Telling the IRS a Better Story
The Unveiling of the 2008 Form 990

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As we return from the holidays and settle into the new year, it is worth reflecting that the Internal Revenue Service now retains the names of more than 1.3 million tax-exempt organizations in its master file. The size and diversity of the tax-exempt community is staggering. In 2004, the most recent year for which data is available, the IRS received 364,601 Forms 990 and 142,269 Forms 990-EZ. And yet, the Form 990 — the principal channel of communication between nonprofits and the federal government — had not been revised in any significant way for nearly 30 years.

That is, until now.

On December 20, 2007, the IRS released its final draft of the 2008 Form 990, *Return of Organization Exempt from Income Tax*. Guided by principles of "enhancing transparency, promoting tax compliance, and minimizing burden on the filing organization," the IRS has made sizeable changes to the form since the (controversial) release of its "Discussion Draft" in June 2007. At its core, this new Form 990 is intended to simplify the filing process and to better allow an organization to "tell its story."

When the IRS circulated a draft of the remodeled Form 990 in June, several new features struck critics and advocates alike. A summary page would now provide an upfront snapshot of an organization's key financial and operational data, including — most controversial — numerous details about executive compensation. For the first time, the form also would require disclosure of basic governance information. Fifteen separate schedules had been redesigned apart from the core document in order to better capture the activities of certain specialized organizations.

Over a 90-day public comment period, the IRS received more than 700 emails and letters — altogether more than 3,000 pages of praise and censure — from the nonprofit community. Many of those observations have been incorporated into the final draft of the new Form 990, and the differences are striking.

The new summary page has been noticeably streamlined. Metrics that had appeared on the front of the "Discussion Draft" — including such figures as the number of employees with compensation greater than $100,000, the highest amount of compensation reported in the form for an individual officer or employee, and fundraising expenses as percentage of contribution — have been removed, replaced by a brief two-year summary of financial data. In the hope of making the summary page more relevant to non-charities, functional expense reporting is no longer required. Instead, organizations will provide a short classification of expenses by type, along the lines of Form 990-EZ expense reporting.

Nonprofit leaders responding to the Discussion Draft asked for the opportunity to tell their story before diving into the financial details. In response, the IRS reworked the order of the core form — shuffling the Statement of Program Service Accomplishments to the front of the form, and moving executive compensation, governance and other financial statements to the back.. These changes should allow a nonprofit to tell the IRS what it does before accounting for how it does it.

The executive compensation section has changed in more subtle ways. The Discussion Draft proposed that compensation reports be based on Form W-2 and Form 1099 amounts, and eliminated the reporting of "other compensation" on the core form. The new form still uses Form W-2 and Form 1099 as a starting point, but provides for separate reporting of nontaxable benefits (such as retirement plan contributions and health benefits) and fringe benefits (such as first-class travel, housing, tax indemnification and "gross-up," and health club dues) in order to allow for a more complete picture of the compensation package.

Many in the nonprofit community found the new section on governance and management in the Discussion Draft to be too ambiguous. Others suggested that the IRS lacked the legal authority to request governance information and asked that the section be removed altogether. This section is significantly revised on the new form, breaking the questions into three categories — governing body, policies and disclosures — and explicitly stating that the questions are not intended to suggest that any particular underlying policies or practices are legally compelled by the IRS.

One of the most significant criticisms of the old Form 990 was its inability to depict the full scope and impact of an organization's activities. The Discussion Draft added more space for some responses and created several new "general application attachments" to supplement others. The new form goes even further, consolidating these attachments to create a new Schedule O, Supplemental Information to Form 990. Electronic filers now have up to two pages to respond to each question on the form, and an additional two pages to present any other information the organization might want to include.

Many of the more progressive suggestions offered during the public comment period have not effected the final form. For instance, the IRS appears unlikely to reconcile the Form 990 with generally accepted accounting principles, or to adopt consolidated tax and financial reporting. In addition, the form will not provide for the attachment of PDF documents or links to organization websites.

However, the IRS has accepted a fair number of suggestions designed to make life easier for the nonprofit community. Citing transparency and compliance concerns, the IRS had removed the ability to use the Form 990 for a "group return" from the Discussion Draft. Many organizations, some with hundreds of subsidiaries and controlled affiliates, noted the substantial increase in cost and administrative burden that would result from completing separate returns; group returns were restored in the final form.

When the Draft was released, the IRS requested comments about eliminating the Form 990-EZ altogether. Some organizations said they would need additional time to transition to the Form 990. The IRS has agreed to a three-year phase-in for these smaller entities. For the 2008 tax year, organizations with gross receipts less than $1.0 million and total assets less than $2.5 million may file the Form 990-EZ instead of the Form 990. For 2009, the threshold is lowered to $500,000 in gross receipts and $1.25 million in total assets. For 2010, only organizations with gross receipts under $200,000 and total assets less than $500,000 will have the Form 990-EZ option available.

These changes remain untested. And many aspects of the new form will, no doubt, remain controversial. The IRS reports that many suggestions are still "under study." At the very least, however, the 2008 Form 990 will enable nonprofits to tell their story with a level of detail — and, hopefully, a degree of ease — never before available.

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