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Representing and Managing Tax-
Exempt Organizations

Form 990 and 990-T Issues
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Today’s Agenda

- The focus on your Form 990 by regulators and non-regulators
  - Websites with searchable databases

- Role of the new Form 990 in IRS enforcement activity
  - Selection of organizations for audit

- Changes to the 2014 Form 990, schedules, and instructions
  - Mostly clarifications as this is the seventh year for the revised Form 990

- When to amend a Form 990 filed for a prior year
  - Substantially complete and accurate is the standard

- Leading practices in board review
  - Challenging reporting issues in Form 990 and Form 990-T
Examples of interest to regulators and non-regulators:

- Qualification for tax-exempt status for federal income tax purposes
- Federal income tax (e.g., unrelated business income) IRC Sections 511 to 514
- Federal excise taxes (e.g., IRC Chapter 42)
- Federal employment taxes (e.g., taxable wages, FICA, FUTA)
- Requirements to file other information returns (e.g., Forms W-2, 1099, 926, 8865, etc.)
- Tax-exempt bond provisions (IRC Sections 141 to 148)
- Quid-pro-quo compliance (IRC Section 6115)
- Transfer pricing rules (IRC Section 482)
- State gaming requirements (various state statutes and regulations)
- State charitable registration requirements and annual reporting
The Information Contained in Form 990 is Vast

- The Form 990 contains a great deal of information and many returns are filed electronically (lots of searchable data)
  - Form 990 Return is an “Information Return”
    - Core Return consisting of 12 Parts
    - 16 Supplemental Schedules

- Form 990 Part II, Signature block:
  - Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete.
  - Declaration of preparer (other than officer) is based on all information of which preparer has any knowledge.

- The big question is: What will all this information be used for by the IRS and others?
The Role of the Redesigned Form 990

- Careful completion of the return is necessary because inaccurate or incomplete reporting may give the appearance of noncompliance, and that may lead the IRS to examine an organization unnecessarily; examples:
  - Lack of consistency within the Form 990 return
  - Lack of consistency with Form 990 returns of related organizations
  - Lack of consistency with other information available to the IRS (e.g., internet searches by the Exempt Organizations Compliance Area’s (EOCA) Review of Operations (ROO) group)

- The IRS is in the process of using condition codes (computer queries) to flag Form 990 returns for audit (field examinations, limited scope, single issue, and correspondence examinations)
  - Searching for the best case for noncompliance to focus resources
  - Example: no conflicts of interest policy combined with Schedule L disclosures may indicate potential noncompliance
The Focus on Your Form 990 by Regulators: Examples

- Internal Revenue Service
- Federal and state criminal law enforcement agencies
- Congress
- Federal agencies other than the IRS
- State legislatures
- State agencies
- State Attorneys General
- State departments of revenue
- Foreign governments and agencies thereof
The Focus on Your Form 990 by Non-Regulators: Examples

- Stakeholders
  - General public/taxpayers and donors/families and employees
  - Families/patients or parents/students
  - Researchers

- Watchdogs, examples
  - Charity Navigator
  - American Institute of Philanthropy
  - National Better Business Bureau Wise Giving

- Media, examples
  - Local media and/or national media

- Tax Whistle Blowers
  - Referrals to the IRS may provide monetary rewards to individuals
  - File Form 211; Application for Award for Original Information

- Opponents
  - Competitors or enemies
In Part VII, Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees, changes clarify that reportable compensation should not be treated as deferred if deferred from the calendar year ending with or within the tax year to a date that is not more than 2 ½ months after the end of the calendar year ending with or within the tax year.

Deferred compensation to be reported in column (F) includes compensation that is earned or accrued in one year and deferred to a future year, whether or not funded, vested, qualified or nonqualified, or subject to a substantial risk of forfeiture. But do not report in column (F) a deferral of compensation that causes an amount to be deferred from the calendar year ending with or within the tax year to a date that is not more than 2 ½ months after the end of the calendar year ending with or within the tax year if such compensation is currently reported as reportable compensation.

