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What the New Form 990 Means for Exempt Organizations

In January 2012, the Internal Revenue Service (IRS) released its new Form 990, the tax document exempt organizations are required to file with the IRS each fiscal year.[1] Although the new form has been revised to enhance readability, it also consists of several substantive changes related to organizations' reporting requirements, thereby imposing new or additional burdens on organizations seeking to maintain their tax-exempt filing status.[2] The new Form 990 makes significant changes with respect to organizations' financial reporting and governance requirements, as well as to the hospital reporting process.[3] Although each of these areas may prove to be compliance challenges, analysts suggest that new reporting requirements applicable to joint ventures and investment partnerships will be the most difficult to satisfy.[4]

Organizations who wish to maintain their tax-exempt status must proportionately report a joint venture's activities as their own based on their ownership interest in the joint venture or other qualified entity. Previously, such organizations could use their own records when reporting the effect the joint venture activities had on their financial statements.[5] However, under the new Form 990, organizations must report their distributive share of income and expenses from the joint venture in addition to a distributive share of assets based upon the organization's ending capital account. For hospitals without such documentation, other business records may be used to determine reasonable estimates of their distributive share.[6]

In terms of governance, the Form 990 now queries organizations as to the policies and procedures that were in place as of the last day of the tax period, rather than those policies implemented after the tax period ended, but prior to the filing deadline. This change in policy demonstrates that organizations will not be able to retroactively achieve compliance in order to qualify for exempt status. For example, the Form 990 now requires additional information concerning the governing body's voting rights, whereby an explanation of any material differences in voting rights among members, or if such authority has been delegated to another body, such as an executive committee, must be provided.[7] In contrast to the heightened requirements concerning organizational governance, the new Form 990 loosens several requirements, including those related to the independence and compensation of board members, as well as to what constitutes a "*business relationship*."[8] Directors, or directors' family members, who serve as *key employees* of entities engaged in a business transaction with the exempt organization now remain independent. The Form 990 clarifies the circumstances under which a director remains independent despite receiving compensation as a board member. Organizations are also required to report business relationships among their *officers, directors, trustees, and key employees.* The Form 990 modifies the definition of *business relationship* to exclude this reporting requirement when the officer, director, or trustee is a key employee of a joint venture. The Form 990 also addresses individuals *who had the power to elect or appoint one or more members of the governing body*, and requires disclosure as to which individuals possessed such power during the tax period, even if such authority was never exercised.[9]

For hospital reporting, the new Form 990 reflects several significant changes. Previously, the Secretary of the Treasury had authority to determine if an organization qualified as a hospital for filing purposes. Now the definition of *hospital* and *hospital facility* refers solely to state law requirements for licensure. However, the definition still includes those facilities which are operated as joint ventures and treated as partnerships or disregarded entities. The most significant changes for hospitals deal with questions relating to hospital policies on emergency medical care; financial assistance; billing and collections practices; and, limitations on medical care charges.[10]

Although many of the revisions to Form 990 are designed to clarify reporting requirements and alleviate some of the burdens on filing organizations, other changes are likely to affect some organizations' operations and policies. Those entities who desire to maintain their tax-exempt status must ensure they have policies and practices in place that comply with Form 990's heightened reporting requirements or else risk losing their tax-exempt status.

1 "The 2011 Form 990: More than Simple Tinkering at the Margins" By Michael N. Fine & Mary K. Samsa, McDermott, Will & Emery LLP, Posted on American Health Lawyers Association, February 10, 2012,

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http://www.healthlawyers.org/News/Health%20Lawyers%20Weekly/Pages/2012/February%202012/February%2010%202012/The2011Form990MoreThanSimpleTinkeringAtTheMargins.aspx (Accessed 02/28/12).

2 Ibid.

3 Ibid.

4 "IRS Releases Final Form 990 with Changes for Joint Ventures" By Bloomberg BNA, January 24, 2012, http://www.bna.com/irs-releases-final-n12884907414/ (Accessed 02/28/12).

5 Fine, "The 2011 Form 990: More than Simple Tinkering at the Margins," February 10, 2012.

6 Ibid.

7 Ibid.

8 Ibid.

9 Ibid.

10 Ibid.

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