



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

August 3, 2011

Ms. Lois Lerner
Director, Exempt Organizations
Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

RE: Comments on Form 990, *Return of Organization Exempt from Income Tax*

Dear Ms. Lerner:

The American Institute of Certified Public Accountants (AICPA) is pleased to provide comments on Form 990, *Return of Organization Exempt from Income Tax*, and instructions. The comments were developed by our Form 990 Task Force made up 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 comments were approved by our Exempt Organizations Tax Technical Resource Panel.

The AICPA is the national professional organization of certified public accountants comprised of approximately 370,000 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.

We look forward to working with you in the future on this matter. We stand ready to discuss and explain our comments with you at any time. If you have any questions, please contact me at (405) 552-3827 or dcook@kpmg.com; or Melissa Labant, AICPA Technical Manager, at (202) 434-9234, or mlabant@aicpa.org.

Sincerely,

Debra C. Cook
Chair, AICPA Exempt Organizations Tax Technical Resource Panel

cc: Stephen Clarke, Tax Law Specialist

American Institute of Certified Public Accountants
Form 990, Return of Organization Exempt from Income Tax, and Instructions
HEADING, PARTS I AND II

Section of the Form	Importance	Urgency	Comment	Recommendation
Part I, Line 6, Volunteers	Low	Low	Question asks for number of volunteers. Instructions do not define whether unpaid board members constitute volunteers.	Recommend adding language to the instructions to define whether the term volunteer should or should not include unpaid board members.

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 PART IV

Section of the Form	Importance	Urgency	Comment	Recommendation
Part IV, Question 10	Low	Low	In some cases, the financial statements are consolidated for GAAP purposes, but the consolidating entities are the taxpayer and its single member LLCs. Therefore, all of the activity is audited and also reported on the Form 990.	Please clarify in the instructions, how the taxpayer should answer the question if the financial statements are consolidated, but only with single member LLCs.
Part I, Line 2; Part IV, Line 32; and Schedule N, Part II	Medium	Medium	Schedule N instructions define "significant disposition of net assets" to include transactions for full and adequate consideration. They are silent regarding whether it includes transfers out of current income. This definition is likely to result in inclusion of a too broad range of transactions such as routine grants. Thus organizations providing grants totaling more than 25% of beginning net assets or expanding their operations through joint ventures or subsidiary organizations will have to complete Schedule N. Organizations selling facilities to buy improved or larger facilities will have to complete Schedule N as well. This is confusing to the general public and other readers of the return that will get the impression that the organization is downsizing or liquidating. The organization's failure to exclude transfers out of current income also may result in Schedule N reporting by organizations that have made grants or exchanged property but that have increased net assets during the year. The additional reporting also can be burdensome to the reporting organization.	We recommend the instructions be modified to either comply with the pre-2008 definition of substantial contraction, or to add additional exceptions to Part II reporting such as 1) Grants made in the ordinary course of the organization's exempt activities; 2) transfers for full and adequate consideration made in the ordinary course of the organization's exempt activities; 3) transfers made out of current income in the ordinary course of the organization's exempt activities; 4) sales of land, buildings, and equipment for full and adequate consideration if such consideration is used to purchase other property to be used in the organization's exempt activities; 5) transfers and capital contributions to partnerships, LLCs, joint ventures, or corporations if the organization receives an ownership interest in exchange for the transfer and if the partnership, LLC, joint venture, or corporation is engaged in exempt activities.

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PART IV

	<p>Grants made are adequately reported on Schedule I and Part VIII. Other transactions that may trigger the requirement to complete Schedule N are also adequately reported elsewhere on the return. It seems that the purpose of Schedule N is for reporting significant diminution of the organization's assets and not to capture transactions of expanding programs or grants made in furtherance of the organization's exempt purpose which are adequately disclosed elsewhere on the return.</p>		
<p>Part IV, Line 15b</p>	<p>The question refers to revenue and expense thresholds with respect to grantmaking, fundraising, business, and program service activities outside the United States. However, the instructions for lines 14-16, in addition to the aforementioned activities, also include investments. In addition, with respect to indirect investments through investment entities, the form of the investment entity (corporation or partnership) determines the extent to which revenue and expenses will be taken into account. Furthermore, because schedule F asks for the value of the investment, it would be appropriate to include the additional cost of investments during the tax year as an alternative threshold.</p>	<p>High</p>	<p>High</p>
	<p>The question should be revised to include reference to investments and should refer to the cost of the additional direct investment during the tax year to avoid the impact of organizational structure in determining whether dollar thresholds have been met, and provide that the relevant threshold for investments should be in the disjunctive (revenue, expense or cost/value).</p>		

