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IRS FORM 990: THE EXPANDED FORM PROVIDES A PUBLIC RELATIONS OPPORTUNITY FOR CHARITIES

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Part I – Introduction

IRS Form 990 is the annual return required to be filed by most tax-exempt organizations.

A tax return filed by a tax-exempt organization may sound like an oxymoron, but the Form 990 is really an information return. Unlike individual and corporate tax returns, Forms 990 are available for public inspection as required by Internal Revenue Code Section 6104.

Who are the audiences for the information revealed on Form 990?

- (1) IRS and Congress
- (2) State officials and agencies seeking to perform charitable or regulatory oversight, or to enforce state income tax filing requirements
- (3) Prospective donors, their legal and financial advisors, and other members of the general public who are interested in the programs and accomplishments of the filing organization, and the efficiency with which it operates
- (4) News media and researchers seeking information about the filing organization

(5) "Watchdog" organizations and others who may be checking up on the filing organization, such as organizations with opposing policy views, taxable organizations checking to see whether a tax-exempt organization is providing unfair competition, etc.

(6) Employees and former employees of the organization

Because Form 990 is a tax form, many organizations delegate its preparation and review to accountants and other "financial types". In fact, Form 990 should be viewed as an important public relations opportunity – a chance to tell the story of your organization – why does it deserve exemption from income tax, and how does it accomplish its tax-exempt purposes?

Part II – IRS' Project to Redesign Form 990?

Why is Form 990 so important? Congress and the IRS have become aware that tax-exempt organizations control trillions of dollars of assets. The overhaul of Form 990 that resulted in a new form for 2008 was the first major overhaul of the form since 1979.

Objectives of Form 990:

(1) Enhance "transparency" by providing IRS and the public with an accurate picture of the organization and its operations.

(2) Provide a basis for comparing the filing organization to other similar organizations. To this end, the filing organization must display its key financial statistics or "metrics" in a snapshot manner that permits easy comparison.

(3) Improve compliance by requiring more disclosures in response to the "hard questions" -- issues such as executive compensation, employment taxes, insider transactions, foreign activities, and relationships with other organizations (through joint ventures and otherwise).

(4) Require the filing organization to be more accountable, and to "justify" its tax-exempt status by providing narrative descriptions of its purposes, programs and activities.

(5) Determine whether the filing organization follows certain management and "good governance" practices – e.g., does it maintain written policies on conflicts of interest, "whistleblowers", and document retention practices.

IRS' philosophy is that a well-managed organization is likely to be a tax-compliant organization. In the case of most of the "good governance" questions, the organization is not legally required to adopt such policies, but its risk of audit will be greater if it lacks those policies. Aside from the risk of audit, what kind of message do you send to prospective donors when you disclose that your organization has no written policy relating to conflicts of interest?

Given the detail required in many of the narrative answers on Form 990, it will be more efficient if a charity begins to develop the relevant information throughout the year. Also, as noted, the form asks questions that reveal whether the organization is following "good governance" practices, such as the existence of and compliance with certain policies indicative of ethical conduct. If the organization begins to think about the form after the year ends, it may be compelled to give unfavorable answers to some questions because it didn't have certain policies in place during the year.

The new Form 990 does not affect private foundations that file Form 990-PF, or small organizations that file the 990-EZ. IRS says it has no plans for a revised 990-PF, but foundation managers and practitioners should assume that the day will eventually come when similar disclosure requirements find their way to the 990-PF. The trend for more transparency is not likely to recede.

Part III – Structure of the New Form 990

One of IRS' professed goals was to minimize the burden on filing organizations. The current ("old") Form 990 consists of nine pages for the basic or "core" form, plus two schedules. The new and improved Form 990 consists of an eleven-page basic or "core" form, plus sixteen schedules. Some organizations will be required to complete a number of schedules; others, just a few.

