

Form 990: Newest Update

04.23.19 | Linda J. Rosenthal, JD



The federal Form 990 is the “information return” that most tax-exempt organizations – including, but not limited, to 501(c)(3)s – must file each year. From time to time, the government updates and revises this document.

The most comprehensive overhaul occurred in 2008, when Treasury and IRS officials worked with state charity regulators to beef up the Form 990, making it more useful as a source of information about how a group is organized, operates, and meets the requirements for tax exemption. The 2008 revision includes a “laser-like focus on governance practices, transparency, and accountability.”

The impetus for the 2008 changes arose from the financial scandals in the early 2000s involving Enron and other huge, publicly traded corporations. Government officials and legislators sprang into action, enacting a law commonly known as Sarbanes-Oxley (“SOX”), the names of the sponsoring legislators, with tough new rules and controls along with criminal penalties. This law was written “to prevent wrongdoing and enhance both the integrity of financial reporting and the quality of corporate governance.”

Although most SOX provisions are aimed at for-profit companies, a few apply as well to nonprofits: “They must have a system for accepting and dealing with whistleblower concerns; they must have policies that protect against the intentional destruction of key documents, and their employees must not impede or obstruct governmental investigations.

Charity regulators took this opportunity to launch some big changes in how they carry out their oversight duties in ways that better enable them to probe for deficiencies and uncover wrongdoing. An important part of the 2008 revision of the Form 990 is the new Part VI, “Governance, Management, and Disclosure” which helps the federal agency (as well as state officials who review these documents, too) understand “...how a nonprofit manages critical issues such as the independence of the board and the resolution of conflicts of interest among key players in the

organization.”

This transformation of the Form 990 into much more than a routine disclosure of basic information about a tax-exempt organization also helps the public evaluate which groups to support.

New Form 990 for 2018

The Internal Revenue Service recently issued the official [2018 Form 990](#) as well as the accompanying [Instructions](#). There are important new matters, including in related forms and schedules, because of the provisions of the 2017 Tax Cuts and Jobs Act (TCJA) effective in most instances beginning January 1, 2018.

These include:

- *New Excise Taxes.* New section 4960 of the Internal Revenue Code imposes an excise tax on an organization that pays any “covered employee” more than \$1 million in remuneration or an excess parachute payment during the year. [Form 4720](#), Return of Excise Taxes Under Chapters 41 and 42 of the Internal revenue Code, has been updated to include questions and disclosures related to this new excise tax, including Schedule N. Similarly, the 2017 TCJA adds new section 4968, an excise tax on net investment income of certain colleges and universities. Form 4720 has been updated to include matters relevant to this new tax, including Schedule O.
- *FASB Changes.* In 2016, the Financial Accounting Standards Board (FASB) published reporting changes for nonprofits related to the way that these entities classify “net assets.” See [Accounting Standards Update \(ASU\) 2016-14](#) (ASU 2016-14), Presentation of Financial Statements of Not-for-Profit Entities. The new Instructions to the 2018 Form 990 for Part X reflect these reporting changes.
- *New UBIT on Fringe Benefits.* The 2017 TCJA changed the way transportation fringe benefits are treated for purposes of the unrelated business income tax rules. Any such tax due on account of disallowed fringe benefits is reported on the Form 990-T.
- *Donor Information Reporting.* A tax-exempt organization, other than one classified as a 501(c)(3) [including a section 4947(a)(1) nonexempt charitable trust] or a section 527 political organization), no longer must disclose the names and addresses of its contributors on the Form 990, Schedule b or on Form 990-EZ. This change is explained in [Rev. Proc. 2018-38](#).

Conclusion

The Form 990 is such an important document that it includes an item asking for the filing organization to describe the process, if any, the group uses to review it before submission. When the IRS wants to know how a group goes about doing this or that, it’s a not-so-subtle signal that it’s a “best practice” to draft and adopt an official board written policy on the matter.

Every organization with a reporting obligation under the Form 990 series should create a policy and procedure for distributing the proposed return to each board member and ensuring that each director individually, and the board as a whole, review it carefully before filing.

— Linda J. Rosenthal, J.D., FPLG Information & Research Director