

THE 2011 FORM 990: PART V - MISCELLANEOUS CHANGES AND ITEMS OF NOTE

*This Health Care Tax News article is Part V in a series addressing recent changes to IRS Form 990 and its Instructions. The previous installments addressed changes to the **Core Form**, changes to **Schedule H**, changes to **Schedule J** and changes to **Schedule K**.*

Our final installment of this series addressing the recent changes to the Internal Revenue Service ("IRS") 2011 Form 990, *Return of Organization Exempt From Income Tax*, and related Schedules identifies miscellaneous changes found throughout the related Schedules and Instructions that we have not otherwise covered in any previous article in this series, as well as the key changes in the 2011 Form 990 Glossary. While these changes may not be as substantive as the changes previously discussed in this series of articles, organizations completing the 2011 Form 990 should nonetheless be aware of these changes as they complete their returns.

BACKGROUND

On January 21, 2012, the IRS released the 2011 Form 990 and the corresponding Instructions, as well as various related Schedules. Since then, the IRS has released additional 2011 Schedules and 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) to be filed during 2012.

CHANGES TO THE GLOSSARY OF THE "CORE FORM"

- The IRS has replaced the phrase "Term endowment" with "Temporarily restricted endowment" and expanded the definition to include not only endowment funds established by donor-restricted gifts that are maintained to provide a source of income for either a specified period of time or until a specific event occurs, but also all other temporarily restricted net assets held in a donor-restricted endowment, including unappropriated income from permanent endowments that is not subject to a permanent restriction.
- The IRS has slightly revised the definition of "control" with respect to control of a nonprofit organization. Under the new definition, control exists if one or more persons have the power to remove and replace (or to appoint, elect or approve *or veto the appointment or election of*, if such power includes a continuing power to appoint, elect *or approve or veto the appointment or election of*, periodically or in the event of vacancies) a majority of the nonprofit organization's directors or trustees, or a majority of members who elect a majority of the nonprofit organization's directors or trustees. In addition, the IRS has added to the definition of control with respect to partnerships or limited liability companies by adding the following sentence: "For this purpose, a 'managing partner' is a partner designated as such under the partnership agreement, or regularly engaged in the management of the partnership even though not so designated."
- The IRS has clarified the definition of "Grants and other assistance" by stating that the term does not include the payment of any benefit by a Code Section 501(c)(9) voluntary employees' beneficiary association ("VEBA") to employees of a sponsoring organization or contributing employer, if such payment is made under the terms of the VEBA trust and in compliance with Code Section 505; and further, the term does not include grants or other assistance to affiliates or branch offices that are not organized as legal entities separate from the filing organization.
- The IRS has clarified the definition of "Significant disposition of net assets" by providing five types of situations that are not considered significant dispositions of net assets for purposes of Schedule N, Part II including, among others, a decrease in the value of net assets due to market fluctuation in the value of assets held by the organization, and transfers to a disregarded entity of which the filing organization is the sole member.

CHANGES TO SCHEDULE B, SCHEDULE OF CONTRIBUTIONS

- The headers to Parts I, II and III now provide that the filing organization should use duplicate copies if additional space is needed. Previously, Schedule B simply contained multiple pages for each of these parts.
- The Instructions for the 2011 Schedule D state that a filing organization must report the value of any qualified conservation contributions and contributions of conservation easements listed in Part II consistently with how it reports revenue from such contributions in its

books, records and financial statements and in Part VIII of the Core Form.

- The 2011 Instructions direct filing organizations not to attach substitutes for Schedule B or provide attachments to Schedule B with information on contributors.

CHANGES TO SCHEDULE C, *POLITICAL CAMPAIGN AND LOBBYING ACTIVITIES*

- Line 1i of Part II-B, Lobbying Activity, now simply directs a filing organization to mark "yes" or "no" if it has engaged in any other lobbying activities to influence legislation. In prior years, a "yes" answer to this Line 1i required filing organizations to provide a detailed description of such other lobbying activities.

CHANGES TO SCHEDULE D, *SUPPLEMENTAL FINANCIAL STATEMENTS*

- The Instructions for the 2011 Schedule D now contain a more detailed explanation as to what constitutes a modification, transfer, release, extinguishment or termination of an easement for purposes of Line 2d of Part II relating to conservation easements.