A. The "Core" Form.

Page 1 starts with several lines for a brief narrative description of the organization's "mission or more significant activities", then continues with a summary of the organization's key financial statistics. The key financial data is compared, side-by-side, for the current year and the prior year. These include contributions received, program service revenue, investment income, grants paid, compensation paid, and professional fund-raising expenses. The side-by-side format focuses attention on changes in these figures from one year to the next. Another prominent question relates to the taxable unrelated business taxable income, a figure taken from the Form 990-T.

The "bottom lines" on page 1 reveal the organization's total assets, total liabilities, and total net assets, both at the beginning of the tax year and the end.

Page 2 is devoted to the organization's mission and its program service accomplishments. What is the organization's mission? Did it undertake any significant program services during this year that were not listed on prior tax returns – and if so, describe them. What were the organization's "exempt purpose achievements" for each of its three largest program service activities, listed in order of the magnitude of grants and revenue (if applicable).

Pages 3 and 4 contain a checklist, mostly in the form of "yes or no" questions. The responses determine what additional schedules the organization needs to complete.

Page 5 is a series of questions designed to alert the organization to additional IRS filings it needs to make, and to issues that may require further compliance review. For example, does the organization maintain foreign bank accounts? Was it a party to a prohibited tax shelter transaction? Did it file the required notifications when it provided goods or services in exchange for contributions, or when it received contributions of cars, boats, and other vehicles? If the organization is a community foundation maintaining donor advised funds, did it make any distributions to donors, donor advisors or related persons?

Page 6 deals with governance, management and disclosure. The new emphasis on governance issues is an expansion of IRS' role. It arose from the question (asked by various members of Congress), who regulates tax-exempt organizations? Each state Attorney General's office has an oversight responsibility for charities operating in their state, but the state AGs differ greatly in the extent to which they devote resources to charities. In most cases, they get involved when there is a consumer-fraud type of complaint -- for example, citizens who contribute to an

organization that claims to be a charity but isn't, or donors who find that most of the money raised from public contributions ends up in the hands of the fundraisers. These are important issues, but they apply only to a small number of exempt organizations. The SEC regulates publicly traded corporations, to monitor the accuracy of their financial reporting and certain ethical issues involved in their management, but the SEC has no jurisdiction over tax-exempt organizations. When you think about the comparison, charities ask the public for money just as a stock corporation does when it is trying to raise capital, albeit for a different purpose.

As a result of these concerns, Congress has encouraged the IRS to become much more actively involved with the governance of these organizations, as well as the purely tax issues. Governance concerns include the following issues:

Are the organization's directors and officers related to one another by family or business relationship? Does the organization keep contemporaneous written records of the meetings of its governing body and its committees? Does the organization have written policies relating to conflicts of interest, whistleblowers, document retention, etc.? How does it monitor and enforce those policies?

How does the organization determine compensation of officers and other key employees? Does the determination process include "a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision"? Note that this is a much deeper inquiry than the prior form into the organization's internal processes.

While recent versions of the 990 have asked whether the organization has a conflict of interest policy, this is the first time it also asks whether the organization "regularly and consistently monitor[s] and enforce[s] compliance with the policy". IRS is telling us, it's not enough to adopt the policy and put it in the minutes; you also must show that you are monitoring and enforcing it.

Another question is, "Was a copy of the Form 990 provided to the organization's governing body before it was filed?" The filer is told to use Schedule O (discussed below) to describe the review process used by the organization.

The easy comparability of the answers provided to these questions by different organizations will lead to peer pressures. Suppose one organization is checking many of these boxes with negative answers, while most of its peers are giving

favorable answers. Analysts will surely focus on the contrast between answers given by seemingly similar organizations.

Pages 7 and 8 require disclosure of compensation paid to officers, directors, trustees, key employees, highly compensated employees (including persons who formerly held those positions), and to the five highest independent contractors who received more than \$100,000. (This information was previously required for 501(c)(3) organizations; now all filers need to disclose this information.) Compensation amounts are correlated to the figures that appear on Forms W-2 and 1099. If compensation exceeds \$150,000, Schedule J must also be completed.