There is a lot of misunderstanding about 457(f) plans and reporting – failure to report the income correctly can lead to big problems.
A Closer Look at IRC 457(f) and Required Reporting

- Part VII, Section A, column D or E and Schedule J, Part II, column b(iii):
  - Amounts deferred by employer or employee (plus earnings) under section 457(b) plan [and 457(f)?] (substantially vested)
  - Amounts deferred under nonqualified defined contribution plans (substantially vested)
  - Earnings or losses of nonqualified defined contribution plan (substantially vested)

- Part VII, Section A, column F and Schedule J, Part II column C
  - Amounts deferred by employer or employee under section 457(f) plan (not substantially vested)
  - Amounts deferred under nonqualified defined contribution plans (not substantially vested)
  - Earnings or losses of nonqualified defined contribution plan (not substantially vested)
Example of Reporting Requirements for 457(f) Plans

Instructions for Schedule J, Part II Column C, Example 2

Under the terms of his employment contract with Organization B beginning July 1 of calendar year 1, an executive is entitled to receive $50,000 of additional compensation after he has completed 5 years of service with the organization.

The compensation is contingent only on the longevity of service. [Time-based vesting]

The $50,000 is treated as accrued or earned ratably over the course of the 5 years of service, even though it is not funded or vested until the executive has completed the 5 years.

Organization B makes payment of $50,000 to the executive in calendar year 6. Organization B enters $5,000 of deferred compensation in column (C) for calendar year 1 and $10,000 for each of calendar years 2 through 5. For calendar year 6, Organization B enters $50,000 in column (B)(iii) and $45,000 in column (F).
In Part XI. Reconciliation of Net Assets, instructions are now provided for lines 5, 6, and 8.

**Line 5.** Report the net unrealized gains or losses on investments reported in the organization's audited financial statements (or other financial statements). This amount represents the change in market value of investments that were not sold or exchanged during the tax year.

**Line 6.** Report the value of services or use of facilities donated to the organization (net of services or use of facilities donated by the organization) reported as income or expense in the financial statements.

**Line 8.** Report the net prior period adjustments during the tax year reported in the financial statements. Prior period adjustments are corrections of errors in financial statements of prior years, or changes in accounting principles applied to such years. The errors may include math errors, mistakes in applying accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared.
Schedule A’s significant revisions address supporting organizations (SOs).
Schedule A asks more questions and requests more information about SOs.
Extensive changes to the Form 990 Instructions explain these changes.
2014 Form 990 Schedule A
New Part IV, Sec. A – New Part/Questions

► Are all the supported organizations listed by name in the SO’s governing documents?
► Did the SO have any supported organizations that do not have an IRS determination of status under Sec. 509(a)(1) or 509(a)(2)?
► Did the SO have a supported organization described in Sec. 501(c)(4), 501(c)(5), or 501(c)(6)?
► Was any supported organization not organized in the U.S.?
► Did the SO add, substitute, or remove any supported organizations during the year?
► Did the SO provide support to anyone other than its supported organizations, individuals in their charitable class, or other SOs that support any of the supported organizations?
► Did SO provide a grant, loan, compensation, or similar payment to a substantial contributor, family member or 35% controlled entity thereof, or another disqualified person?
► Did SO have any excess business holdings during the year?
Part IV, Sec. B – Type I SOs

- Did supported organization(s) have power to regularly appoint or elect at least a majority of the SO’s directors or trustees?
- Did SO operate for the benefit of any supported organization other than that which supervised or controlled the SO?

Part IV, Sec. C – Type II SOs

- Were a majority of the SO’s directors/trustees also a majority of the directors/trustees of each of the supported organizations?

