

August 20, 2008

IRS Releases Revised Instructions to Redesigned Form 990

The IRS has released the revised instructions for the redesigned Form 990, which must be filed starting with the tax year 2008 by most tax-exempt organizations other than private foundations. The redesigned Form 990 is intended to provide the IRS and the public much more information about the internal operations and governance of non-profit organizations. The new Form 990 consists of an 11-page “core” form that must be completed by all organizations and a series of schedules. Based on the information provided on the core form, the reporting organization will also be required to complete at least one of the 16 schedules. For example, all public charities will be required to complete Schedule A (called “Supplementary Information for Organizations Exempt Under Section 501(c)(3)”). In addition, if the organization is, for example, a hospital that has engaged in political campaign and lobbying activities, and has paid compensation to any officer, director, trustee or certain category of employee, it will also be required to complete, at a minimum, Schedules C (Political Campaign and Lobbying Activities), H (Hospitals) and J (Compensation Information).

The new instructions contain a sequencing list that provides organizations with a recommended order in which to complete the core form and Schedules, revised general and specific instructions for the core form and Schedules, a 19-page glossary of key terms and **bold-faced type** when referring to terms defined in the glossary, and a compensation table to help organizations determine where and how to report types of compensation paid to any officer, director, trustee, key employee, and highest compensated employee.

The core form of the Form 990 requires more detailed information about governance and management, such as information about the number of independent voting members on the board. In addition, the core form requests information about whether the organization has adopted certain disclosure policies, such as a conflict of interest policy, whistleblower policy, and a written document retention and destruction policy. The IRS makes it clear in the instructions that even though such information regarding governance, management, and disclosure policies and procedures generally are not required under the Internal Revenue Code, the IRS considers such policies and procedures generally to improve tax compliance, and each organization, depending on its size and type, should “consider the governance policies and practices that are most appropriate for that organization in assuring sound operations and compliance with the tax law.”

The instructions also make it clear that the IRS will impose penalties on organizations that fail to complete a required line item or a required part of a schedule, such as failure to provide required information regarding compensation, fundraising expenses, or related-party transactions.

Not all organizations will be required to file the new Form 990. Smaller organizations will be allowed to file the Form 990-EZ instead of the Form 990, if gross receipts are less than \$1 million and total assets are less than \$2.5 million in the 2008 tax year; gross receipts are less than \$500,000 and total assets less than \$1.25 million in the 2009 tax year; and gross receipts are less than \$200,000 and total assets less than \$500,000 in 2010 and subsequent tax years. The IRS has not released the instructions to the 2008 Form 990-EZ, but expects to release those instructions in the next few weeks.

The new Form 990 instructions, along with three new background documents explaining the new form and instructions, can be found at: <http://www.irs.gov/charities/article/0..id=181089.00.html>.

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If you have any questions about the new Form 990 or its instructions, or any of the services Sutherland provides, please feel free to contact any of the attorneys listed below.

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