

Form 990: Two Years into Implementation



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Learning Objectives

At the end of this session, you will leave with:

- A comparison of the first and second years filings
- Best practices for implementing improving the tax process in your organization



The Good News

The 2nd year of implementation
is generally much easier!



What Lessons Have We Learned

- The true underlying assumption:
 - Good governance, and
 - Transparency
- Lead to:
 - Tax compliance, and
 - Public trust.



What Lessons Have We Learned

- The board of many organizations never paid attention to the 990.
- They do now!



What Lessons Have We Learned

- There is no substitute for reading the instructions.
 - Many terms and definitions
 - Many rules and exceptions



What Lessons Have We Learned

- The 990 is only as good as the “known data”.
 - Business and family relationships.
 - Conflicts of interest.
 - Evaluate your tools to uncover.



What Lessons Have We Learned

- Gather your data early and throughout the year.
- The organizations, their boards and their accountants need to work together.



What Lessons Have We Learned

- Review draft 990 before completing.
 - Review by management.
 - Review by board.



What Are the Unknowns?

- Are there “right” and “wrong” answers to the questions?
- Will certain answers be red flags?



What Are the Unknowns?

- IRS has issued governance training materials.
 - http://www.irs.gov/pub/irs-tege/governance_training_presentation.pdf
 - Next two slide are excerpts from above presentation.



Most Important Takeaways

- When it comes to nonprofit governance, one size does not fit all
 - Governance issues vary depending on size, type, structure and culture of the organization
- It is our responsibility to administer the tax laws uniformly and fairly
 - Everyone in EO must understand why we are focusing on governance, what we mean when we say we will emphasize governance, and how we intend to do that across all of EO
 - ◇ Education and outreach, rulings and agreements, examinations



Summary of Main Points

- Each organization needs to decide for itself how best to govern – one size does not fit all
- Not IRS role to tell them how to govern
- Form 990 governance questions severe transparency and compliance goals
- All of EO must understand our role in the area and what we are trying to accomplish in the areas of education and outreach, rulings and agreements and examinations
- IRS will keep you posted and seek input along the way



Specifics of the Form



2008 to 2009 – Changes Made by the IRS

- Form 990, Part IV:

- 12** Did the organization obtain separate, independent audited financial statements for the tax year? *If “Yes,” complete Schedule D, Parts XI, XII, and XIII.*
- 12A** Was the organization included in consolidated, independent audited financial statements for the tax year? *If “Yes,” completing Schedule D, Parts XI, XII, and XIII is optional.*

- Form 990, Part XI:

- 2a** Were the organization’s financial statements compiled or reviewed by an independent accountant?
- b** Were the organization’s financial statements audited by an independent accountant?
- d** If “Yes” to line 2a or 2b, check a box below to indicate whether the financial statements for the year were issued on a consolidated basis, separate basis, or both:
- Separate basis Consolidated basis Both consolidated and separate basis

- All of Schedule H and Schedule K are required.
- Revised definitions of “Related Organization” and “Control”.



Organizational Review & Approval

Form 990, Part VI:

- 11 Has the organization provided a copy of this Form 990 to all members of its governing body before filing the form?
- 11A Describe in Schedule O the process, if any, used by the organization to review this Form 990.

- To answer YES, you only need to PROVIDE copies to board members.
- Do you want to meet the minimum or exceed it?
- The Minnesota Attorney General's Annual Report (including the Form 990) must be annually reviewed and approved by the entire board of directors.



continued

- Board and committee meetings are the new filing deadline.
- You must plan ahead to meet your deadlines.
 - Who will write the narratives?
 - Who will approve the narratives?
 - Who will gather the numerical data?
 - Who should review the Form 990?
 - At what level of detail will each person review it?
 - When will the officers be in the office to review and/or sign?
 - When should materials be ready to send prior to board meetings?



Hospitals

- This is the most time-consuming schedule in the return.
 - The IRS estimates that it will take 71 hours to gather the necessary information.
- Little information in Schedule H comes from the audited financial statements.
- The schedule requires detailed knowledge of:
 - Your accounting system.
 - Your policies and procedures for recording costs and revenues.
 - Your community-building activities.
 - Your charity care and bad debt policies and debt collection practices.



Hospital Narratives

- Explanations of how your numbers were calculated:
 - Part III, Line 4 – The costing methodology used to determine bad debt expense (at cost) and bad debt expense (at cost) attributable to patients eligible under the charity care policy.
 - Part III, Line 8 – The costing methodology used to determine Medicare allowable costs of care relating to Medicare revenue.



Other Numbers of interest

- Part I, Line 7g – Costs attributable to a physician clinic as subsidized health services
- Part I, Line 7f – Any bad debt expense that was subtracted out for purposes of calculating this line.
- Part I, column f - Any bad debt expense that was subtracted out for purposes of calculating this column.
- Part III, Lines 5 and 6 – Any Medicare revenues and costs not included in its Medicare Cost Reports.
- Part III, Lines 5 and 6 – A reconciliation of the amounts reported in lines 5 and 6 and the total revenues and costs of your Medicare programs.
- Any prior year settlements for Medicare-related services that were received in the current year.
- Part V - The number of each type of facility listed, other than those required to be recognized as a health care facility.



