

Client Alert

A report
for clients
and friends
of the firm February 2006

Revised Form 990 Annual Return for Tax- Exempt Organizations

In general, all organizations that are tax-exempt under Section 501(c) of the Internal Revenue Code of 1986, as amended (the "Code") such as Section 501(c)(3) charities and hospitals and Section 501(c)(6) business leagues and trade associations are required to file annually a Form 990 *Return of Organization Exempt from Income Tax*.

On February 1, 2006, the Internal Revenue Service released a revised 2005 Form 990 that includes significant changes from the previous year. In an effort to make exempt organization activities more transparent, the new Form 990 requires the reporting organization to disclose information about those who control the organization, including their business or family relationships, as well as information about related entities. The new Form 990 also includes a new question regarding compensation of former officers, directors and key employees, and questions on foreign grants, offices, and financial accounts.

Conflict of Interest Policy

The new Form 990 asks whether the organization has adopted a written conflict of interest policy. This question had been added to the Form 1023 *Application For Recognition of Exemption Under Section 501(c)(3)* when it was revised in October 2004, indicating the Service's view that, while not mandated by the Code or the Treasury Regulations, all tax-exempt organizations should have a conflict of interest policy.

Relationships Among Those In Control and Information About Related Entities

The Form 990 requires the reporting organization to disclose more detailed information about the persons who control the organization and information about

related entities. In the prior version of Form 990, the organization was required to list each officer, director, trustee and key employee and the total amount of compensation, including benefits, paid. The revised Form 990 incorporates new disclosure requirements which delve further into the controlling persons by asking questions about their family and business relationships and compensation paid to them by related organizations. The Form 990 includes the following new questions:

1. The number of officers, directors, and trustees that are entitled to vote on the organization's business at board meetings.
2. Whether any of the officers, directors, trustees, key employees, or the organization's highest compensated professionals or other independent contractors are related through family or business relationships and if so, to attach a statement identifying the individuals and explaining the relationship(s).
3. Whether any of the officers, directors, trustees, key employees, or the organization's highest compensated professionals or other independent contractors receive compensation from any organizations related to the filing organization through common supervision or common control and if so, to attach a statement identifying such individuals, explaining the relationship between the organizations, and describing the compensation arrangements.

Compensation to Former Officers, Directors, Key Employees

The new Form 990 requests information regarding compensation and other benefits paid during the year to any former officer, director, trustee, or key employee and the address where the Service can contact them. The required disclosure includes loans and salary advances, current payments of deferred

compensation, contributions to employee benefit plans and deferred compensation plans, expense account allowances, and all other fringe benefits.

Foreign Grants, Offices and Financial Accounts

The Service is continuing to focus on foreign activities and holdings of exempt organizations, in light of the heightened awareness against funding terrorist activities abroad. The new Form 990 requires Section 501(c)(3) and Section 501(c)(4) organizations and Section 4947(a)(1) nonexempt charitable trusts to disclose whether any portion of a grant made during the year was a foreign grant.

The new Form 990 also requires the organization to list the countries where the organization maintains offices and to disclose whether the organization has an interest in or signature authority over a financial account in a foreign

country. If the organization has any foreign accounts, it must list the countries where the account(s) is/are located and file Form TD 90-22.1 with the Department of Treasury by June 30, 2006.

Conclusion

It is important to keep in mind that every organization's Form 990 is available for public inspection. The Service is aware that the public relies on the Form 990 as the primary and sometimes sole source of information about a particular organization. Therefore, it is of prime importance to the Service that the Form 990 is accurate, complete and fully describes the reporting organization's programs, accomplishments and relationships with other entities, as well as compensation paid to persons who control the organization.

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