Part IV, Sec. D – All Type III SOs

- Did the SO meet its notification requirement to its supported organizations?
- Was there a close and continuous working relationship?
- How did the supported organization have a significant voice in SO’s investment policies and in directing use of SO’s income/assets?
2014 Form 990 Schedule A
New Part IV, Section E

► Type III Functionally Integrated SOs
  ▶ How did the SO satisfy the integral part test?
    ▶ Satisfied the activities test
    ▶ SO is a parent of each of its supported organizations
    ▶ SO supported a governmental entity (see Notice 2014-4)
  ▶ If activities test box is checked
    ▶ Did substantially all of SO’s activities directly further supported organization(s)’ exempt purposes?
    ▶ But for the SO’s involvement, would one or more of the supported organizations have engaged in the activities?
  ▶ If parent box is checked
    ▶ Did SO have power to regularly appoint or elect a majority of the supported organizations’ officers, directors, or trustees?
    ▶ Did SO exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations?
2014 Form 990 Schedule A
New Part V

► Type III Non-Functionally Integrated SOs
  ► Sec. A: Adjusted net income
  ► Sec. B: Minimum asset amount
  ► Sec. C: Distributable amount
  ► Sec. D: Distributions
  ► Sec. E: Distribution allocations

► Similar to distribution requirement provisions in Form 990-PF
Group Returns Containing 509(a)(3) Organizations

Schedule A (Form 990 or 990-EZ), Parts IV through VI. In addition to Part I in paragraph 18 above, if any section 509(a)(3) organizations are among the subordinates in the group return, also complete the relevant sections of Part IV and V.

If an answer in Part IV requires more information with respect to any section 509(a)(3) organizations, then answer with respect to those organizations and provide that additional information in Part VI.

For instance, if the group includes 50 section 509(a)(3) organizations, and one of them does not list all of its supported organizations by name in its governing documents, then answer “No,” to Part IV, Section A, line 1, and explain in Part VI.

If the group includes more than one Type III non-functionally-integrated supporting organization, then provide aggregate data in Part V.
Please provide answers and documentation to explain the items below [19 Questions]:

1. Please provide a copy of your current determination letter and a copy of your group exemption letter.

2. For tax year ending [YOUR FISCAL YEAR END], please provide a list of your subordinates, including contact information and where each operates. If your annual group exemption update for a tax year is an accurate list of your subordinates for that year, you may attach a copy of the report in response.

3. If not provided in response to question 2, above, please provide a copy of your annual group exemption update for the year ending [YOUR FISCAL YEAR END], and for the most recent taxable year.

4. As a central organization, you are required to have "general supervision or control" of the subordinates that are under your group exemption letter. Please explain in detail how you exercise general supervision or control over your subordinates and provide any relevant supporting documents.

5. Has your tax-exempt status ever been revoked based on an examination? If yes, please provide an explanation, including
   - When your status was revoked
   - For what years was your status revoked
   - The legal issue resulting in revocation
   - How and when you re-obtained exempt status
6. Has your tax-exempt status ever been automatically revoked for not filing a required return (Form 990-series) or notice (Form 990-N) for three consecutive years? If, yes, please provide an explanation, including:
   - When your status was revoked and for what years you failed to file required returns or notices
   - When you obtained reinstatement and to what date it was effective

7. Please list the paragraph(s) of section 501(c) the Internal Revenue Code (e.g. 501(c)(3), 501(c)(4), etc.) under which each of your subordinates are tax exempt.

8. If your subordinates are section 501(c)(3) organizations, please provide the types of foundation or public charity classifications that are represented by your subordinates.

9. Are any of your subordinates organized in a foreign country? If yes, please list the subordinate(s) and the foreign country in which each subordinate is organized.

10. Do any of your subordinates conduct or support any activities in foreign countries? If yes, please list the subordinate(s) and for each provide a detailed explanation of the activities supported and conducted in foreign countries and the country or countries in which the activities take place.
11. When considering whether to add an organization to your group as a subordinate, what type of information and records do you require the organization to provide to you? Please provide a detailed explanation, including whether you require an organization to submit a signed statement authorizing inclusion in the group.

You may wish to provide copies of any forms, applications, or other documents you provide to potential subordinate organizations where relevant to your response.

