

## THE 2011 FORM 990: PART I - THE CORE FORM AND INSTRUCTIONS

*This Health Care Tax News article is Part I in a series addressing recent changes to Form 990 and Instructions.*

In January of this year, the Internal Revenue Service ("IRS") released the 2011 Form 990, *Return of Organization Exempt From Income Tax* and the corresponding Instructions. The 2011 Form 990 is to be used by filing organizations for their 2011 tax year (i.e., for tax years beginning on or after January 1, 2011). There are a variety of revisions to the 2011 Form 990 and Instructions, ranging from non-substantive formatting and wording adjustments to noteworthy changes in several areas of questions and required information. Organizations required to file the 2011 Form 990 will want to become familiar with these changes. This article is Part I in a series describing these changes and will focus on the "Core Form" of the 2011 Form 990. Subsequent articles will address significant revisions made to certain "Schedules" of the 2011 Form 990, such as Schedule H (*Hospitals*), Schedule J (*Compensation Information*) and Schedule K (*Supplemental Information on Tax-Exempt Bonds*).

### BACKGROUND

In 2007, the IRS significantly redesigned the Form 990 for the 2008 tax year, which represented one of the most significant developments in the tax-exempt sector in the past 30 years. This redesigned Form 990 consisted of a "Core Form" to be filed by all applicable tax-exempt organizations and a series of 15 Schedules, which organizations may be required to file based upon their particular activities. At the time, the IRS stated that it was guided by three goals while redesigning the Form 990: enhancing transparency, promoting tax compliance and minimizing the burden on the filing organization. Today, the basic structure of the redesigned Form 990 remains intact, while revisions have been made each year to comply with newly enacted laws, resolve ambiguities and further the aforementioned goals.

### SIGNIFICANT CHANGES TO THE CORE FORM

With the release of the 2011 Form 990, the IRS made several noteworthy changes to the Core Form and the related Instructions, which are further described below.

**Governance, Management and Disclosure.** In Part VI of the Core Form, filing organizations are required to respond to questions regarding governance, management structure and policies and compliance with public disclosure requirements. Several revisions to Part VI were made with the release of the 2011 Form 990:

- Line 1a was modified to note that, if the governing body delegated broad authority to an executive committee or similar committee, the filing organization must explain in Schedule O (*Supplemental Information to Form 990*). Also, the Instructions clarify that a governing body consists of one or more persons.
- The Instructions to Line 1b no longer provide that a director loses independence because the director, or a family member of the director, was a key employee of an entity that engaged in a business transaction with the filing organization reportable in Schedule L (*Transactions with Interested Persons*). The Instructions also provide examples showing when board chair compensation is considered compensation to the board chair as an officer or employee of the organization.
- The Instructions to Line 2 exempt from reporting certain business relationships in which an officer, director, trustee or key employee of the filing organization was a key employee of another organization.
- Line 7b was expanded to ask if any governance decisions of the organization are reserved to, or subject to approval by, persons other than the governing body.
- The Instructions to Section B clarify that an organization may answer "Yes" to any question that asks whether the organization has a particular policy if either its governing body or a committee authorized by the governing body adopted the policy by the end of its tax year.
- The Instructions to Line 11 clarify that the organization should answer "No" if it merely informs its governing body members that a copy of the Form 990 is available upon request. This indicates that an organization's governing body members must actually be provided with

the Form 990 before filing.

**Compensation.** Part VII requires filing organizations to disclose detailed information regarding the compensation provided to officers, directors, trustees, key employees and highest compensated employees and independent contractors. The more significant revisions to Part VII include the following:

- Section A, column (C) requires the filing organization to check a box identifying the position a listed person holds with respect to the organization. The 2011 Form 990 now clarifies that filers are to check only one "Position" box for each person listed in the compensation table, unless the person is both an officer and director/trustee of the organization.
- The Instructions to Section A now clarify that reportable compensation for officers and employees includes compensation reported in Form W-2, Wage and Tax Statement, box 1 or 5 (whichever amount is greater).
- Section B, Line 1 clarifies that independent contractor compensation should be reported for the calendar year ending with or within the tax year.

**Financial Information.** Parts VIII, IX and X of the core form deal with financial information of the filing organization. The more significant revisions to these parts are described below:

- The Instructions to Part VIII, Statement of Revenue, clarify that Medicare and Medicaid payments, and other government payments made to pay or reimburse the organization for medical services provided to individuals who qualify under a government program for the services provided, and who select the service provider, should be reported on Line 2. The Instructions also clarify that the organization's distributive shares of investment income, royalties and rental income from joint ventures should be reported on Lines 3, 5 and 6, respectively.
- The heading in Part IX, Statement of Functional Expenses, includes a new checkbox that an organization must check if its Schedule O contains a response to a question in Part IX.
- The Instructions for Line 12 of Part X, Balance Sheet, clarify that the organization should report its distributive share of assets in any entity treated as a partnership for federal tax purposes, according to its ending capital account in such partnership as reported on Schedule K-1.

**Miscellaneous.** Finally, there are some miscellaneous changes scattered throughout the Core Form and Instructions worth noting:

- In Part IV, Checklist of Required Schedules, Line 14b now states that an organization must complete Schedule F, Part I if it had foreign investments during the tax year valued at \$100,000 or more. Also, new Instructions for Lines 15 and 16 clarify when the organization should complete Schedule F, Part II or III based on grants outside the U.S. and inside the U.S. for foreign activity.
- In the Glossary, the definition of "control" has been revised to clarify that a "managing partner" is a partner designated as such under the partnership agreement or regularly engaged in the management of the partnership.

## CONCLUSION

Whether changes in reporting are required by law or pursuant to the judgment of the IRS as it continues to fine tune the Form 990, each year seems to bring new twists for tax-exempt organizations required to file a Form 990. As always, filing organizations should familiarize themselves with these revisions to ensure compliance with the 2011 Form 990 filing requirements.

For your reference, the 2011 Form 990 and Instructions (including all Schedules) can be found here: <http://www.irs.gov/charities/article/0,,id=233830,00.html>.

Should you need assistance with your organization's evaluation of the 2011 Form 990, please contact Calvin R. Chambers at (317) 977-1459 or [cchambers@hallrender.com](mailto:cchambers@hallrender.com), Jeffrey L. Carmichael at (317) 977-1443 or [jcarmichael@hallrender.com](mailto:jcarmichael@hallrender.com) or your regular Hall Render attorney.