



American Institute of CPAs
1455 Pennsylvania Avenue, NW
Washington, DC 20004-1081

August 16, 2012

Ms. Lois Lerner
Director, Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, N.W.
Washington, D.C. 20224

Re: Comments on Form 990, *Return of Organization Exempt from Income Tax*, and Instructions

Dear Ms. Lerner:

The American Institute of CPAs (AICPA) is pleased to provide comments on Form 990, *Return of Organization Exempt from Income Tax*, and instructions. The comments were developed by the AICPA's Exempt Organizations Taxation Technical Resource Panel, comprised of practitioners who serve tax-exempt organizations and who are experienced with both the nuances of the form and the challenges that arise for taxpayers in trying to complete it.

The AICPA is the national professional organization of certified public accountants comprised of nearly 386,000 members. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

Our recommendations address various sections of the form and instructions, including comments and recommendations, as well as indicating the importance and urgency of each recommendation.

<u>Section of the Form</u>	<u>Importance</u>	<u>Urgency</u>	<u>Comment</u>	<u>Recommendation</u>
General	Medium	Medium	The Internal Revenue Service (IRS) continues to change the instructions through various means including actual instruction changes, frequently asked questions (FAQs), etc.	Make available a red-lined version of the prior year instructions highlighting all changes. Alternatively, consider noting the changes from the prior year's instructions in bold in the current year's instructions.
Heading, Section B	Medium	Medium	Following the 990 Instructions to check the "Name Change" box on page 1 of the 990, and thereby treating the return as a "name change return" (which phrase is <i>not</i> defined anywhere) requiring a paper return to be filed according to IRS Publication 4163, page 75, triggers a correcting letter from the IRS requiring the return to be e-filed if the organization has already notified the IRS of the name change by means other than a 990 (for example, by letter).	The 990 Instructions say to check the "Name Change" box on Page 1 if the name change has not been reported on a prior return. It does not say <i>not</i> to check that box if the name change has not been reported on a prior year but <i>has</i> been reported to the IRS in another manner (by letter, etc.). This should be added for clarification.
Part IV, Line 20b – Audited financial statements for hospitals	High	High	The instructions do not define audited financial statements.	The instructions should clarify whether the term audited financial statements includes details to consolidation which may not be audited but are generally "Other Financial Information" that is included in consolidated audited financial statements.

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Part V, Lines 1 and 2	Medium	Medium	Whereas the instructions provide guidance with respect to the reporting of compensation for a short year return in which there is no calendar year that ends with or within the short year, no such guidance is provided with respect to these lines.	The instructions should clarify what the responses should be for such short period returns. With respect to Part V, Lines 1a and b and 2a and b, since no forms would have been issued for the short period, the entry should be none.
Part VI, Section B, Questions 12, 13 and 14 – On policies	High	High	The form does not require board or board delegated committee approval of the policy. However, the instructions state such approval is necessary to obtain a yes answer.	Questions 12 through 14 should be changed to add wording such as “and such policy was approved by the board or a board delegated committee”.
Part VI, Line 1a and b	Medium	Medium	Although, in accordance with the instructions, no compensation is to be entered for the short period, if compensation was paid during the short period individuals receiving such compensation might not be independent.	The instructions should make clear that the definition of independence as set forth in the instructions are applicable notwithstanding the absence of compensation being reported in Part VII.

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Part VII, Section A and Schedule J, Part II	Medium	Medium	The Compensation / Benefits Matrix call for 403(B) and 401(K) Employee Salary Deferrals to be reported in base pay in Column (B)(I) but to report Employee 457(B) Salary Deferrals as Other Reportable Compensation In Column (B)(III).	In the interests of consistency the Matrix should be revised so that Employee 457(B) Deferrals be reported in Column (B)(I).
Part VII – Compensation, Deferred Compensation Column	Medium	Medium	Currently, anything not paid but accrued to an individual listed must go into deferred compensation according to the instructions. Exempt organizations should be permitted the same treatment as taxable organizations - not to define and treat as deferred compensation if paid within 2-1/2 months of the calendar year end.	The instructions should permit items paid within 2-1/2 months of the calendar year end not to be listed as deferred compensation.
Part VII, Section A, Checkbox	Medium	Medium	The checkbox is to be checked if no compensation was paid by the filing organization or related organization to any current officer, director or trustee.	A second checkbox should be added for short period returns.

