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## IRS Issues New Governance Guidelines To Reflect Reporting Required By New IRS Form 990

On February 14, 2008, the Internal Revenue Service ("IRS") released the Life Cycle education tool with a component entitled "Governance and Related Topics – 501(c)(3) Organizations" (the "Guidance") replacing the draft guidance issued last spring entitled "Good Governance Practices for 501(c)(3) Organizations." Upon release of the new Guidance, the IRS stated, "current IRS positions on non-profit governance are best reflected in the reporting required by the revised Form 990, effective beginning with the 2008 tax years, and the governance and related topics components included in the Life Cycle."

### Background

On February 7, 2007, the IRS issued a preliminary staff discussion draft of possible good governance practices for charitable organizations. On June 14, 2007, the IRS released a draft redesigned Form 990 which contained a section on governance topics, and requested public comments regarding the June draft. Based on public comments received by the IRS, and continued discussions within the non-profit sector regarding non-profit governance, a revised governance section appeared in the new Form 990 released on December 20, 2007. The same comments and discussions were taken into account when enhancing the Life Cycle educational tool which has been available for tax-exempt organizations since 2004.

### Life Cycle: Governance and Related Topics – 501(c)(3) Organizations

According to the Guidance, the IRS believes that a well-governed charity is more likely to obey the tax laws, safeguard charitable assets, and serve charitable interests than one with poor or lax governance. Therefore, a charity should have clearly articulated purposes describing its mission, a knowledgeable and committed governing body and management team, and sound management practices in order to operate both effectively and consistently with the requirements of tax law. Below is a summary of the guidance which specifically references the 2008 IRS Form 990.

#### Mission

- A charity should establish and regularly review the organization's mission.
- The mission of the charity should be adopted by the board of directors.

#### Organizational Documents

- A charity must have organizational documents regardless of its corporate form.
- The IRS requires submission of organizational documents and bylaws, if adopted, with an application for exemption under 501(c)(3).

#### Governing Body

- A charity's governing board should be active, engaged and composed of persons who are informed and active in overseeing a charity's operations and finances.
- Governing boards should not tolerate a climate of secrecy or neglect.
- The size of a governing board should be appropriate (not very large or very

small) to effectively ensure a charity obeys tax laws, safeguards its charitable assets, and furthers its charitable purposes.

- Governing boards should include independent members and should not be dominated by employees and others who are not, by their very nature, independent individuals because of family and business relationships.
- Governing board composition should represent a broad public interest.

#### Governance and Management Policies

- Although not required by the Internal Revenue Code ("IRC"), the IRS will review a charity's governance and management policies relating to: Executive Compensation, Conflicts of Interest, Investments, Fundraising, Documenting Governance Decisions, Document Retention and Destruction, and Whistleblower Claims.

#### Financial Statements and Form 990 Reporting

- A charity's board of directors should act as stewards of a charity's financial and other resources to ensure they are used to further charitable purposes.
- A charity should consider obtaining an audit of its financial statements by an independent auditor which may be overseen by a board established independent audit committee.
- A charity should consider providing copies of its IRS Form 990 to its governing body and other internal governance or management officials.

#### Transparency and Accountability

- A charity that makes full and accurate information about its mission, activities, finances, and governance publicly available will encourage transparency and accountability to its constituents.

### **Conclusion**

The IRS is committed to ensuring the charitable purposes of tax-exempt entities. In pursuit of protecting charitable purposes, the IRS continually seeks to promote good governance practices, which the IRS has now stated are "best reflected in the reporting required by the revised Form 990." As a result, organizations required to file the IRS Form 990 should pay special attention to the newly released Guidance in order to both prepare themselves to file the new IRS Form 990 and to establish IRS condoned governance principles.

Should you have any questions, please do not hesitate to contact your regular Hall Render attorney, or James R. Willey at [jwilley@hallrender.com](mailto:jwilley@hallrender.com) or 317-338-9135 or Andrea L. Impicciche at [aimpicciche@hallrender.com](mailto:aimpicciche@hallrender.com) or 317-977-1578.

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