Descriptions of your activities

- Part I, Line 3c – The income-based criteria for determining eligibility for free or discounted care.
- Part III, Line 4 – The financial statement footnote related to bad debt.
- Part III, Line 8 – The extent to which any shortfall in Medicare revenues should be treated as community benefit.
- Part III, Line 9b – Describe your collection practices to be followed for patients who are known to qualify for charity care or financial assistance.
- Part VI, Line 2 – Describe how you assess the health care needs of the communities you serve.



continued

- Part VI, Line 3 – How do you inform and educate patients about their eligibility for assistance under federal, state and local government programs or under your charity care policy?
- Part VI, Line 4 – Describe the communities you serve. Include geographic area and demographic constituents.
- Part VI, Line 5 – Describe how your community building activities promote the health of the communities you serve.
- Part VI, Line 6 – Provide any other information about how your hospital(s) and other facilities further your charitable purpose by promoting the health of the communities you serve.
- Part VI, Line 7 – If you are part of an affiliated health care system, describe the respective roles of your organization and its affiliates in promoting the health of the communities it serves.
- Part VI, Line 8 – Identify all states with which you, or a related organization, file a community benefit report.



Interested Persons

- Schedule L – Relationships between the organization and board members, officers and key employees.
 - Very few relationships end up being disclosed.
 - When required, details are minimal.
 - Do not disclose relationships through other tax-exempt organizations.
 - Do not disclose management companies.
- Form 990, Part VI - Relationships between board members.
 - Do not disclose relationships arising through the ordinary course of business.
 - When required, details are minimal.
 - ◇ “Family Relationship”
 - ◇ “Business Relationship”



Related Organization – The IRS Definition

- An organization, including a nonprofit organization, a stock corporation, a partnership or limited liability company, a trust, and a governmental unit or other governmental entity, that stands in one or more of the following relationships to the filing organization at any time during the tax year:
 1. Parent – an organization that controls the filing organization.
 2. Subsidiary – an organization controlled by the filing organization.
 3. Brother/Sister – an organization controlled by the same person or persons that control the filing organization.
 4. Supporting/Supported – an organization that is (or claims to be):
 1. A supporting organization of the filing organization within the meaning of section 509(a)(3); or
 2. A supported organization within the meaning of section 509(a)(3).



Control – The IRS Definition

- Nonprofit organizations (or other organizations without owners or persons having beneficial interests):
 - The power to remove and replace (or to appoint or elect, if such power is continuing) a majority of the organization's board members.
 - The power to remove and replace (or to appoint or elect, if such power is continuing) a majority of the members who elect the organization's board members.
 - A parent controls a subsidiary if a majority of the subsidiary's board members are officers, board members, employees or agents of the parent.
- Stock corporations:
 - Ownership of more than 50% of the voting power.
 - Ownership of more than 50% of the stock.



continued

- Partnerships and LLC's:
 - Ownership of > 50% of the profits in the partnership or LLC.
 - Ownership of > 50% of the capital interests in the partnership or LLC.
 - Being a managing partner if there are three or fewer managing partners in a partnership or LLC.
 - Being a general partner if there are three or fewer general partners in a limited partnership.
- Trusts with beneficial interests:
 - Ownership of > 50% of the beneficial interests.



Related Organizations

- An organization that you consider related may not meet the IRS definition.
- An organization that you consider unrelated may meet the IRS definition.
- Control can occur through multiple levels.
- Detailed disclosures of transactions are limited.
 - Controlling organizations disclose:
 - ◇ Interest, annuities, rents or royalties regardless of amount.
 - ◇ Other transactions if greater than \$50,000.
 - Controlled organizations and uncontrolled organizations only disclose that activities occur.



Compensation Calculated Two Ways

- Form 990, Part VII – Report compensation based on:
 - The organization that issued the W-2.
 - The calendar year ending within the fiscal year.
 - Broken down into three categories:
 - ◇ W-2 compensation
 - ◇ Deferred compensation
 - ◇ Non-taxable benefits
- Form 990, Part IX – Report compensation based on:
 - The allocation of their compensation between organizations.
 - The fiscal year.
 - Broken down into three categories:
 - ◇ Salary and wages
 - ◇ Pension
 - ◇ Other benefits



What is Deferred Compensation?

- “Compensation that is earned or accrued in, or attributable to, one year and deferred to a future year for any reason, whether or not funded, vested, or subject to a substantial risk of forfeiture.”
- This includes pensions!



Compensation – Other Disclosures

- Do you provide any of the following special benefits?
 - First-class or charter travel
 - Travel for companions
 - Tax indemnification or gross-up payments
 - Discretionary spending accounts
 - Housing allowance or residence for personal use
 - Payments for business use of personal residence
 - Health or social club dues or initiation fees
 - Personal services
- Do you have a supplemental non-qualified retirement plan – 457(f)?
- Do individuals receive compensation that is contingent on the revenues or net earnings of the organization?
- Do any individuals receive non-fixed payments?
 - A payment is fixed if the amount is fixed, or the calculation method is fixed.



Compensation and Related Organizations

How do I determine the five highest paid employees for each Form 990?

1. Only look at the W-2's issued by the filing organization.
2. Identify the five highest paid employees of that organization with Form W-2, box 5 greater than \$100,000.
 - Ignore board members, officers and key employees since they are already reported.
3. Identify any compensation paid to those five people by related organizations.

How do I determine the five highest paid employees for the Minnesota Attorney General's Annual Report?

1. Aggregate the compensation paid by all related organizations.
2. Identify the five highest paid employees.



Compensation Data Collection – An Example

Gross Pay		Flex		Deferred Comp		Other Non-taxable Benefits	
Base Salary		Gross Pay		Employee 403(b) Contribution		Employer Paid Health Premiums	
PTO Sellback		Health Flex		Employee 457(b) Contribution		Employer Paid Life, AD&D Long-term Care Insurance	
Employer 457(b) Contribution		Dependent Flex		Total W-2, Box 5		Disability	
Group Life Gift		Total Flex				Total Other Comp.	



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