

## Not For Profit Newsletter

Winter 2009

### **Significant Form 990 Changes**

The IRS is requiring exempt organizations to use the new Form 990 starting with 2008 returns (filed in 2009). The reg. changes were necessary to incorporate changes made to the reporting requirements during the IRS's year-long project to revise the form and its instructions.

A few of the highlights include new sections that (1) ask questions about the organization's governance structure, policies and practices (2) are to be used to report non-cash contributions (3) requires data about the organization's mission (or most significant activities), governance, (number of voting Board members, employees, and volunteers), and two year comparison of key financial results (4) requires more detailed compensation information for certain of the officers, directors, trustees, key employees, and highest compensated employees and to report certain information regarding the organization's compensation practices and arrangements (5) include information on certain financial transactions, arrangements or relationships between the organization and certain interested persons; also used to determine whether a voting member of the organization's governing body is an independent member.

The IRS is mandated to revoke the tax-exempt status of any organization that fails to file this form. The IRS estimates that over a half of million non profits could be affected.

The revision of this document is very comprehensive and the items noted above are only a portion of the new and revised components of the form. Members of our staff have spent a significant time researching these changes and have an expertise that they are able to share with you. Please call us with any questions to insure your organization is ready for these new reporting requirements.

### **IRS Initiatives**

Besides the extra efforts at insuring the Form 990 is filed the IRS has other plans as well.

They have announced that will be first concentrating on reviewing Colleges & Universities, Political Activities, Hospitals, Community Foundations, and will be searching for non filers.

Within the organizations examined, the service will be looking at charitable spending, gifts-in-kind, governance, mutual organizations and student loan organizations.

### **New Requirements For ERISA Covered 403 (B) Plans**

Beginning in 2009, employee benefit plans sponsored by charitable organizations and schools under Internal Revenue Code section 403(b) and covered under the Employee Retirement Income Security Act will be subject to the same reporting and audit requirements as section 401(k) plans.



Section 403(b) plans are also commonly known as “tax-shelter annuity plans.” Under new Department of Labor regulations amending the filing requirements for Form 5500, Annual Return/Report of Employee Benefit Plan, ERISA-covered 403(b) plans with 100 or more participants generally will be required to file audited financial statements beginning with their 2009 Form 5500 filing. 403(b) plans with fewer than 100 participants will be eligible to use a new Short Form 5500 and thus will be eligible for a waiver of the audit requirement.

### **Key Areas to Avoid Legal Hot Water**

Is your organization in full compliance with all the appropriate laws that govern nonprofits?

The news media are always on the lookout for possible abuses in the nonprofit sector. The publicity such cases receive create skepticism on the part of potential donors—which can cause even the most above-board charities to lose support.

1. Make sure your organization is in compliance with all applicable state charitable solicitation statutes. At least 39 states have statutes governing the solicitation of charitable contributions. Your organization must be properly registered in all the states in which it is soliciting contributions. If your charity solicits in a given state without being properly registered, you run the risk of significant fines. For example, in Pennsylvania, the fines can be up to \$1,000 per violation and additional penalties of up to \$100 per day for every day a violation takes place.” New technologies are allowing regulators to track charities’ contributions with greater accuracy. So it’s much easier to get caught and much better to simply go through the proper registration procedures.
2. Make sure all your organization’s professional fundraisers are properly registered.
3. Pay your key executives only “reasonable;” not “excessive,” compensation. This doesn’t mean that Non profit executives can’t make a good salary. There may be good reasons someone is paid more. However, the nonprofit must have documentation that justifies why an executive is paid more. Follow the appropriate IRS provisions on reasonable compensation. Otherwise, your organization, board members and the employee could be subject to hefty fines and penalties. Tip: A good guideline is to look at what executives filling similar positions at similar organizations are making.
4. Avoid treating employees like independent contractors. Federal taxes are not withheld from the pay of “independent contractors.” If you treat employees like independent contractors, you can incur hefty fines and penalties.

5. Ensure that your organization properly forwards required withholding taxes to the IRS and state taxing authorities. A surprising number of organizations withhold the appropriate taxes from their employees' pay and then fail to forward the taxes on to the IRS, The General Accounting Office recently documented that over 55,000 charities had failed to remit over one billion dollars of withholding taxes to the IRS.

With all the disclosures and changes going into place, experts advise every organization should review their policies and procedures and revise those needed to cover these points. Ensure the Board approves them and that the approvals are noted in the minutes and that they are truly implemented.