Pages 9, 10 and 11 consist of financial information. The "bottom line" figure, in many cases, will be part of the summary displayed prominently on page 1.

B. The Schedules.

Schedule A – Public Charity Status and Public Support

This is the place to indicate the organization's public charity status and the mathematical basis on which it meets the requirements for that status. Because this schedule uses a 5-year test period, it is anticipated that IRS will eliminate the current practice of making an advance determination of public charity status, and then following up with Form 8734 at the end of the advance ruling period to determine whether the public support test has actually been satisfied.

If the filer is a 509(a)(1) or 509(a)(2) organization, different sets of grids are provided for the organization to enter the figures proving its eligibility for this status.

If the filer is a supporting organization, it is asked to indicate whether it is a Type I, Type II, Type III "functionally integrated" or Type III "other". Next, it is asked whether it has a written determination from IRS as to which type of supporting organization it is. This and other information asked on Schedule A is a clear result of the new rules imposed on supporting organizations under the Pension Protection Act of 2006.

Schedule B – Schedule of Contributors

This is the list of contributors. In general, the filer must list all contributors who gave \$5,000 or more during the year. If the filer is a 509(a)(1) public charity, it needs to disclose each contributor who gave at least the greater of \$5,000 or 2% of total support.

Names and addresses of contributors may be redacted when this form is disclosed for public inspection. This is the only part of Form 990 that is not available to the public.

Caution: Because states typically make the filings of nonprofit organizations available for public inspection, do not file Schedule B with the state unless state law specifically requires you to do so. Also, I often recommend that the organization type "Not for Public Disclosure" in bold type at the top of Schedule B, to serve as a reminder to anyone who is copying the form to comply with a request from a member of the public.

Schedule C – Political Campaigns and Lobbying Activities

This schedule discloses information relating to political campaign and lobbying activities. Political activities of tax-exempt organizations have become the subject of considerable controversy this year. Political campaign activities are prohibited to 501(c)(3) organizations, but may be engaged in to a limited extent by most other types of exempt organizations.

Schedule D – Supplemental Financial Statements

This schedule requires additional information that may be needed to clarify the organization's financial statement. It also inquires about donor advised funds and endowments, among other issues.

Schedule E – Schools

Schools are required to answer a series of questions, most of which relate to the existence of and compliance with racially non-discriminatory policies relating to students, faculty, staff, and school programs.

Schedule F – Statement of Activities Outside the United States

This schedule requires disclosure of foreign activities, including grant-making outside the United States in excess of \$5,000. When grants are made to a non-U.S. organization, the schedule inquires as to whether the grantee is tax-exempt.

Schedule G - Supplemental Information Regarding Fundraising or Gaming Activities

Does the organization solicit funds? Does it sell mugs or other trinkets to raise money? Does the organization ask donors to overpay for meals at fund-raising events? If so, these are some of the activities that will be the subject of disclosures on Schedule G. Among other questions, the organization must identify all the states in which it is registered or licensed to solicit funds (or in which it is exempt from registration or licensing).

Schedule H – Hospitals

More detailed information is asked about charity care policies and procedures, community benefit, and so-called community-building activities. These may include training programs for health workers, research activities, subsidized care, etc.

Hospitals are also required to disclose bad debt, Medicare shortfall, and collection practices. The form also requires disclosure of management companies and joint ventures owned jointly with officers, directors, trustees, key employees and physicians, including ownership percentages.

Schedule I - Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the United States

If the filer is a grantmaking charity, as many are, this schedule asks for detailed information about the recipients and the grants.

Schedule J – Compensation Information

This schedule requires more detail than in the past about compensation paid to officers, directors, trustees, key employees and highly compensated employees. The questions relate to benefits and deferred compensation as well as direct compensation, with specific questions about bonuses and incentive compensation.

