



UPDATING YOUR POLICIES FOR FORM 990

by Elizabeth A. Thompson, CPA | HHM

If your organization was able to file a 2008 Form 990-EZ, it may not be so lucky for 2009. The filing limits for organizations who are eligible to file this abbreviated form rather than the full Form 990 drop to \$500,000 in gross receipts and \$1,250,000 in assets for 2009, and \$200,000 in gross receipts and \$500,000 in assets for 2010 (see chart). Although the final gross receipts limit is twice what it was prior to the revisions to the 990, it still leaves many small organizations subject to the full reporting requirements.

Within the daunting list of new questions asked in the revised 990 are questions regarding the organization's policies. Interestingly enough, these policies are not required by the Internal Revenue Service -- you won't find a Revenue Procedure or Code Section that mandates them. However, the IRS notes on its StayExempt.org website that it has found that organizations with these policies are much more likely to be tax compliant than organizations that do not have these policies. In other words, organizations that can check "Yes" to these policies are much less likely to raise a red flag with the IRS.

So, are your policies in order?

Conflict of interest policy -- In the instructions to the 990, the IRS notes that a conflict of interest arises "when a person in a position of authority over an organization ... may benefit financially from a decision he or she could make in such capacity ..." In layman's terms, your organization needs to consider who can benefit from any given transaction. Once a conflict of interest policy is in place, you will want to make sure that each year, officers, directors, trustees, and key

employees disclose interests that may give rise to conflicts. You will also need to establish a process for monitoring and enforcing compliance with the policy.

Whistleblower policy -- A whistleblower policy is designed to protect an individual from retaliation who came forward with information about illegal practices or violations of policies. A whistleblower policy should also identify to whom the individual should report such information. Certain federal and state laws impose criminal liabilities for retaliation against whistleblowers. The 990 only asks if the organization has a whistleblower policy, but it is a good policy to have regardless of which information return you file.

Document retention and destruction policy -- A document retention policy clarifies how long documents should be kept, when they should be destroyed, and by whom. An organization is required to keep books and records that support its tax exemption and IRS filings for a certain period of time, but an organization typically has a lot more documents than that. Is it necessary to keep all of your emails or other correspondence? What about old lease agreements? These and many more need to be factored into your organization's policy.

Executive compensation policy -- In order to answer "Yes" to this question on the 990, your organization's process for determining the compensation of the top management official (executive director, CEO, etc.), as well as other officers or key employees, should include 1) approval by a compensation committee or the organization's governing

Form 990-EZ Requirements by Year

Form Year	Gross Receipts Less Than	Total Assets Less Than
2008	\$1,000,000	\$2,500,000
2009	\$500,000	\$1,250,000
2010	\$200,000	\$500,000

body, 2) the use of comparable compensation for similarly-qualified people in similar jobs, and 3) contemporaneous documentation and recordkeeping about the process and final decision.

Joint venture arrangement policy -- If your organization participates in a joint venture with a taxable entity, it should have a policy to ensure that its own tax exempt status is not jeopardized. For example, the joint venture should further the exempt purpose of the organization, should hold the exempt purpose as a priority over making a profit, and should not engage in any lobbying activities.

Other policies -- The 990 also asks the process for reviewing the organization's financial statements and information returns, as well as the organization's policy for complying with public inspection requirements.

The 990 asks these questions based on whether or not the organization had these policies in place as of the end of the fiscal year. If your organization will not be able to put these policies into place before then, it should still aim to put them in place prior to filing the 990. The questions will still need to be answered "No", but you can describe in the supplemental schedules that you were able to put them in place subsequent to year-end, and hopefully lower those red flags a bit.

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NONPROFIT TAX ADVISORS BEWARE

by Holly Roland | HHM

Have you ever found yourself telling a donor, "Yes, you will be able to deduct this donation on your tax return"? If you have, you may be exposing your non-profit organization to a potential liability situation. Your tax-exempt status allows you to accept contributions that are potentially deductible on a donor's tax return; however, the question of whether or not a donor will be able to deduct that charitable contribution on his tax return is a question that should be left up to the donor's tax advisor. There are a number of criteria that factor in to whether or not a donor will be able to take his contribution as a deduction on his tax return. Without knowing all of these factors, you are providing erroneous advice, and a donor that took your "Yes" and incorrectly deducted a contribution on his tax return could potentially sue the organization for relying on the tax advice that was given to them when he made his contribution.

Let's look at an example: Your biggest donor gives you \$100,000 to build a building. Great! Then he asks you if it is deductible on his tax return. Is it? The answer is that it depends. There are a number of factors that have to be taken into account in order to answer that question:

- Standard versus itemized deduction
- Adjusted gross income limitations
- Charitable contributions limitations for businesses
- Special rules for contributions of stock
- Special rules for contributions of noncash items

- Different deduction amounts depending on the type of your organization
- Itemized deduction limitations
- Other charitable contributions and charitable contribution carryforwards

It would be wrong to assume that your \$100,000 donor has enough income to be able to deduct his contribution. What if his business did poorly for the remainder of the year and he has a big loss? What if the contribution is in stock that has appreciated in value and is subject to different rules? What if he has given large donations to other organizations that may limit the benefit he receives from the contribution to your organization? Once you take into consideration all the factors that may limit a donor's deduction for his charitable contribution, it is clear that a blanket "Yes" to all donors may be bad advice.

Instead of answering "Yes" to these questions, your organization should have its employees tell donors that the organization is a tax-exempt organization that accepts tax-deductible contributions. As to whether a donor would be able to receive a benefit of this contribution on his tax return, you should advise the donor to consult his tax advisor.

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