CHANGES TO SCHEDULE I, *GRANTS AND OTHER ASSISTANCE TO ORGANIZATIONS, GOVERNMENTS, AND INDIVIDUALS IN THE UNITED STATES*

- The 2011 Instructions have clarified that grants and other assistance include, among other things, contributions, non-cash assistance, program-related investments and cash allocations made by the filing organization during the tax year.
- The 2011 Instructions have clarified that grants and other assistance do not include payments to independent contractors if the primary purpose of such payments is to serve the direct and immediate needs of the filing organization (such as legal, accounting or fundraising services).
- Consistent with the definitional change described above, the 2011 Instructions have clarified that grants and other assistance also do not include the payment of any benefit by a VEBA to employees of a sponsoring organization or contributing employer if such payment is made under the terms of the VEBA trust and in compliance with Code Section 505.

MISCELLANEOUS CHANGES TO SCHEDULE L, *TRANSACTIONS WITH INTERESTED PERSONS*

- Part IV. The 2011 Instructions state that the filing organization must report a business transaction with an interested person if compensation payments in excess of \$10,000 are made to a family member of a current or former officer, director, trustee or key employee of the filing organization. In prior years, the Schedule L Instructions referred to compensation payments made to family members "of certain persons" without any further explanation. This is a helpful clarification by the IRS.
- Part IV. An "interested person" includes an entity that is more than 35% owned by one or more current or former officers, directors, trustees or key employees or their family members. The 2011 Instructions, however, have been revised to clarify that such a 35%-owned entity does not include a Code Section 501(c)(3) organization, a Code Section 501(c) organization of the same subsection as the filing organization (for example, a Code Section 501(c)(4) organization if the filing organization is itself a Code Section 501(c)(4) organization) or a governmental unit or instrumentality.

AUTOMATIC EXTENSION FOR FILING 2011 FORM 990

On December 16, 2011, the IRS notified tax-exempt organizations that the IRS Modernized e-file system would not be available from January 1, 2012 through February 29, 2012 for electronic filing of Forms 990, 990-EZ, 990-PF and 1120-POL information returns. The IRS suspended the availability of the system to implement changes to IRS systems for the 2011 tax year (i.e., forms for fiscal years beginning on or after January 1, 2011 to be filed in 2012).

To minimize the impact on affected organizations, the IRS granted an extension of time to file to March 30, 2012 to organizations whose due date or first extended due date is January 17 or February 15, 2012. Organizations required to file electronically may, however, file electronically between March 1, 2012 and March 30, 2012. Affected organizations that are not required to file electronically may do the same and, alternatively, may file a paper return any time before March 30, 2012.

An organization that is impacted by this and that has not previously received an extension and wishes to extend its filing due date until after

March 30, 2012 may request an automatic three-month extension by filing Form 8868, *Extension of Time to File an Exempt Organization Return*, by its original due date. If an affected organization has already obtained an automatic three-month extension, the IRS has stated that it will grant the organization an additional three-month extension if the organization files Form 8868 by its first extended due date. Organizations that have already been granted two extensions for a total of six months may not request a further extension.

The IRS has stated an organization with a filing due date (or first extended due date) between January 1, 2012 and February 29, 2012 that files its return by March 30, 2012 will be considered to have timely filed. In the case of an organization with a second extended due date that falls during the suspension period, the organization will have reasonable cause for late filing and will not be subject to late filing penalties if it files by March 30, 2012. The IRS directs such organizations to attach a "Reasonable Cause Statement" to its return referencing Notice 2012-4 to avoid receiving a system-generated late filing penalty notice from the IRS. The IRS has provided that if an organization that is required to file electronically and has already obtained two three-month filing extensions is uncomfortable with taking advantage of the late filing penalty relief provided in the notice, then the organization may file its return on paper.

CONCLUSION

The IRS continues to revise the Form 990 and related Schedules and Instructions. Organizations should ensure that they are familiar with these changes and account for such revisions in completing the 2011 Form 990.

Should you need assistance with your organization's evaluation of the 2011 Form 990 or accompanying Schedules, please contact Gregory J. Melgares at (414) 721-0459 or gmelgares@hallrender.com, Jeffrey L. Carmichael at (317) 977-1443 or jcarmichael@hallrender.com or your regular Hall Render attorney.