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Part VIII	High	High	Announcement 2012-19 made it optional to report income from partnership interests using information from Form 1065, Schedule K-1. The instructions to date indicate Schedule K-1 must be used for Form 990 reporting. A number of organizations, particularly those with large endowments, hold partnership investments that are recorded on a "mark-to-market" basis for GAAP accounting purposes. Requiring the use of Schedule K-1 information for Form 990 reporting would generate significant differences between the organization's books and the Form 990. This, in turn, would create significant reconciling items on the Form 990 in order to properly report net asset figures that are consistent with the organization's books and records.	The optional reporting of Announcement 2012-19 should be made permanent. As an alternative, consideration should be given to having a separate schedule to the Form 990 on which the filing organization can report income from partnerships using information from Schedule K-1, while income, expenses and assets in the core form would still be reported using information from the organization's books and records.

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Schedule A, Part I, Line 11	Medium	Medium	Column vii at the bottom right says Amount of Support. It should be renamed amount of monetary support. According to the instructions, only money should be reported here. Many filers incorrectly place the value of services provided here.	Change the wording in Column vii to say “Amount of Monetary Support” instead of Amount of Support.
Schedule C, Part II-A and II-B – on Lobbying expenses	Medium	Medium	The instructions do not clearly address whether lobbying indirectly perhaps through membership in other organizations is reportable.	The instructions should include for Line 1f of Part II-B and for Part II A that indirect lobbying through a portion of membership dues via a separate organization should be reported where the lobbying may benefit the filer.
Schedule D, Part XII	Low	Low	Line 2a refers only to unrealized gains. Often there are unrealized losses that presumably should be entered as a negative amount. However, in the absence of an appropriate description there is often confusion whether to enter on Line 2a or on Line 4.	To avoid confusion, the description should read “Net Unrealized Gains (Losses) on investments”.

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Schedule F, Part II	High	High	<p>The 2010 Instructions added language requiring the reporting on Schedule F of grants or other assistance to a particular U.S. organization or entity for foreign activity. This will result in possible additional compliance (Expenditure Responsibility) in cases where one domestic public charity makes grants to another domestic public charity for use abroad. The added language is ambiguous by virtue of the omission of any guidance as to what factors are to be taken into consideration in determining whether the grant or assistance will be utilized in a foreign activity. Furthermore, the added language does not reflect the “Conduit Theory” as enunciated in Revenue Rulings 63-252 and 66-79, that preserve the tax deductibility of charitable contributions under section 170 when the U.S. charitable organization exercises control over such funds.</p>	<p>Treasury Reg. § 53.4945-5(A)(6), with respect to certain earmarked grants, provides that a grant shall not be regarded as a grant to a secondary grantee even though the grantor has reason to believe that certain (other) organizations would derive benefits from such grant so long as the original grantee organization exercises control, In fact, over the selection process and actually makes the selection completely independently of the grantor. The Instructions should refer to Treas. Reg. § 53.4945-5(A)(6) and should state that when such variance power exists, the grant should not be reported on Schedule F.</p>

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Schedule H, Part V, Section B – Facility policies and practices	High	High	We understand that section 501(r) uses a facility by facility approach for reporting policies and practices. However, the form should contain a checkbox for filers to easily indicate if all facilities would answer in the same manner to all of the questions rather than requiring separate Section B answers for each facility.	Adjust the form in Part V to add above Name of Hospital Facility something to the effect of “If all facilities listed in Section A have exactly the same answers for all of Section B, check this box and complete only one Section B.”

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Schedule J, Column D	Medium	Medium	Currently, the instructions state benefits provided for a listed person must be reported in Column D to the extent not reported as taxable compensation in Form W-2, Box 5 or in Box 1 or Form 1099 MISC Box 7. The value of housing provided by the employer should be included except to the extent such value is a working condition fringe. Only experienced preparers may be aware of the differences between sections 119 and 132. Less experienced preparers or self-preparers would not understand the difference and would likely not disclose housing if it is excluded regardless of what section of the Code may act to exclude it.	The instructions should be clarified to incorporate all housing exclusions not needing disclosure or explain what a working condition fringe exclusion is and how it differs from section 119 which is the more common exclusion we see. Examples would also be helpful.
Schedule N, Examples of “Significant Disposition of Assets”	Medium	Medium	The Glossary definition of “Significant Disposition of Assets” includes several examples that are not in the Schedule N instructions.	The instructions for Schedule N – “Significant Disposition of Assets” should also include the examples given in the Glossary in order to maintain consistency of approach.

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We appreciate your consideration of our recommendations, and look forward to working with you in the future on this matter. We are available to meet with you to discuss and explain our comments further. If you have any questions, please contact Jeffrey Frank, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel at (317) 656-6921, or jdfrank@deloitte.com; or Michelle R. Koroghlanian, AICPA Technical Manager, at (202) 434-9268, or mkoroghlanian@aicpa.org.

Sincerely,



Patricia A. Thompson, CPA
Chair, Tax Executive Committee

cc: Stephen Clarke, Internal Revenue Service, Tax Exempt and Government Entities
Division, Tax Law Specialist