

September 14, 2007

Internal Revenue Service
Form 990 Redesign, SE:T:EO
1111 Constitution Avenue, NW
Washington, DC 20224

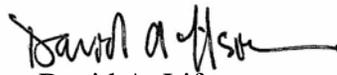
By e-mail: Form990Revision@irs.gov

Re: IR-2007-117 – Redesigned Draft Form 990

The New York State Society of Certified Public Accountants, representing 30,000 CPAs in public practice, industry, government and education, submits the following comments to you regarding the above captioned release. NYSSCPA thanks the Internal Revenue Service for the opportunity to comment on this release.

The NYSSCPA Exempt Organizations Committee deliberated the draft Form 990 for tax-exempt organizations and prepared the attached comments. If you would like additional discussion with the committee, please contact Paul E. Hammerschmidt, chair of the Exempt Organizations Committee, at (212) 885-8321, or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303.

Sincerely,



David A. Lifson
President

Attachment



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**COMMENTS ON IR-2007-117 – REDESIGNED DRAFT FORM 990
FOR TAX-EXEMPT ORGANIZATIONS**

September 14, 2007

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**NEW YORK STATE SOCIETY OF
CERTIFIED PUBLIC ACCOUNTANTS**

EXEMPT ORGANIZATIONS COMMITTEE

COMMENTS ON IR-2007-117

Redesigned Draft Form 990 for Tax-Exempt Organizations

GENERAL COMMENTS

CPAs working with nonprofit clients bring a unique perspective on financial reporting by nonprofit organizations that has evolved from our historic roles of preparing or reviewing their information returns and tax returns, auditing their financial statements, and advising on their operations.

The IRS has recently made a bold revision of the form, the first since 1979. The goal is to implement these changes for the 2008 form, that is, in January 2009 for the 2009 filing season.

While we have found that much of the redesigned Form 990 is a welcome improvement over the old form, we have some general concerns as well as some specific suggestions for improvement. It is our hope that the revised Form 990 will provide the IRS, state charity officials and the public with a more realistic picture of organizations and will more accurately reflect their operations.

In several instances, we recommend that the threshold requirement be raised in connection with Form 990-EZ filers as well as for reporting separate schedules. We make these recommendations with consideration of the three guiding principles of the redesign of Form 990: (1) enhancing transparency, (2) promoting tax compliance, and (3) minimizing the burden on the filing organization.

SPECIFIC COMMENTS AND RECOMMENDATIONS FOR IMPROVEMENT

Continuance of Group Returns

The IRS indicated in the “Phone Forum” held on July 18 and 19, 2007, that it is considering the elimination of group returns for several reasons including a “lack of transparency” as well as a process that is “administratively burdensome.” This is consistent with the elimination of boxes H and I on page 1 of the current Form 990.

In the interest of transparency and reducing the administrative burdens on the IRS and many organizations, we recommend that group returns, currently permitted under Reg. 1.6033-2(d)(2)(i), continue to be allowed.

The relationship that is required for a central organization to obtain a group ruling to include its subordinates, which are subject to the central organization's general supervision or control, insures that the group return will provide transparency and be a meaningful report of operations of the subordinates. Group returns often include local chapters of a larger organization. Sometimes these chapters are unsophisticated and do not have the resources to provide accurate and detailed financial information, and they rely on the central organization for proper reporting to the IRS. The administrative burden on both the IRS and these organizations would be increased significantly by requiring each chapter to prepare and file returns on their own, and having the IRS process them.

State Filings

Many states require the attachment of audited, reviewed or compiled financial statements to Form 990 as part of the organization's state filings, and these financial statements may only be available electronically in the protected ".pdf" format. There is a need for the redesigned Form 990 to accommodate attachments in ".pdf" format as well as explanations and other notes.

