

Keeping up with IRS and Sarbanes-Oxley

October 23, 2007
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The Form 990 – Revised

Round One

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The Form 990

“We can see that abuse is increasingly present in our sector, and we must work to address it. We will act vigorously, for to do otherwise is to risk the loss of faith and support that the public has always given to the charitable community. And if that is lost, the bountiful vitality of the American charitable sector will wither.”

Mark Everson, Former IRS Commissioner

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Who files?

- Form 990:
 - Gross annual receipts normally exceed \$25,000
 - Except for churches and affiliated organizations.
- New Form 990-N (beginning after Dec. 31, 2006)
 - Small tax-exempt organizations file electronically (under \$25,000 annually)
 - Due the 15th day of the fifth month

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What is the Form 990?

- Not a tax return
- Public document
- Both financial and non-financial information

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What's Included?

- Non-financial information includes list of significant contributors,
- List of officers, board members and key employees with compensation information and
- Questions regarding activities and exempt status.

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Guiding Principles of the New Version

- Enhance Transparency
 - Provides the IRS and the public with a realistic picture of the organization and its operations
- Promotes Compliance
 - Designing a return that accurately reflects the organization's operations and use of assets
- Minimize the burden on filing organizations
 - Asking the questions in a manner that makes it easy to prepare the return.

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Public Disclosure Rules

- Form 990 is a public document and copies must be provided if requested by anyone.
 - Schedule B: List of Contributors is not required to be provided.
 - This includes annual returns for the previous 3 years.
- Application for tax exemption (Form 1023) is also a public document and must be provided, and must include the correspondence with the IRS.
- Form of Request
 - If in person – same day
 - If in writing – 30 days

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Public Disclosure Rules, Cont'd

- You may charge a reasonable fee
 - \$1 for the first page, \$.15 each add'l page
- Penalty for failure to comply
 - \$20/day up to \$10,000
- Exception where “widely available”

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Electronic Filing Requirements

- After December 31, 2006:
 - \$10 million or more in total assets and
 - Organization files at least 250 returns in a calendar year.
- Private Foundations
 - At least 150 returns in a calendar year
 - Regardless of asset size

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Draft Form 990 – Page 1

- Part I – Summary
 - Mission Statement
 - Efficiency and effectiveness indicators
 - Note:
 - Number of members of governing body
 - Percentages of total revenues and expenses

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Page 2 – Part II, Section A

- Detail of Officers/Directors/Trustees/Key Employees and Independent Contractors
 - Redesigned
 - Use of Organization's address is no longer acceptable but city and state is required
 - Compensation, with higher threshold of \$100,000.

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Page 3, Part II, Section B

- Clarification of Potential Conflicts of Interest and Method Used to Manage them
 - Read these carefully now and implement plans now to manage these issues.

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Page 4, Part III

- Statements regarding governance, management and financial reporting.
Note questions on governance policies:
 - Question 3a – conflict of interest
 - Question 4 – whistler-blower protection policy
 - Question 5 – document destruction/retention policy
 - Question 9 – audit committee

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Page 5, 6 and 7 Financial Information

- Expanded from previous version
- Revenues reported in one schedule rather than 2 as before
- Expenses by function on page 6
- Balance sheet on page 7

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Page 8, General Activities Page 9, Other IRS Filings

- Read carefully and answer carefully
- Note required schedules based on answers to some of these questions.

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Page 10, Statement of Program Service Accomplishments

- Formally, Section III on page 2.
- Good marketing tool
- Carefully document your accomplishments using numbers, percentages, etc.

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Sarbanes-Oxley Act

- The American Competitiveness and Corporate Accountability Act of 2002
- Signed into law – July 30, 2002
- Response to Enron, Arthur Andersen and WorldCom
- Generally applies only to publicly traded companies
- Some real implications for nonprofits

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Sarbanes-Oxley Act Main Provisions

- Independent and Competent Audit Committee

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Sarbanes-Oxley Act Main Provisions

- Responsibilities of Auditor
 - Rotation
 - Prohibition of non-audit services

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Sarbanes-Oxley Act Main Provisions

- Certification of Financial Statements

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Sarbanes-Oxley Act Main Provisions

- Insider Trading and Conflicts of Interest

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Sarbanes-Oxley Act

- Disclosures

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Sarbanes-Oxley Act

- Whistle-Blower Protection
- Document Destruction

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Sarbanes-Oxley Act

- Main provisions
 - Independent and Competent Audit Committee
 - Responsibilities of Auditor
 - Rotation
 - Prohibition of non-audit services
 - Certification of Financial Statements
 - Insider Trading and Conflicts of Interest
 - Disclosures
 - Whistle-Blower Protection
 - Document Destruction