



July 29, 2020

Margaret Von Lienen  
Director, Exempt Organizations  
Tax Exempt & Government Entities  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20224

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

Dear Ms. Von Lienen:

The American Institute of CPAs (AICPA) is pleased to provide comments on Form 990, *Return of Organization Exempt from Income Tax*, and the related instructions and Form 990-T, *Exempt Organization Business Income Tax Return*, and the related instructions. Our matrices include comments and recommendations, while indicating the priority level of each recommendation.

The comments were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel (TRP) and approved by the AICPA Tax Executive Committee. The Exempt Organizations TRP is comprised of practitioners who serve tax-exempt organizations and are experienced with both the nuances of the forms and the challenges that arise for taxpayers in trying to complete them.

The letter is submitted in a matrix format as the comments are meant to match up line-by-line with Forms 990 and 990-T. Each page of the respective matrix has a title at the top of the page which indicates to which part of the form it is applicable. Underneath the form header is detail about the specific section and line item on the form on which the AICPA is commenting.

The AICPA is the world's largest member association representing the accounting profession, with more than 431,000 members in the United States and worldwide, and a history of serving the public interest since 1887. 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.

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Jennifer Becker Harris, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (425) 709-6664, or [JHarris@clarknuber.com](mailto:JHarris@clarknuber.com); or Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9247, or [elizabeth.young@aicpa-cima.com](mailto:elizabeth.young@aicpa-cima.com); or me at (612) 397-3071, or [chris.hesse@CLAconnect.com](mailto:chris.hesse@CLAconnect.com).

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a stylized "H" and "E" at the end.

Christopher W. Hesse, CPA  
Chair, AICPA Tax Executive Committee

# FORM 990

Form 990, Part IV		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Part IV, Line 29	Medium	<p>The threshold of \$25k is too low to be meaningful, especially with regard to larger organizations.</p> <p>The \$25,000 currently includes the FMV of donations, gifts, grants, or other contributions of property other than cash.</p>	Consider updating the threshold for non-cash contributions to be the greater of 5% of total contributions or \$25,000.

# FORM 990

Form 990, Heading Part V		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Part V, Section A, Line 2a	Medium	State law currently controls whether an individual is an employee of the filer and has caused confusion.	Line 2a should address the use of a professional employer organization (PEO) or management company in the instructions so that it is clear whether the directives from Part VII, Section A are, or are not, applicable to the number of employees to be reported in Part V, Line 2a.

# FORM 990

Form 990, Part VI			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part VI, Section A, Line 1b	Medium	See Sch. L recommendation.	See Sch. L recommendation.
Part VI, Section A, Line 5	High	The diversion of asset reporting threshold is increasingly inadequate for large organizations.  The current threshold for reporting is the lesser of \$250,000 or 5% of total assets.	Increase the minimum threshold for reporting to the lesser of \$1,000,000 or 10% of total assets.
Part VI, Section B, Lines 15a & b	Medium	The instructions require an organization that does not compensate any officers or key employees to check the box "No," which may be misleading to readers of the form.	Update the instructions to allow Lines a and b to be left blank if the individuals listed are not compensated by the filing organization or compensated by the related organization.

# FORM 990

Form 990, Part VII		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Part VII, Section A, Instructions, page 29	Medium	State law currently controls whether an individual is an employee of the filer and has caused confusion.	The paragraph within the instructions addresses employees of a management company as potentially required to be treated as employees of the filer if they would be considered such under state law. However, the header of the paragraph within the instructions only references employee leasing companies and PEOs. The preceding paragraph (on management companies) should also include the following sentence: "The organization should treat employees of an employee leasing company, a professional employer organization (whether or not certified under the new Certified Professional Employer Organization), or a management company as the organization's own employees if such persons are common law employees of the filing organization under state law." Alternatively, the above sentence should be moved to a stand-alone paragraph.
Part VII, Section A, Line 1a	Medium	The highest compensated employee reporting threshold is increasingly inadequate for large organizations.  The current reporting threshold for the highest compensated employees is \$100,000.	Increase the reporting threshold for the highest compensated employees to \$200,000.  Alternatively, the reporting threshold could be indexed to section 414(q) for each taxable year. For 2019 the amount would be \$125,000.
Part VII, Section A, Line 4	Medium	The reporting threshold for Schedule J reporting is increasingly inadequate for large organizations.  For most of the reporting requirements, the current reporting threshold for Sch. J is \$150,000.	Increase the reporting threshold for reporting on Schedule J to \$200,000.  Alternatively, the reporting threshold could be indexed to section 414(q) for each taxable year plus \$50,000. For 2019 the amount would be \$175,000 (\$125,000 plus \$50,000).
Part VII, Section B, Line 1	Medium	The independent contractor reporting threshold is increasingly inadequate for large organizations.  The current reporting threshold is for independent contractors that received more than \$100,000.	Increase the reporting threshold for independent contractors that received more than \$200,000.  Alternatively, the reporting threshold could mirror the key employee compensation amount.