12. How many subordinates do you currently have in the group operating under your tax-exemption letter? Did each of these give you written authorization, signed by a duly authorized officer of each subordinate to be included in your group? If not, please list the organizations which did not give you such a written authorization and explain why not. Please provide copies of the written authorizations for the remaining organizations.

13. Are you aware of having ever added to your group an organization whose tax exempt status had previously been revoked (either by examination or for not filing annual information returns for three consecutive years)?

If yes, please provide a detailed explanation, including whether you verified that any organization that was revoked for failing to file returns subsequently applied (e.g., on Form 1023 or Form 1024) for exemption and obtained reinstatement before you added it to the group ruling.

14. Have you filed a Form 990-T on behalf of one or more of your subordinates for tax years ending [YOUR FISCAL YEAR END]?

If "yes", please provide a copy of the Form(s) 990-T at issue and explain whether you included the subordinate(s) on your own Form 990-T, and/or filed a group Form 990-T that included only your subordinate(s). Please state which subordinates were included and identify or provide work-papers to identify tax items belonging to the parent and each subordinate organization, respectively.
15. Have you ever reported information on any of your subordinates' revenues, expenses, assets, liabilities or activities on your own Form 990-series return (not a group return)? If yes, please state on which return(s) and identify or provide work papers to identify the tax items belonging to the parent and each subordinate organization, respectively.

16. Have you filed a Form 990 group return on behalf of two or more of your subordinates for tax years ending [YOUR FISCAL YEAR END]? If yes, answer the following questions (otherwise skip to question 17):

a. Have you obtained an EIN (Employer Identification Number), separate from your own EIN, to use to file a group return? If yes, what is the EIN?

b. Prior to filing a group return, did you obtain a written statement, signed by an officer under penalties of perjury, from each of the subordinates included in the group return that authorized each subordinate's inclusion in the return for the periods listed below? If no, please provide a detailed explanation.

17. Do you verify the continued existence of each of your subordinates prior to the submission of your annual group exemption update? If yes, describe the verification process. If no, please provide a detailed explanation of why you do not.

18. If you have ever removed subordinates from your group, did you report the removal of the subordinates to the IRS through your annual group exemption update? If no, please provide a detailed explanation of why you did not.

19. Indicate the date of the most recent annual group exemption update you submitted to the IRS.
Revised on-form instructions clarify when a public charity can exclude from Schedule B contributors that fall below the greater than $5,000/2% threshold.

Organization must complete Schedule A, Part II to show that it is described in section 170(b)(1)(A)(vi) and qualifies to use the greater than $5,000/2% threshold.
Part IV. Foreign Forms

All Schedule F (Form 990) filers must complete Part IV, lines 1-6.

If the organization answers “Yes” to any of lines 1-6 because it engaged in the activities described on that line during the tax year, it may need to file the form referenced on that line.

To determine whether an organization is required to file any of the IRS forms referenced on lines 1-6 (i.e., Forms 926, 3520, 3520-A, 5471, 5713, 8621, or 8865), see the instructions for those forms.

Do not attach Forms 3520, 3520-A, or 5713 to Form 990.
2014 Form 990 Schedule H

► No significant changes to Parts I, II, III and IV
► Part V, Section A
  ► If group return, asks for name and EIN of each subordinate hospital that operates a hospital facility reported in Part V
► Part V, Section B
  ► Changes reflect some of proposed 501(r) regulations
    ► Final 501(r) regulations released December 29, 2014
      ► Effective/applicability date: 1\textsuperscript{st} date of 1\textsuperscript{st} tax year beginning after December 29, 2015
    ► Schedule H, Part V, Sec. B will need to be revised again, for TY2015 or TY2016, to reflect final 501(r) regulations
  ► Section B, questions 1 & 2 added about timing of becoming a hospital facility, for purpose of determining whether and when community health needs assessment (CHNA) is required
Part V, Section B (continued)