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 PART IV

Part IV, Lines 14-16	High	High	<p>The instructions distinguish between partnerships and corporations with respect to taking into account the revenue and expenditures of such entities in determining whether the dollar threshold has been met. Inasmuch as Schedule F reporting is dependent on form of organization, and whereas the value of the investment may be the same in corporate and partnership form, reporting on Schedule F should not be dependent on legal structure of the investment entity.</p>	<p>The instructions should provide that the additional cost of investment during the tax year as an alternative threshold for determining whether reporting on schedule F is required.</p>
Part IV, Line 29	High	High	<p>As contrasted to Line 30 which requires no dollar threshold, Line 29 does. Accordingly, if the dollar threshold is not met, Schedule M is not required (unless Line 30 is answered yes). Therefore, Schedule M, Question 31, with respect to non-standard contribution, and Question 33, with respect to non-cash contributions for which no revenue has been reported, would not be required to be answered. Since the instructions for Line 31 states that such contributions do not have a ready market value and the value of the item is highly speculative or difficult to obtain, it is not unlikely that such non-standard contributions would not have been valued or valued at a de minimis amount.</p>	<p>Trigger questions for Lines 31 and 33 should be added to Part IV.</p>

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 PART VI

Section of the Form	Importance	Urgency	Comment	Recommendation
Part VI Section B, Line 10a and related instructions	Medium	Medium	Please clarify the term "affiliates." Should the question be answered "yes" where a parent entity is the sole member of its subsidiaries? For example in a healthcare system, the activities of the subsidiaries would be different than the parent. The question seems targeted to more homogenous groups like lodges and chapters of national groups.	Recommend adding to the instructions a more precise definition of "affiliate" and clarify whether the question is meant to apply to "nonhomogeneous" groups.
Part VI, Line 14 document retention	Low	Low	Part VI, Line 14 - Example: Policies exist at the department level but there is no comprehensive policy and not all departments in the organization have a written policy, e.g., treasury, legal AP and payroll have their own departmental retention and destruction policies, but other departments such as events, development, programs don't. It is unclear whether the question should be answered "yes" or "no."	Instructions should address situations where the policy exists at a departmental rather than organizational level.

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 PART VI

<p>Section B - Policies</p>	<p>High</p>	<p>High</p>	<p>The Form 990 instructions provide that the policy questions can only be answered "yes" if the organization's governing board adopted a policy by the end of the year. The boards of many organizations have delegated policy-making authority to board committees. The policies that are adopted by these committees are binding on the organization's employees and appropriate disciplinary actions can be taken for non-compliance. The IRS has recognized the ability for boards to delegate authority to committees in areas such as Form 990 review, or documenting the reasonableness of compensation. Additionally, the instructions were released on December 20 2010, which gave calendar year filers no opportunity to comply with this requirement for 2010. Answering "no" and including an explanation on Schedule O is not an attractive alternative. Many readers of the Form 990 will see the "no" answer and not look to Schedule O.</p>	<p>The instructions should be modified to provide that organizations may answer "yes" to the policy questions if the policies have been adopted by the board, or by a committee which has been authorized by the board to act on such policy matters. Additionally, an FAQ should be issued allowing organizations to answer these questions "yes" for 2010 if the policies have been adopted by an authorized committee. The FAQ could then provide notification of the "board adoption" requirement going into effect for 2011 returns in sufficient time for calendar year filers to comply with the instruction.</p>
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PART VII

Section of the Form	Importance	Urgency	Comment	Recommendation
Part VII Instructions Type of Compensation Chart	High	High	Chart is inconsistent where Incentive Compensation paid is to be reported in Schedule J, Part II, Column B(ii) but contributions to nonqualified plans (substantially vested), which could be the same type of plan, suggest reporting the contributions in Schedule J, Part II, Column B(iii).	Recommend adding language to the instructions that if a particular item could qualify as more than one item on the chart, reporting in accordance with either item on the chart is permissible.
Part VI, Line 1, Definition of Independent Board Member	High	Medium	Clarification is needed regarding board members that are not employees, and whether payments for reasonable compensation to such persons impairs independence. Point #1 of the definition of independent board members states that officers are not independent if compensated. However, Point #2 states that members may receive reasonable compensation without impairing independence. For example, if an organization pays all of its board members reasonable compensation for services as board members, then it appears that the board officers would not be considered independent, while the non-officer board members would still be independent.	Please add another example or two to the instructions to clarify if/when board officers would not be independent when receiving reasonable compensation for board service.

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 PART VIII, IX, X AND XI

Section of the Form	Importance	Urgency	Comment	Recommendation
Part IX, Line 13, Office Expenses	Medium	Medium	The instructions indicate that supplies, including office and medical supplies, should be listed here. In a healthcare organization medical supplies are a large amount. Listing large amounts of medical supplies under Line 13 as office supplies may be misread or mischaracterized by a reader that is not aware that office expenses should include medical supplies.	Change instructions to indicate that medical supplies of a medical organization should be listed in Line 24 as Other and specifically described as such rather than listing with office expenses in Line 13.
Part IX, Line 11f, Investment Management Fees	Low	Low	Mutual funds typically deduct investment fees prior to remitting and reporting dividends or interest. The fees are often not readily available or separately reported in the statements. The instructions do not indicate whether the fees netted in net investment income must be requested (a time-consuming and sometimes difficult process) and the net investment income "grossed up."	Instructions should clarify that if investment fees are deducted from income received, they are not required to be separately reported.