Other questions requiring more specific explanations include failure to follow reimbursement policies, providing severance pay or equity-based compensation, providing compensation contingent on revenue or net earnings, and other non-fixed compensation payments.

Specific questions are asked about any instances of the organization paying for any of the following "hot button" items: first class or charter travel; travel for companions; tax indemnification; discretionary spending accounts; housing allowances or residence for personal use; payments for business use of a personal residence; health or social club dues or initiation fees; and personal services such as chef, chauffeur and/or maid. If the answer is yes, a narrative explanation must be provided. The narrative explanation can be either good or bad, depending on the facts – for example, the payments in question may be required in order to be market-competitive with other exempt organizations. The narrative also gives the organization the opportunity to say that while it has made certain payments during the year that require a disclosure, it has now discontinued that practice.

Schedule K - Supplemental Information on Tax Exempt Bonds

Some issuers of tax-exempt bonds will also get a one-year reprieve on the new disclosure requirements. Much of the disclosure relates to information intended to reveal violation of the private use limitations and other problem areas.

Schedule L - Transactions with Interested Persons

This schedule is intended to reveal potential self-dealing and "excess benefit" transactions. It requires the disclosure of details of transactions involving current and former officers, directors, trustees and key employees. It also asks about the amount involved in each transaction, and whether it involves sharing of the filing organization's revenues.

If a loan was made to an "insider", the form asks the purpose of the loan, whether it was approved in advance by the Board or a committee of the Board, whether it is reflected by a written agreement, and whether it was in default during the year.

The schedule also asks whether the organization discovered any excess benefit transactions during the year. If so, it asks for the name of the disqualified person, a description of the transaction, whether it was corrected and the amount of any excise tax paid under Code Section 4958, if any.

An organization that discloses transactions listed in Schedule L should ask itself, should we consider ending any of these practices?

Schedule M – Non-Cash Contributions

Does the organization receive gifts of non-cash property such as securities, vehicles, art works, historical treasures, real estate, or conservation easements? If so, it will need to provide additional information on this schedule.

Schedule N – Liquidation, Termination, Dissolution, or Significant Disposition of Assets

The caption is self-explanatory. This schedule requires disclosure of information that generally did not have to be reported in the past.

Schedule O – Supplemental Information to Form 990

When the core form instructs the filer to describe or explain certain actions, or to expand upon answers to check-the-box questions, Schedule O is generally the place where those descriptions and explanations must be provided.

For example, the filer is told to use Schedule O to describe (i) the process used by the organization to review Form 990, (ii) the process used to determine and approve compensation of officers and other key employees, and (iii) the process used to monitor and enforce the conflicts of interest policy.

Schedule O also provides a "blank sheet" that gives the filing organization an opportunity to "tell its story". It is vitally important to a charity that wishes to use the narrative answers as an opportunity to tell its story to prospective donors and others who are interested in its activities.

Schedule R – Related Organizations and Unrelated Partnerships

Relationships between charities and non-charities have always been a sensitive issue. Relationship may mean ownership or control greater than 50%, or in the case of nonprofits, it may be based on overlapping Board members. The exact definitions of "related" will depend on the IRS instructions that will be released in the near future.

This schedule identifies the related organizations and analyzes the flow of funds among them. It requires details of each transaction between the filing organization and a related party – including gifts, grants, and performance of services. It asks about interest, annuities, royalties and rent received from a controlled organization – facts that would have implications for determining the existence of unrelated business taxable income.

Part IV – Governance Recommendations

If possible, a tax-exempt organization will want to answer "yes" to questions asking whether it has adopted (1) a conflict of interest policy; (2) a "whistle-blower" policy; (3) a document retention and destruction policy; (4) policies regarding affiliates and joint ventures, so as to safeguard the organization's exempt status; (5) policies regarding the organization's chapters, branches and affiliates (if any), to assure that they are operated in a manner consistent with its exempt purposes; (6) a policy regarding reimbursement of business, travel and entertainment expenses; (7) compensation policies (for both directors and key staff); (8) a financial information/audit policy (including tax filings); and (9) a financial information disclosure policy.