Comments on Glossary

The definition of "audit of financial statement" does not agree with the professional literature, and should be changed to the following sentence from Section AU 110.01 of the U.S. Auditing Standards chapter of AICPA *Professional Standards*:

"The objective of the ordinary audit of financial statements by the independent auditor is the expression of an opinion on the fairness with which they present, in all material respects, financial position, results of operations, and its cash flows in conformity with generally accepted accounting principles."

The definition of a "compilation" does not agree with the professional literature, and should be changed to the following sentence from Section AR 100.04 of the Accounting and Review chapter of AICPA *Professional Standards*:

"Presenting in the form of financial statements information that is the representation of management (owners) without undertaking to express any assurance on the statements."

The definition of a "review of financial statement" does not agree with the professional literature, and should be changed to the following sentence from Section AR 100.04 of the Accounting and Review chapter of AICPA *Professional Standards*:

“Performing inquiry and analytical procedures that provide the accountant with a reasonable basis for expressing limited assurance that there are no material modifications that should be made to the statements for them to be in conformity with GAAP [generally accepted accounting principles] or, if applicable with another comprehensive basis of accounting (OCBOA).”

CORE FORM

Part I – Summary

Form 990 Instructions do not provide program service activity codes. Rather, they refer the preparer to the Form 990-T Instructions. We suggest that program activity codes also be provided in Form 990 Instructions.

We suggest that percentages, ratios and other statistical information not be deemed automatic “red flags” (with IRS establishing minimums or maximums for inquiries). We suggest that Form 990, as redesigned, allow room for organizations to provide a narrative to assist the reader to understand the financial information reported.

Part III – Statements Regarding Governance, Management, and Financial Reporting

We agree that tax-exempt organizations should maintain strong governance standards. However, the revision added sections concerning governance even though the IRS currently has no statutory authority to regulate the governance of exempt organizations (including mandating best practices such as “Voluntary Best Practices” for U.S.-Based Charities¹ and “Sarbanes-Oxley” provisions). These governance areas include the following parts of the redesigned Form 990:

- (1) Percentage of board members who are independent
- (2) Relationships of board members, officers and key employees (page 3 of the core form)
- (3) Written conflict of interest policy (and its availability to the public) and number of related transactions reviewed, written “whistleblower” policy, written document retention and destruction policies, and written policy safeguarding exempt status concerning transactions and arrangements with related organizations
- (4) Financial statements and independent accountant’s compilation, review or audit services, along with the availability to the public of financial statements and audit reports

¹ U.S. Department of The Treasury Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S.-Based Charities

- (5) Review of Form 990 by the organization's governing body before it is filed.

We suggest that the IRS indicate to the public the purpose of this new section and whether particular responses to these matters are indicators of inquiry or examination. We recommend that the IRS expand its outreach efforts to increase the quality of governance maintained by exempt organizations.

In addition, we suggest that the IRS include a statement on Form 990, Part III, indicating that compliance with these governance standards is not mandatory. Rather, they are recommended to achieve good governance that is part of the process of decision-making and the process by which decisions are implemented (or not implemented).

Part VII – Statements Regarding General Activities

Line 8a – We recommend that additional guidance of “conduct all or a substantial part of its exempt activities through or using a partnership, LLC or corporation” be provided that would assist the preparer to properly respond to this question.

Part IX – Statement of Program Service Accomplishments

The addition of Line 3 to Part IX will require organizations to report their program service revenue in two different ways on the core form: by source (but excluding government grants) in Line 2 of Part IV and by activity in Line 3 of Part IX. The instructions to the core form should include a worksheet (that is not included in the return) that reconciles the program service revenue reported in these two parts.

The IRS is proposing to require organizations to report direct revenue (*i.e.*, program service revenue; not contributions) for programs along with the related program service expenses (required for 501(c)(3) and (4) organizations and 4947(a)(1) trusts; optional for others) in part IX. The instructions do not provide adequate guidance, and it is not clear how direct revenue reported here would reconcile with program service revenue reported on Part IV, Line 2.

