leveled at the new Form 990 and the compliance burdens placed upon filing organizations, the reality is the new Form 990 is logical, straightforward and makes sense in this time of enhanced scrutiny and demand for greater transparency of tax-exempt nonprofit organizations.