

Get Ready for Machine-Readable Form 990s

01.26.16 | Linda J. Rosenthal, JD



There is a significant technological advance coming down the pike in connection with the IRS [Form 990](#), the all-important information return required for many tax-exempt organizations. Machine-readable Form 990's (Modernized E-file, "MeF") will reportedly be launched in the [next month or so](#). The significance of this innovation is that this method makes it possible to electronically search for data, making it much "easier to study and review the" information contained in" these returns.

Court Case Ruling

As with most new advancements related to the IRS, this development did not come about without an outside push. Early last year, a government transparency advocacy organization, [Public.Resource.org](#), made a Freedom of Information Act (FOIA) request for nine Forms 990 in the MeF format, "which is readable by computers and [which the IRS uses to process the forms](#)." Since Forms 990 are considered public record, they are subject to FOIA requests. "The IRS currently handles FOIA requests by converting paper forms of the Form 990 into an image file format, a file type that makes it difficult for users to search specific fields online. Electronically filed Form 990s are converted into images as well because the IRS has to remove personally identifiable information from all Forms 990 before it distributes them." Some nonprofits are required to file electronic returns, but many others have the option of filing either electronically or by paper documents. [Public.Resource.org](#) argued that ordering the IRS to use an MeF file "would enhance the public's ability to review and study the data contained" in the requested Forms 990." When the IRS did not comply, [Public.Resource.org](#) filed suit in federal court in California, alleging that the tax agency's "refusal to release the requested 990s in MeF format violated the requirements of the

Freedom of Information Act.”

Federal judge William H. Orrick considered but rejected the IRS’ argument that its “policy of producing Forms 990 ... in an image-only format complies with the FOIA.” The agency argued that it was cost-prohibitive to convert the filed 990s to the machine-readable format. Judge Orrick ruled that the IRS “must hand over electronic documents in a machine-readable format, because the “alleged burden of the cost of training staff, developing new protocols and redacting the Forms 990, which the IRS receives and stores in MeF format, was not a compelling argument.”

The Internal Revenue Service implemented its current method of redacting data from Forms 990 back in 1998, years before the introduction of electronic filing. The tax agency receives almost 800,000 information returns each year from exempt organizations. It spends \$1.3 million processing them for disclosure in PDF format.

Public.Resource.org. had argued in its moving papers that “releasing the tax-exempt returns in MeF format would actually increase the IRS’ ability to redact confidential information.”

The attorneys representing Public.Resource.org hailed the decision, noting that “[t]his ruling will go a long way to change the practices at the IRS and encourage all federal agencies to make their records available in useful electronic formats,” and that “doing so will reap benefits for everyone.” And it’s “not just the courts that are asking the IRS to become more open to digital use of the Form 990. The IRS Advisory Committee on Tax-Exempt Organizations and Government Entities (ACT) recently recommended the IRS make filing Form 990s electronically mandatory for all not-for-profit organizations.”

Implications for Exempt Organizations

This is a wake-up call for any organization that takes the Form 990 for granted or believes that the information return can be slapped together without serious preparation. Since much of the information on Form 990 is a matter of public record, it’s always been important to accurately and carefully complete this document.

With the advent of this machine-readable format, far more information will be available – much more easily – to “enterprising reporters, watchdog groups, and many others [who] will be able to use the new format to more easily aggregate data about the sector – and potentially expose bad actors/behavior.” It will be easier to compare nonprofits, too.

Nonprofit advisors and experts have long advised exempt organizations to treat the 990 “as a public relations document.” The information contained in the 990 can be a valuable way to attract donors, grants, and supporters, and to show these third parties that the Organization “can effectively manage its

financial resources.”

Conclusion

“Not-for-profits should prepare now for more scrutiny on their returns. Verify that the information you include about your organization accurately displays the mission and scope of your organization to the public and to other not-for-profits.”