Organizations may not report amounts of direct revenue (by program) in their financial statements and these amounts may not be easily calculated. Further, disclosure of amounts of direct revenue would marginally enhance transparency and promote tax compliance while adding to the burden on the filing organization. Charitable organizations often provide a benefit or service to a charitable class in fulfillment of their exempt purpose. Programs are typically funded from a combination of different revenue streams including government grants and program service revenue. For these reasons, we recommend that IRS eliminate the requirement to report direct revenue associated with program services.

SPECIALIZED SCHEDULES

Schedule A – Supplementary Information for Organizations Exempt Under Section 501(c)(3)

Line 11f – This question asks whether the organization has a written determination from the IRS that it is a Type I, Type II or Type III supporting organization. We recommend that the IRS suspend the request for written determination of the Type I, II or III status of supporting organizations until the IRS establishes a procedure to enable Section 501(c)(3) organizations (that already have determination letters that did not list their type of supporting organization) to receive such Type I, II, or III determinations.

Part II – We are pleased to see that the IRS has eliminated the need to require most publicly supported organizations described in IRC §§ 509(a)(1) and 170(b)(1)(A)(vi) (*i.e.*, organizations preparing Form 990 under the accrual method of accounting, required under generally accepted accounting procedures, often referred to as donative public charities) to convert various revenue amounts from the accrual method of accounting to the cash method of accounting for purposes of the support schedule. The IRS should seriously consider using the information provided in this schedule in lieu of the current requirement of organizations having to complete and file Form 8734 within 90 days after the end of their advance ruling period in order to obtain their definitive ruling. To effectuate this change, the Treasury Department would need to modify the requirements of Reg. § 1.170A-9(e)(5).

Part III – We believe that the requirement to use the cash method of accounting should be eliminated for supported organizations described in IRC § 509(a)(2) (often referred to as service provider entities), similar to donative public charities described above. Once again, the IRS should seriously consider using the information provided in this schedule in lieu of the current requirement of organizations having to complete and file Form 8734 within 90 days after the end of their advance-ruling period in order to obtain their definitive ruling. To effect this change, the Treasury Department would need to modify the requirements of Reg. § 1.509(a)-3(d).

Schedule C – Political Campaign and Lobbying Activities

We suggest that further consideration be given to the need and the benefits expected to be derived from Part I-A as organizations that conduct direct and indirect political campaign activities will likely face difficulties in accumulating the number of volunteer hours to report in Part I-A.

Schedule D – Supplemental Financial Statements

Part VI – There appears to be a typographical error in the heading. It most likely should read, “...for assets not reportable on lines 1-15 (Form 990, Part VI, Line 16).”

Because the amount of support and contribution revenue for many organizations can vary widely from year to year or may not cover an organization’s financial needs, many organizations rely on endowment investments to supplement their other sources of cash for either short or long periods. Readers should appreciate the reporting of the accumulation of assets in endowment funds as a requirement of the donor (*e.g.*, restricted contributions) or as responsible financial planning. In addition, the size of an organization’s endowment fund in relation to its overall expenditures should also be evaluated in terms of each organization’s own reasonably anticipated future needs. For example, an organization may have a multi-year capital campaign that may not be reported in the financial information but may be described by the organization in a narrative.

We suggest that a comment section be provided to Schedule D, Part XII, “Endowment Funds,” as well as to Schedule M, Line 29 (property held for the three years from the date of initial contribution) to provide an opportunity for organizations to furnish explanations of their reasonably anticipated future needs and their policies and practices.

Schedule F – Statement of Activities Outside the U.S. and Schedule I – Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.

Grants made to domestic organizations, when a majority of their activities are either in foreign countries or primarily benefit people in foreign countries, would be reported as foreign grants on Schedule F. Currently, makers of grants to domestic organization grantees having a majority of their activities either in foreign countries or primarily benefiting people in foreign countries rely on their American public charity status, and do not perform the additional grant recipient selection or monitoring procedures that they would do for foreign organizations doing the same humanitarian work. We suggest that the IRS require these organizations to advise their contributors of the foreign grant status in the contribution acknowledgement letters, and provide a transition period for the grant-making organizations to accumulate this information prior to requiring this disclosure on the new Form 990.