The organization should maintain contemporaneously-prepared written records of all Board meetings and committee meetings. It should determine and remediate any failure to monitor and enforce compliance with the conflicts policy or other ethical guidelines.

The various Form 990 schedules applicable to specific types of non-profits ask about specialized policies – for example, non-profit hospitals are asked about charity care and billing and collection policies, schools are asked about racial discrimination policies, and conservation organizations are asked about conservation easement policies.

Here is a brief overview of "good governance" policies or related items that the IRS would like all tax-exempt organizations filing the Form 990 to adopt.

Mission Statement

Non-profit organizations should adopt a well-written focused mission statement that sets forth the organization's purposes and objectives. As noted in the IRS governance practices paper, "a clearly articulated mission statement" will

"popularize the charity's purpose and serve as a guide to the organization's work." An organization's mission statement will serve as its introduction to the IRS.

As noted above, the first item on the new Form 990 asks for a brief description of the organization's mission. If the governing body has not crafted a mission statement, how will the preparer of the Form 990 be able to answer this question appropriately?

The mission statement should address why the organization exists, what it hopes to accomplish, what activities it will undertake, where it will undertake them, and for whom.

Conflict of Interest Policy

Non-profit organizations are subject to increasing public scrutiny, especially when an "insider" is perceived to receive an inappropriate benefit. The conflict of interest policy should emphasize the non-profit director's duty of loyalty, which requires every director to act in the best interest of the non-profit organization, rather than in the personal interest of the director or some other person or organization. Interest policy should (1) require directors and staff to act solely in the interests of the non-profit without regard to personal interests; (2) include written procedures for determining whether a relationship, financial interest, or business affiliation results in a conflict of interest; and (3) prescribe a course of action in the event a conflict is identified.

A good conflict of interest policy will not only help the organization avoid the appearance of impropriety; it will also help the organization to safeguard its tax-exempt status, which is jeopardized if insiders derive inappropriate benefits.

Whistle-Blower Policy

Whistle-blower policies establish a procedure for individuals to report, without fear of retaliation, complaints or unethical conduct occurring at an organization. A whistle-blower policy allows the organization to investigate and remedy any potential issues before a situation has unintended consequences. When adopting a policy, non-profits should consider the following questions: how extensive in coverage should the policy be; how should complaints be reported; who should resolve the complaints; and what protection is the whistle-blower afforded? This policy may be incorporated into the organization's code of ethics.

Code of Ethics

The exemption from income tax carries with it an obligation to operate in the public interest. One indication that an organization is working in the public interest is its adherence to ethical standards.

The governing body of the organization is responsible for seeing that ethical standards are maintained. A written code of ethics adopted by the organization will help to encourage "good behavior" while discouraging "bad behavior", and will at the same time communicate a culture of legal compliance and ethical integrity. Among other issues, the code of ethics should deal with the organization's relationships with vendors and policies on expense reimbursement.

Document Retention and Destruction Policy

The new Form 990 signals IRS' clear intent to encourage non-profit organizations to adopt a written policy establishing standards for document integrity, retention, and destruction. Details on what provisions such a policy should include may be found in IRS Publication 4221, *Compliance Guide for 501(c)(3) Tax-Exempt Organizations*. It recommends that organizations retain supporting documents relating to contributions, purchases, sales, payroll, grant applications, and awards, as well as sales slips, paid bills, invoices, receipts, deposit slips, and canceled checks. The publication also recommends the duration of the retention period of various types of tax and non-tax records.

Policy on Affiliated Organizations (Including Joint Ventures)

When a non-profit organization enters into a partnership or joint venture with another organization, exempt or non-exempt, the relationship can carry significant risks. IRS is concerned that a joint venture may divert a non-profit organization from its exempt purpose, or possibly result in the use of the income or assets of the non-profit organization to benefit the other partner in the venture. Either slip can expose the non-profit organization to penalties, or at worst, jeopardize its tax exemption.