- New question 6b: did facility conduct its community health needs assessment (CHNA) with one or more organizations other than hospitals?
- Question 7c – revised to ask if paper copy of CHNA was made available at facility without charge
- Questions 8-11 replace TY 2013 questions 6 & 7
  - More detail about the implementation strategy, year of adoption, website and the addressing significant needs
- Question 11: all filers must describe how facility is addressing significant needs in its most recently conducted CHNA (no longer a yes/no question)
- Question 13 replaces TY 2013 questions 10-12
  - Removed “State regulation” and “Medicaid/Medicare” as listed criteria for establishing financial assistance eligibility
  - “Underinsurance status” replaced “Uninsured discount”
Part V, Section B (continued)

Question 15 (formerly question 13)--how financial assistance policy (FAP) explains method for applying for financial assistance; checkboxes added:

- Whether the FAP or FAP application form described required information and documentation for a FAP application
- Whether FAP or FAP application form provided contact information for the FAP and FAP application process

Question 16 (formerly question 14; measures to publicize FAP); checkboxes revised:

- Provide URL for FAP, FAP application, and plain language summary
- Were FAP, FAP application, and plain language summary of FAP provided upon request, without charge?
- Was notice of available of FAP conspicuously posted throughout facility?
- Were members of community most likely to need assistance notified about available of the FAP?
Questions 18 and 19 (list of actions permitted and taken before the hospital facility made reasonable efforts to determine eligibility for financial assistance)

- collapsed 3 boxes for lawsuits, liens, and body attachments into a single box: “actions that require a legal and judicial process”
- added “selling individual’s debt to another party”
- Added “None or these actions or other similar action were permitted”

Question 20 (reasonable efforts made before taking collection actions listed in questions 18 and 19)
- Added “None of these efforts were made”
### 2014 Form 990, Schedule H, Part V, Q13-15

#### Part V Facility Information (continued)

**Financial Assistance Policy (FAP)**

<table>
<thead>
<tr>
<th>Name of hospital facility or letter of facility reporting group</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
</table>

Did the hospital facility have in place during the tax year a written financial assistance policy that:

**13** Explained eligibility criteria for financial assistance, and whether such assistance included free or discounted care?  
**If “Yes,” indicate the eligibility criteria explained in the FAP:**

- [ ] Federal poverty guidelines (FPG), with FPG family income limit for eligibility for free care of ___ ___ % and FPG family income limit for eligibility for discounted care of ___ ___ %
- [ ] Income level other than FPG (describe in Section C)

**14** Explained the basis for calculating amounts charged to patients?

**15** Explained the method for applying for financial assistance?  
**If “Yes,” indicate how the hospital facility’s FAP or FAP application form (including accompanying instructions) explained the method for applying for financial assistance (check all that apply):**

- [ ] Described the information the hospital facility may require an individual to provide as part of his or her application
- [ ] Described the supporting documentation the hospital facility may require an individual to submit as part of his or her application
- [ ] Provided the contact information of hospital facility staff who can provide an individual with information about the FAP and FAP application process
- [ ] Provided the contact information of nonprofit organizations or government agencies that may be sources of assistance with FAP applications
- [ ] Other (describe in Section C)

Questions in lines 13-14 (corresponding to lines 9-12 on the 2013 Sch H) have been reorganized. For 2013, most checkbox options under the 2014 line 13 were in line 12, which asked whether the FAP explained the basis for calculating amounts charged (2013 line 14). Checkboxes are also revised. “Underinsurance status” is new for 2014. Prior year choices included “Medicaid/Medicare”, “State regulation” and “Uninsured discount.”