# FORM 990

Form 990, Parts VIII, IX, X, XI & XII			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part VIII, Column C	High	Unrelated business income based upon books and records vs. 512(a)(6).	Provide clarification in the instructions that the suspension of losses netting against gains is for tax purposes only on Form 990-T. Form 990 reports gains and losses from unrelated business income on a book basis, which allows the netting of gains and losses within an accounting period. This netting of gains and losses from unrelated business activities whether regularly carried on is the rule which will apply for Schedule A Part II, Line 9 and Part III, Line 11.
Part XII, Line 3a	Medium	The question asks if the organization is required to undergo a single audit. Clarification is needed related to the year the reporting applies, which is the year the single audit requirements are triggered (greater than \$750K of federal awards), or the year the audit occurs (the year following receipt of the funding).	Consider adding clarity as to when the question is triggered. For instance, would the question align with Part XII, Line 2, where in the reporting period of the return there is a financial statement audit; or does the question align with the year the single audit should be performed (which is the following year of the receipt of funds).  The question could be restated as follows: "As a result of a federal award <i>during the reporting year</i> , was the organization required to undergo an audit..."

# FORM 990

Form 990, Schedule C		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Schedule C, Part I-C, Line 5	High	Many politicians provide their social security number as the tax identification number.	The instructions should clarify that social security numbers should not be reported on Schedule C. The instructions should state that a 527 organization must have a separate EIN, and that if it does not have one, it should apply for one.
Schedule C, Part III-A, Line 1	Medium	<p>990 Sch C Instructions on page 6 states:                      4. Section 501(c)(4) and section 501(c)(5) organizations that receive more than 90% of their annual dues from: a. Persons, b. Families, or c. Entities, who each paid annual dues of \$169 or less in 2019 (adjusted annually for inflation). See Rev. Proc. 2018-57; 2018-49 I.R.B. 827, section 3.33, available at <a href="http://www.irs.gov/IRB2018-49">www.irs.gov/IRB2018-49</a>, (or latest annual update).</p> <p>The instructions pulled from section 3.33 of the Rev. Proc. Section 3.33 relates only to the treatment of dues for agriculture and horticulture organizations under section 512(d) (UBI). The reference should be to section 3.46 which relates to the exceptions to the notice requirements under section 6033(e)(3).</p> <p>Rev. Proc. 2018-57 section 3.46 states: Reporting Exception for Certain Exempt Organizations with Nondeductible Lobbying Expenditures. For taxable years beginning in 2019, the annual per person, family, or entity dues limitation to qualify for the reporting exception under section 6033(e)(3) (and section 5.05 of Rev. Proc. 98-19, 1998-1 C.B. 547), regarding certain exempt organizations with nondeductible lobbying expenditures, is \$117 or less.</p>	Update the instructions to reference the correct section of the Revenue Procedure.



# FORM 990

Form 990, Schedule F		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Schedule F, Part IV	High	Since the enactment of the TCJA (Tax Cuts and Jobs Act), it is unclear when certain foreign filings are required.	Consider updating the trigger questions for the foreign filings and the instructions to provide additional clarification when foreign filings are required for exempt organizations.

# FORM 990

Form 990, Schedule H		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Schedule H, Part I, Line 3 and Part V, Section B, Line 13	Medium	Part I, Line 3 and Part V, Lines 13a and 13b are redundant.	Consider removing the Part I, Line 3 question as it is also addressed in Part V, Line 13. Part V, Line 13 contains more financial assistance information than Part I, Line 3. Therefore, Part V, Line 13 is more useful to a reader of the return.
Schedule H, Part III, Section A, Line 1	Medium	Hospital organizations adopting ASU (Accounting Standards Update) 2014-09 (Topic 606) and return preparers may not understand the interaction between HFMA Statement 15 and Topic 606.	Schedule H instructions should include clarification that the HFMA Statement 15 was updated in June 2019 to include issues addressed in Topic 606; primarily implicit price concessions. Therefore, hospital organizations may answer "Yes" to Line 1, post-adoption of Topic 606.
Schedule H, Part III, Section A, Line 2	Medium	Topic 606 is expected to cause significant reductions in bad debt expense reported for GAAP purposes.	Consider more flexibility in the amount reported on this line. Allow hospital organizations to include both bad debt expense as defined under Topic 606 and implicit price concessions on Line 2. If the latter is not identifiable, organizations may report only bad debt expense on Line 2.
Schedule H, Part III, Section A, Line 4	Medium	Organizations adopting Topic 606 no longer have a bad debt expense footnote in the GAAP financial statements. This question becomes obsolete for most Schedule H filers.	Revise the instructions for this line to address the absence of a bad debt expense footnote. Alternatively, request the content of, or reference to, the financial statement footnote addressing Topic 606.
Schedule H, Part III, Section A, Lines 9a and b	Medium	This section requests information on a written debt collection policy as well as whether the debt collection policy that applied to the largest number of patients during the year contain provisions on collection practices to be followed for patients known to qualify for financial assistance.	The requested information is slightly redundant to Part V: Billing and Collections questions on Lines 17-20. While we realize Part V is structured to monitor compliance with section 501(r) policies, perhaps the questions and descriptions on this line could be combined with those on Part V to simplify reporting and review.
Schedule H, Part V	Medium	The required listing of other health care facilities is time consuming, voluminous, and does not add value to the Form 990 user.	Consider substantially limiting or eliminating this disclosure. Alternatively, allow organizations to provide a web link to a list of non-hospital facilities in order to significantly reduce the amount of time hospitals put into preparing this separate list for Schedule H purposes.