Non-profit organizations should consider adopting a policy that safeguards its tax-exempt status when partnering with other entities. The policy should make clear that joint ventures must permit the tax-exempt partner to act exclusively in furtherance of its exempt purpose. The non-profit organization should also retain effective control over the venture to the extent needed to assure that the venture furthers the organization's exempt purpose.

Policies on Compensation and Expense Reimbursement

Non-profit organizations are generally prohibited from using their income or assets for private benefit. However, they are clearly permitted to pay reasonable compensation for services rendered, and to reimburse expenses that are reasonable and necessary to the organization's activities. (Even private foundations – the most heavily regulated of all tax-exempt organizations – are permitted to pay reasonable compensation to "insiders" who render services that enable the organization to carry out its exempt purposes.)

As in other sensitive areas of relationships between non-profit organizations and "insiders", good practices indicate that a non-profit organization develop a written policy of compensation and expense reimbursement. In order to assure that officers and other key employees receive no more than "reasonable" compensation, the organization should review what persons performing similar tasks for similar organizations are receiving as compensation.

Organizations exempt under Code Sections 501(c)(3) and 501(c)(4) may wish to include procedures for satisfying the rebuttable presumption of reasonableness under Code Section 4958.

Non-profit organizations are permitted to pay for or reimburse ordinary and necessary expenses incurred while carrying out the organization's activities, including the costs of travel. However, expense reimbursement policies should be consistent with recent IRS guidance on the required elements of an accountable plan expense reimbursement, which include the following: (1) there is a business connection or reason for the expense; (2) the officer or employee adequately accounts for such business expenses within a reasonable time; and (3) the officer or employee returns any amount of excess reimbursement within a reasonable time.

The IRS now takes the position in audits of non-profit organizations that expenses reimbursed outside of an accountable plan must be reported as taxable income to the individual receiving such reimbursements, which means additional taxes must be withheld.

Non-profit organizations may wish to reconsider whether they will continue to reimburse airline fares that exceed coach airfare. As discussed above, Schedule J of the new Form 990 asks whether the organization paid or reimbursed for "first-class travel, club dues or use of personal residence."

Part V – Some Practical Advice, and The Bottom Line

- (1) Be aware of transparency. When preparing Form 990, draft the answers as if they may appear on the front page of the local newspaper -- because they just might!
- (2) Not "just a tax form". Form 990 is not "just a tax form" any more. Many organizations delegated the preparation and review of Form 990 to the financial professionals. When the form was considered as a compilation of numbers, there seemed little point to having the non-financial types review it -- after all, the Board of Directors is not expected to go back and re-add the columns of numbers.
- (3) More plain English. The new form provides much more opportunity for narrative answers -- plain-English presentations to address such questions as what is the organization's mission, what does it do to accomplish its tax-exempt purposes, and how does it operate. Schedule O, "Supplemental Information", is essentially a blank sheet that enables the organization to provide "supplemental explanation" about any entry that requires further discussion, except when provided otherwise. Every Form 990 filer will include a Schedule O, because some questions require that their answers be explained on Schedule O.
- (4) Public relations opportunity. Form 990 is a public relations opportunity. Because of the expanded narrative answers, Form 990 can begin to resemble a statement to the public. Many answers can be taken from the organization's website, or from the brochures and letters it sends to prospective donors. In fact, the Form 990 narrative answers should resemble communications the organization would send to its most important prospective donors -- because that's one of the functions that Form 990 is likely to serve.
- (5) What not to do. Despite the opportunities provided by Form 990 to showcase the organization's programs, plans and accomplishments, some exempt organizations follow their old habits. The Form 990 is prepared by finance professionals with little input from the program-oriented folks, so the narrative answers are terse statements that repeat Internal Revenue Code terminology. The description of the organization's activities is cloned from the prior year's 990, which in turn was cloned from the one before that. The organization's website talks about exciting new programs and innovative approaches to accomplish the charitable objectives, but the narrative answers on Form 990 sound like nothing

has changed since 2003. Organizations that take this approach to Form 990 are shortchanging themselves.