For 2013, the corresponding question (line 13) did not have checkboxes or require an explanation.
## 2014 Form 990, Schedule H, Part V, Q16-18

| Q16 | Included measures to publicize the policy within the community served by the hospital facility? | Yes/No | Checkboxes in line 16 (2013 Line 14) have been revised to more closely track the final regulations.
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>The FAP was widely available on a website (list url).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>The FAP application form was widely available on a website (list url).</td>
<td></td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>A plain language summary of the FAP was widely available on a website (list url);</td>
<td></td>
<td></td>
</tr>
<tr>
<td>d</td>
<td>The FAP was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>e</td>
<td>The FAP application form was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>f</td>
<td>A plain language summary of the FAP was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>g</td>
<td>Notice of availability of the FAP was conspicuously displayed throughout the hospital facility</td>
<td></td>
<td></td>
</tr>
<tr>
<td>h</td>
<td>Notified members of the community who are most likely to require financial assistance about availability of the FAP</td>
<td></td>
<td></td>
</tr>
<tr>
<td>i</td>
<td>Other (describe in Section C)</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

### Billing and Collections

<table>
<thead>
<tr>
<th>Q17</th>
<th>Did the hospital facility have in place during the tax year a separate billing and collections policy, or a written financial assistance policy (FAP) that explained all of the actions the hospital facility or other authorized party may take upon non-payment?</th>
<th>No/Yes</th>
</tr>
</thead>
</table>

<table>
<thead>
<tr>
<th>Q18</th>
<th>Check all of the following actions against an individual that were permitted under the hospital facility's policies during the tax year before making reasonable efforts to determine the individual's eligibility under the facility's FAP:</th>
<th>No/Yes</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>Reporting to credit agency(ies)</td>
<td></td>
</tr>
<tr>
<td>b</td>
<td>Selling an individual's debt to another party</td>
<td></td>
</tr>
<tr>
<td>c</td>
<td>Actions that require a legal or judicial process</td>
<td></td>
</tr>
<tr>
<td>d</td>
<td>Other similar actions (describe in Section C)</td>
<td></td>
</tr>
<tr>
<td>e</td>
<td>None of these actions or other similar actions were permitted</td>
<td></td>
</tr>
</tbody>
</table>

*Schedule H (Form 990) 2014*
2014 Form 990, Schedule L Instructions
Definition of “Interested Persons”

► 2014 Schedule L instructions
► Purpose of changes
  ► Increase consistency
  ► Decrease confusion
  ► Decrease burden
► Key change: more uniform definition of “interested persons” for Parts II-IV
Interested person definition:

- For Schedule L, Part I—no change
  - Disqualified persons under Code Section 4958

- For Schedule L, Parts II-IV (expansion):
  - The creator or founder of the organization
    - And their family members
  - Including sponsoring orgs of VEBAs
  - Substantial contributors reported in Schedule B (expanded to Parts II and IV)
    - And their family members
  - 35% controlled entities (expanded to Part II)
Definition of “interested persons”

“Interested person” for Sch. L, Pts II-IV (contraction)

- **Removed** (from Part II): highest compensated employees and section 4958 disqualified persons
- **Removed** (from Part II): contributing employers of VEBAs
- **Removed** (from Part IV): entity of which a current or former officer, director, trustee, or key employee, or any family member thereof, was serving as a
  - Director, officer, or trustee; or
  - Partner, member, or shareholder with a direct or indirect ownership interest in excess of 5% in a professional corporation or entity treated as a partnership
- **Removed** (from Pt IV) non-stock organizations more than 35% controlled by other interested persons
2014 Form 990, Schedule L instructions
Other changes

Other 2014 Schedule L instructions changes

► Uniform “reasonable efforts” definition that applies to all parts (not just Parts III and IV)
► Part I (excess benefit transactions): identify in Part V organization manager(s), if any, that knowingly participated in the excess benefit transaction
► Part II (loans): clarification that split-dollar life insurance arrangements described in Regs. 1.7872-15 are loans reportable in Part II
► Part IV (business transactions): new reporting exception for transactions with publicly-traded corporations in the ordinary course of business, on the same terms as are generally offered to the public
Page 1, third column — although a VEBA must report a contributing employer as a related organization, the contributing employer should not report the VEBA as a related organization, unless the VEBA is related to the contributing employer in some other capacity.

Page 3, first column — new Example 8 to illustrate that a supported organization’s parent is not necessarily related, for Schedule R purposes, to the supported organization’s supporting organization.