Schedule F, Part I, Line 2, requires makers of foreign grants to have formal procedures for selecting grant recipients and monitoring the use of grant funds. Many grant-making organizations with a small staff that make separate grants in excess of \$5,000 to U.S. public charities conducting their activities abroad rely on the recipient US public charities’ effectiveness. A provision should be made to exempt U.S. grant-making organizations

that rely on these recipient U.S. public charities for the selection and monitoring functions from having to complete Line 2 of Part 1 of Schedule F.

Schedule G – Supplemental Information Regarding Fundraising Activities

Reporting requirements have been expanded from the current (2006) Form 990, Line 9 (including the required schedule listing the two largest fundraising events and an aggregate reporting of other events as measured by gross receipts).

IRS Instructions regarding who must file Schedule G do not appear to be consistent with Part IV, Line 11 that indicates, “Attach schedule G if ‘total’ exceeds \$10,000.” It appears, from the instructions, that the IRS is referring to Part IV, Line 11a. If so, we suggest that the word “total” be replaced with “Line 11a.” In addition, there is an inconsistency in the guidance of Part IV, Line 11a, that indicates that Schedule G is required when the total “*exceeds \$10,000,*” while the Schedule G instructions indicate that the schedule is required when Part IV, Line 11a, is “*\$10,000 or more.*” We recommend that the threshold be consistent between the guidance and the instructions and suggest using “*\$10,000 or more.*”

There is an additional inconsistency in guidance of Part V, Line 11e, that indicates that Schedule G is required when the total “*exceeds \$10,000,*” while the Schedule G instructions indicate that the schedule is required when Part IV, Line 11a, is “*\$10,000 or more.*” Again, we recommend that the threshold be consistent and we suggest “*\$10,000 or more.*”

Schedule I – Supplemental Information on Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.

We support the requirement to furnish employer identification numbers, however we suggest a delay or transition period for implementation to allow U.S. grant-making organizations time to accumulate the employer identification numbers of domestic and foreign grantees in Schedules F and I.

Schedule M – Non-Cash Contributions

Schedule B, “Schedule of Contributions,” has not been revised. Schedule M (to provide details for non-cash contributions) will be burdensome for organizations to prepare. Schedule B reports both cash and/or non-cash contributions of \$5,000 or more (unless special rules apply) while Schedule M reports non-cash contributions in excess of \$5,000. We recommend that the threshold be consistent between these two schedules.

CONCLUSION

The redesigned Draft Form 990 is a significant enhancement in the objectives of improving transparency and promoting tax compliance. We support attaining these goals as long as the cost is reasonable and in line with the benefits that the IRS seeks to attain.

We believe professional fees in connection with the preparation of the revised Form 990 are likely to increase significantly. Also, organizations that prepare Form 990 in-house are likely to experience additional and considerable administrative burdens to gather, process and report the additional information required to file the new Form 990.

Under current provisions, for tax periods beginning after December 31, 2006, small tax-exempt organizations whose gross receipts are normally \$25,000 or less may be required to file an annual electronic notice, Form 990-N, "Electronic Notice" (e-Postcard). We believe that this filing threshold is appropriate.

Under current provisions, Form 990-EZ is available for organizations (other than supporting organizations) whose gross receipts during the year are less than \$100,000 and total assets at the end of the year are less than \$250,000. Recognizing the additional burden of having to gather, process and report information, as well as the third key principle to reduce the filing burden, we recommend that the gross receipts threshold be increased to \$200,000, and that the current asset level of \$250,000 be retained.

A cost/benefit analysis should be made that considers the balance between the enhanced information made available to the public and the significantly increased costs to exempt organizations as they pursue their missions and goals.