(6) Addressing potential negatives. Suppose a disclosure on Form 990 could have negative implications, or could raise questions about the organization's practices. For example, the compensation to an officer may appear unusually high, or the organization may have engaged in a reportable transaction with one of its directors. Form 990 provides the opportunity for the organization to confront the potentially negative information head-on, and explain why the information should not be viewed negatively, or how the organization has changed its practices to avoid a recurrence of the problem behavior. Maybe the high compensation was to make up for prior years in which the officer was paid less than she was owed, due to the organization's pressing cash needs to operate its programs. Perhaps the transaction with the director was vetted by the disinterested Board members in conformity with the organization's conflict of interest policy. Even if the reported event does not have a favorable explanation (e.g., a discovered diversion of assets), the organization may explain how it changed its policies to assure that there will be no recurrence.

(7) Important role for the Board. The Board of Directors has a much more important role in the Form 990. Part VI of Form 990 asks whether the organization has provided a copy of Form 990 to all members of its governing body before filing. The purpose is to assure that all Board members have reviewed the form with an opportunity to comment. It also asks the organization to describe (in Schedule O) the process by which the organization reviews Form 990. Because of the many narrative questions, Board review is much more meaningful than it would be if the form was simply a compilation of numbers.

(8) The "Good Governance" Questions. IRS now asks about your recordkeeping practices, and how you document the decisions made by your board and committees. It asks whether your organization has written policies relating to conflicts of interest, whistleblowers, and document retention and destruction.

(9) A New Role for IRS. Some observers say that the IRS has set itself up as the SEC-equivalent for nonprofits. Part VI, Section B of Form 990 candidly discloses in its introduction, "This Section B requests information about policies not required by the Internal Revenue Code." As a result, many of the governance questions can be answered negatively without indicating any violation of the tax law. IRS has made it clear, however, that negative answers to the "good

governance" questions will increase the likelihood that your organization will be audited. IRS takes the position that an organization that complies with "good governance" practices is more likely to comply with the tax law. Under this reasoning, an organization that does not follow those practices merits greater scrutiny for possible tax law violations.

As discussed, the new Form 990 focuses more on the organization's activities, not just its numbers. There is much more opportunity for the program-oriented leaders of an exempt organization to have meaningful input in the form. Because the questions include mission statements and a description of the organization's accomplishments, Board members can and should review it carefully with those issues in mind, as well as looking over the accuracy of the financial information presented.

For each exempt organization, Form 990 is a chance to tell its story to anyone who has an interest in reading it. This includes prospective donors who are contemplating making a major gift or bequest, and may include potential critics who are looking to write the next headline-grabbing story about some alleged abuse by a tax-exempt organization!

If the answers to the questions asked in Form 990 reveal some weakness or deficiency within the organization's internal policies or procedures, it should resolve to correct those problems as soon as possible, so that more favorable answers can be provided the following year.

The well-advised exempt organization should make sure that Form 990 describes it in the best possible light. Remember, Form 990 is not only a tax form, it is an important public relations opportunity if properly utilized.

NOTE: *The statements made in this outline are general in nature, and are not intended as legal or tax advice. Please consult with your own tax adviser, because it is always possible that some aspects of your particular tax situation will cause a different result than the general rule stated herein. Also, this outline discusses only selected provisions of the IRS Form 990. The form includes other provisions that may be relevant to this subject matter. The tax law includes many narrow exceptions and special rules that cannot be addressed in this outline. This outline is copyrighted, and all rights are reserved to the author, Richard P. Sills, Esq. Reproduction in whole or in part is prohibited without prior written permission.*