Page 5, third column, last paragraph — transactions between the filing organization and its disregarded entities do not need to be reported in Part V, Line 1.
Form 990-T; changes for 2014

The maximum credit for small employer health insurance premiums claimed on line 44f increases to 35% of premiums paid for tax-exempt eligible small employers. To be eligible for the credit, an eligible small employer generally must pay premiums on behalf of employees enrolled in a qualified health plan offered through a Small Business Health Options Program (SHOP) Marketplace. The credit is available to eligible small employers for a 2 consecutive tax year credit period. For more information, see the Instructions for Form 8941 Credit for Small Employer Health Insurance Premiums.

The “Who Must File” instructions clarify that IRAs and other individual accounts are treated as separate trusts for unrelated business income tax purposes (even if there is a single beneficiary for multiple accounts), and the custodians are treated as the trustees.

The definition of a trade or business clarifies that an activity must be conducted with intent to profit to constitute a trade or business.
The Schedule I and J instructions have been amended to provide that those schedules also apply to section 501(c)(7), (9), and (17) organizations.

Section 179D deductions. The energy efficient building deduction under the provisions of section 179D has been extended for one year for property placed in service before January 1, 2015. You can claim a deduction expense in Part II, on line 28, for property placed in service before January 1, 2015.

Qualified specified payments. The exclusion from unrelated business taxable income for qualifying specified payments under section 512(b)(13)(E) has been extended for one year for payments received or accrued before January 1, 2015. You can claim the qualifying specified payments that occurred before January 1, 2015.
The Form 990-T may need changes to implement the final regulations under 501(r) and 6012 (i.e., 1.501-2(d) and 1.6012-2(i).

- If a hospital facility failed to meet 501(r) requirements but the organization as a whole is still tax-exempt, hospital facilities are required to report noncompliant facility income on Form 990-T under the final regulations.

- However, the final regulations state operation of a noncompliant hospital facility is not considered to be an “unrelated trade or business” under section 513. This raises the question of how noncompliant facility income should be reported on form 990-T, since 990-T is designed for reporting of income from an unrelated trade or business.

- Stay tuned...
**Advisory committee on TE/GE (ACT) recommendations**

Report dated June 11, 2014 recommended that IRS:

- Open a regulation project to formalize the commensurate test reflecting that profits from a substantial commercial activity will not preclude exemption as long as income is used commensurate in scope with charitable programs.
- Provide formal guidance regarding allocation of indirect costs between exempt activities and unrelated businesses.
- Issue a comprehensive revenue ruling on a range of UBI issues to include categorizing activities as UBI and addressing facility rentals and dual-use property.
- Formalize and adopt a new web-based Form 990-T.
- Continue to improve public access to IRS materials and information available on the IRS website.
Advisory committee on TE/GE (ACT) recommendations

- Categories/leadings included in ACT’s draft revenue ruling:
  - Facility rental/dual use property
  - Cell tower rentals
  - Hotel rentals and dormitory use
  - Catering/food services
  - Website publications
  - Bookstore operations
  - Youth camps
  - Technology transfer
  - Guidance on preparatory time spent on activities
  - Foreign blocker corporations
Advisory committee on TE/GE (ACT) recommendations

The new Form 990-T vision would be to:

- Heighten education and outreach in the UBI arena - expanded instructions to include work-sheets
- Simplify Form 990-T - a “unrelated business activities checklist” similar to a flow-chart/decision tree
- Minimize size of return – with a new “worksheet” format, form could be reduced to 2-3 pages.
- Provide IRS requested Yes/No questions to provide overall UBI data (similar to Form 990, Part V)
Discovery of an error on a prior Form 990

- Example: Assume that information that was required to be disclosed on a prior year Form 990 was not accurate or was inadvertently omitted.