# FORM 990

Form 990, Schedule I		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Schedule I	Medium	The reporting requirement for grants is outdated for larger organizations.  The current reporting threshold is \$5,000.	Similar to Schedule B (under the special rule), allow larger organizations to report only grants that are the greater of 2% of total Sch. I grants versus the \$5,000 threshold and/or the amounts reported on Part IX of Form 990.

# FORM 990

Form 990, Schedule L			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule L, Instructions	Medium	<p>It appears there are gaps in the Sch. L instructions related to the Form 990-EZ; however, the instructions may be intentionally silent. Categories of interested person (IP) are enumerated for the Form 990-EZ as follows (in relevant part):</p> <ol style="list-style-type: none"> <li>1) Is limited to the current officers, directors, trustees, and key employees listed on Part IV, which matches the Form 990-EZ definition.</li> <li>2) Is silent with regard to the 990-EZ regarding whether the founder/creator is an interested person.</li> <li>3) Specifically includes substantial contributors on which the Form 990-EZ instructions were silent.</li> <li>4) III and IV are N/A for the Form 990-EZ.</li> <li>5) Family member of above.</li> <li>6) 35% controlled entity of above.</li> <li>7) Employee of a substantial contributor if the employee or their child received a grant award.</li> </ol>	<p>Provide clarification whether "founder/creator" is a classification of IP that Treasury intended to exclude or whether the intent was to have this individual subject to the disclosures of Sch L Part II when the taxpayer files the 990-EZ. Currently, it is not clear whether including transactions with a founder/creator who has no other relationship with the Form 990-EZ filing organization is required.</p>
Schedule L, Part IV, Business Transactions	Medium	<p>The threshold for loss of independence due to compensation of a family member is too low. A trustee of a large, multi-state organization can be deemed "not independent" because a great-grandchild living hundreds of miles away receives compensation of \$10,001.</p> <p>The current reporting threshold for family members of interested persons is \$10,000.</p>	<p>Increase the compensation threshold from \$10,000 to \$100,000 or to a percentage of total revenue or total compensation expense.</p>

# FORM 990

Form 990, Schedule R		AICPA	
Section of the Form	Priority Level	Comment	Recommendation
Schedule R, Part V, Line 2	High	The listing of transactions between related entities is often lengthy and time consuming to prepare while adding minimal usable information to the Form 990 user.	Consider eliminating Line 2. At a minimum, remove the requirement to disclose the amount of the transactions and report instead only the name of the related organization and the type of transaction.