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GLOSSARY

Section of the Form	Importance	Urgency	Comment	Recommendation
Professional Fundraising Services	Low	Low	Unclear whether grantwriting assistance is included or not.	Adjust glossary definition to address whether "contributions" includes grants and if grantwriting assistance is a professional

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 SCHEDULE A

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch A, Part I, Line 11h, Column vii, Amount of support	Low	Low	The form heading states amount of support but the instructions indicate to list only "monetary" support.	Change form to say monetary support or permit both monetary and an estimate of the value of services to be reported here.

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 SCHEDULE B

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch B, Part I, Contributors	Low	Low	The form requires listing donors as well as grantors. The reader would be greatly assisted if they knew if it was a grantor rather than an ordinary donor.	Add check box "Grantor" and explain to check the box if what was given was a grant rather than an ordinary donation.
Sch B, Part I, Contributors	Medium	Medium	The form requires completion using the same method of accounting that is used for the rest of the Form 990. It seems the form would be more useful if prepared on a cash basis. Noting pledges that are accrued in the financial statements when the gift may never be received does not seem useful.	For Schedule B and Schedule M consider reporting actual gifts received as opposed to using the accrual basis.

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 SCHEDULE C

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch C, Part II-B, 501(c)3 organization and no 501(h) election	Low	Low	The form in Part IV indicates to provide descriptions for Part II-B, Line 1i - but the instructions say to describe in Part IV any activities conducted not just Line 1i, "Other Activities."	Change the form to indicate that the filer should provide descriptions for Part II-B, Line 1 and not just Line 1i, or change the instructions to require a description of only Line 1i.

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 SCHEDULE G

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch G, Part III, Line 11 Nonmembers	Low	Low	Question asks about operating gaming activities with nonmembers however instructions have no definition of nonmember for this purpose.	Recommend adding language to the instructions to define nonmembers for this question. NOTE: there are other references to nonmembers in the form and instructions - if possible a consistent use of the term and definition in the glossary would be helpful.

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 SCHEDULE H

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch H	Medium	Medium	Some rehabilitation organizations are licensed as hospitals. However, as a rehabilitation facility they are closer to a skilled nursing facility and do not necessarily have charity care policies and their actual charity care is very low.	Exempt rehabilitation hospitals from filing or provide a place at the beginning of Schedule H for the filer to explain its healthcare mission. Having the filer explain in the supplementary information is not believed to be sufficient.

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 SCHEDULE M

Section of the Form	Importance	Urgency	Comment	Recommendation
Sch M, Part I, Line 25 Vouchers	Low	Low	Many fundraising organizations have auctions using donated items. Certain noncash items like vouchers for a dinner, massage/spa treatment, and other items appear to be services rather than goods but the voucher could be interpreted as an item rather than services.	Instructions should clarify whether vouchers donated for future services should be reportable or not.

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 SCHEDULE R

Section of the Form	Importance	Urgency	Comment	Recommendation
Part V, Line 2	Low	Low	The instructions are confusing about which transactions to list. It seems to say all controlled related parties in Parts II, III, and IV should be listed even if no transactions occur. It does not seem appropriate to list these when there are no transactions between the entities.	The instructions should clarify that Part V, Line 2 should only be completed where there are transactions between the entities and not where Columns (b) and (c) would be blank.
Column F, Direct Controlling Entity	Low	Low	The instructions say that if the filing organization "indirectly" controls the related organization through one or more related organizations, enter the name of the entity that directly controls the related organization. Otherwise enter N/A.	The instructions for this column are very confusing. It would seem that if the IRS wants to know the name of the direct controlling organization, the filer should enter the organization that "directly" controls the filing organization. It seems the instructions say only to enter the name of the direct controlling organization if the filing organization indirectly controls the organization. This is not intuitive - most filers use this column to reflect the controlling organizations rather than an organization with indirect control. If only indirect control is what is to be reported, further clarity in the instructions and the form should be accomplished perhaps by retitling the column to "Filer indirectly controls" or something to that effect rather than direct controlling organization.

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SCHEDULE R

Part V, Lines 1 and 2	High	High	<p>The instructions say that Line 1 transactions should be reported on Line 2 (when Line 2 reporting requirements are met) at fair market value. Some transactions between related organizations might be at less than fair market value, with the difference constituting a donation. General Form 990 instructions say that donated services and donated use of materials, equipment and facilities should NOT be reported on Form 990 or its Schedules.</p>	<p>The instructions should clarify whether donated services and use of materials, equipment, or facilities between related organizations should be reported. If they should be reported on lines 1 and 2, the instructions should note that this is an exception to the general Form 990 rule that donated services and donated use of materials, equipment and facilities should NOT be reported on Form 990 or its Schedules.</p>
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