- Judgment is involved – was the Form 990 return substantially complete and accurate?
  - The risk to the organization is that as mentioned previously, penalties can be imposed for:
    - Filing an **incomplete Form 990** or
    - Filing a **Form 990 that contains incorrect information**

- Organization’s obligation to correct a prior year Form 990
  - When is an error or omission substantial enough that an amended return should be filed? It depends…
  - When do insubstantial errors need to be corrected for reasons of public or media perception? It depends…
From a perception perspective, the Internal Revenue Service and other regulators may also be more interested in certain disclosures; while in no particular order, examples include:

- **Sources, types, classification, and amounts of revenue**
- **Changes in program expenditures; discontinued, new or changes in magnitude**
- **Involvement in the political process**
- **Changes in foundation classification – Schedule A**
- **Lobbying expenditures**
- **Compliance with certain specified tax requirements – Part V**
- **Foreign activity and investments – Schedule F**
- **Gaming and fundraising – Schedule G**
- **Hospitals – Schedule H**
- **Changes in governing documents – Part VI**
From a perception perspective, the Internal Revenue Service and other regulators may also be more interested in certain disclosures; while in no particular order, examples include:

- Grants to organizations other than public charities – Schedules I and F
- Information about tax-exempt bonds – Schedule K
- Receipt of non-cash contributions – Schedule M
- Certain dispositions of assets – Schedule N
- Compensation and practices – Parts VI, VII, and Schedule J
- Transactions with interested persons – Schedule L
- Significant diversions of assets – Part VI
- Changes in the list of and transactions between related entities
- Restatement of financial statements and impact on Form 990
Penalties can be imposed for not filing on time, filing an incomplete return, or filing a return that contains incorrect information

- **Against the organization**
  - Penalty of $20 a day, not to exceed the lesser of $10,000 or 5% of the gross receipts of the organization for the year,
  - Penalty of $100 a day for organizations with annual gross receipts exceeding $1 million (with a maximum penalty for any one return of $50,000).

- **Against responsible person(s).**
  - If the organization does not file a complete return or does not furnish correct information, the IRS will send the organization a letter that includes a fixed time to fulfill these requirements. After that period expires, the person failing to comply will be charged a penalty of $10 a day. The maximum penalty on all persons for failures for any one return shall not exceed $5,000.

There are also penalties (fines and imprisonment) for willfully not filing returns and for filing fraudulent returns and statements with the IRS (see IRC Sections 7203, 7206, and 7207).

States may impose additional penalties for failure to meet their separate filing requirements.
Leading practices for reviewing Form 990 with senior management and the governing board

• Key information to discuss:
  - Remember Form 990 is a public document, but, generally, contributor names and addresses are not subject to public inspection.
  - Form 990 should be considered “draft” and not distributed to anyone outside the organization until filed with the IRS.
  - Explain the period covered by Form 990, and clarify that, for fiscal year filers, the compensation is reported based on the calendar year that ended within the fiscal year.
  - Describe the organization’s process to collect data, prepare the form, and review it prior to filing.
  - Address, if necessary, potentially problematic disclosures and explain the matters and their resolution.

• Consider providing Form 990-T or a summary thereof, particularly if the organization is an IRC Section 501(c)(3), to explain the unrelated business activities that generate taxable income (or loss)
Leading practices for reviewing Form 990 with senior management and the governing board

• Anticipate questions from board members by reaching out to them in advance of the meeting, especially key members like the Board Chairperson and Audit Committee Chairperson.

• Focus points that are of interest:
  - Significant differences from the prior year Form 990
  - How Form 990 reconciles to the audited financial statements (explain any significant differences)
  - Compensation disclosures and practices on Part VII and Schedule J
  - Transactions with interested persons on Schedule L
  - Governance and policy questions on Part VI
  - Schedule H (if a hospital, particularly Part I, line 7, financial assistance and certain other community benefits)
  - Schedule F (if significant foreign operations)
Leading practices for reviewing Form 990 with senior management and the governing board

- Consider benchmarking key metrics in Form 990 to peer organizations. Items to benchmark might include:
  - Percentages of functional expenses by program service, management and general, and fundraising
  - Governance and compensation policies
  - Compensation levels and special pay arrangements
  - Endowment performance on Schedule D
  - Charity care and community benefit for hospitals
Questions and Contact Information

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