# Form 990-T

Form 990-T, General			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Overall comment, Form and Instructions	High	Section 8 of the April 2020 issued proposed regulations regarding Unrelated Business Taxable Income Separately Computed for Each Trade or Business (REG-106864-18), indicates the "The Treasury Department and the IRS recognize that changes to the Form 990-T and related schedules may be necessary."	We support this effort and recommend that the Form 990-T and the related instructions be amended as soon as practical for the matters raised within the proposed regulations.
Overall comment, Form and Instructions	High	Section 8 of the April 2020 issued proposed regulations regarding Unrelated Business Taxable Income Separately Computed for Each Trade or Business (REG-106864-18), ask whether an ordering rule is necessary to clarify how the special rule in sections 170(d)(1)(B) and 170(d)(2)(B) operate when an exempt organization has both net operating loss (NOL) carry overs and charitable contribution carry overs in more than one unrelated trade or business.	As (REG-106864-18) determines that charitable contributions are calculated after application of the section 512(a)(6) siloing rules, an ordering rule may be simplified. Thus, to determine the section 172(b)(2) taxable income for purposes of applying sections 170(d)(1)(B) and 170(d)(2)(B), it seems reasonable to have the starting point for computing section 172(b)(2) taxable income be AFTER section 512(a)(6) has been applied. Therefore, the special rule will only continue to apply for pre-2018 NOLs and should no longer be applicable for post-2017 NOLs. We recommend adding a worksheet to the Form 990-T filing instructions to help tax preparers properly execute the provision.
Instructions, page 6	Medium	The at-risk limitation rules are only applicable to trusts and not to corporations.	Add clarifying language to the instructions that Form 6198 is only applicable if the entity was organized as a trust.
Instructions, pages 6 & 7	Medium	Forms 5471 and 8858 may also apply to exempt organizations, however they are not listed in the instructions.	Add clarifying language to the instructions that Form 5471 or Form 8858 may also be required to be filed by an exempt organization. Also, clarify that filings may be attached either to Form 990 or Form 990-T.
Instructions, page 7	Medium	It is our understanding that Form 8975 does not apply to exempt organizations.	Either remove Form 8975 from the instructions or clarify when this filing would apply to exempt organizations (for example, if the organization has more than \$850 million in gross unrelated business income activity). If the filing should be included by an exempt organization, please clarify if Form 8975 should be attached to the Form 990T, Form 990, or Form 990-PF.
Instructions, page 7	High	Forms 965, 8991, and 8993 will likely be rare filings for an exempt organization.	Clarify in the instructions when Forms 965, 8991 and 8993 must be attached to Form 990-T and if they should only reflect amounts subject to unrelated business income.
Instructions, page 7	Medium	If a Passive Foreign Investment Corporation (PFIC) was debt-financed then a Form 8691 would need to be filed with the Form 990-T.	This scenario is a rare occurrence; however, we recommend adding this filing to the form instructions with clarifying language that the form is required to be filed if the overall investment was subject to section 514. Adding this information would clarify the information reported on page 15 of the instructions.
Instructions, page 14	High	Some filers sign confidentiality agreements with certain investment partnership managers. Disclosing the name of partnership(s) by a section 501(c)(3) filer on a public document could violate the confidentiality agreements.	Allow section 501(c)(3) filers to identify each partnership generally (e.g., Investment Partnership 1, Investment Partnership 2, etc.) or state that detail is available upon request.
Instructions, pages 18 & 19	High	Line 30-NOL Deduction Arising in Tax Years Beginning on or After January 1, 2018 - Instructions still indicate to attach a statement showing the computation of the NOL deduction. Line 36-Deduction for NOL arising in Tax Years Beginning Before January 1, 2018 no longer mentions attaching a statement showing the computation of the NOL deduction and therefore many software providers have eliminated the ability to print this statement.	The instructions should require a statement to be attached for line 36 similar to the statement to be provided for line 30. Requiring such statements will improve compliance and record-keeping.

# Form 990-T

Form 990-T, Heading			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Line B	Medium	There is not a checkbox available for state colleges and universities that are not exempt under section 501(c)(3), but are required to file Form 990-T.	Add a checkbox for organizations described in section 511(a)(2)(B).
Line E	Medium	There are many organizations that merely file the Form 990-T to attach certain required foreign filings.	The form instructions should either leave this line blank or provide a different code to use if the entity does not have an unrelated trade or business.
Lines E & H	Medium	As confirmed in the April 2020 proposed regulations regarding Unrelated Business Taxable Income Separately Computed for Each Trade or Business (REG-106864-18), separate unrelated trades or businesses identified under special rules will need additional options for categorization in addition to NAICS codes. For example, other options are to categorize by qualified partnership interests, section 512(b)(13), or debt-financed activities.	Create additional codes for activities that are not easily classified by NAICS codes or those activities that can be grouped together based on regulations
New Line Item	Medium	As confirmed in the April 2020 proposed regulations regarding Unrelated Business Taxable Income Separately Computed for Each Trade or Business (REG-106864-18), organizations may not change the NAICS 2-digit code it has chosen for a particular trade or business, beginning with the codes reported on its first Form 990-T filed after the regulations are published as final in the Federal Register.	Create a box that can be checked if changing from one NAICS code to another for the same activity

# Form 990-T

Form 990-T, Part II			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part II, Trusts	Medium	For entities that are trusts it is unclear where the section 199A items should be reported.	Provide additional guidance in the instructions on how these items should be applied.
Part II, Line 31	High	If a trade or business ceases to exist, there is no guidance on how taxpayers should allocate the remaining NOLs. For example, it is unclear if the losses can be allocated among other trades or businesses.	Clarify the treatment of loss allocations within the instructions.