

IRS Form 990: New Questions About Executive Compensation and Foreign Grants

By Charles M. Watkins

FOR THE FIRST TIME IN SEVERAL YEARS, the IRS has added significant new questions to IRS Form 990, *Return of Organization Exempt From Income Tax*, the annual information return required to be filed by most tax-exempt organizations (EOs).¹ These new questions require each EO filing Form 990 to provide additional information about: (1) whether it has a conflict of interest policy; (2) compensation of directors, officers, and employees; and (3) foreign grants and bank accounts.

The changes described below appear on draft forms available on the IRS's website at www.irs.gov (enter Form 990 in the search field). However, the IRS is unlikely to make significant changes before releasing the final version of the forms.

Compensation questions

Part V of Form 990, which formerly asked for information about officers, directors, trustees and key employees, has been subdivided into Parts V-A and V-B. Part V-A now asks for information about compensation paid to *current* officers, directors and key employees, and Part V-B asks for information about payments to *former* officers, directors, and key employees. In addition, new questions have been added to Part V-A asking: (1) the total number of officers and directors permitted to vote at board meetings; (2) about family and business relationships among the officers, directors, and key employees; (3) whether any officers, directors, or key employees receive compensation from organizations related to the reporting organization by "common supervision or common control;" and (4) whether the EO has a written conflict of interest policy. These questions are like those now asked on IRS Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3)*, and will provide the IRS with a continuing look at this information. Explanations of family relationships and compensation from "related" organizations are required.

The IRS is expanding the scope of "related organizations." For years before 2005, the instructions stated: "A 'related organization' is any entity (whether tax-exempt or taxable) that the filing organization directly or indirectly

owns or controls, or that directly or indirectly owns or controls the filing organization." However, the draft Form 990 refers to "other organizations ... that are related to this organization through common supervision or common control." Thus, it appears that organizations that share staff and/or some board members (but not a majority) may now be "related," and thus be required to disclose additional compensation arrangements, even though they are not in a "control" relationship. The instructions (not yet available) will tell the tale.

In addition, Form 990, Schedule A, Part II has been expanded to require information about independent contractors who provide services other than "professional services."

Foreign grant bank accounts

Part II, Line 22 (Statement of Functional Expenses) and Part III (Statement of Program Services) now ask if "grants and allocations" include any "foreign grants." Because the instructions for Form 990 have not been released, the definition of "foreign grants" remains unclear. For example, besides grants to foreign organizations, does the definition include grants to branch offices, or to controlled or otherwise related affiliates located or operating in foreign countries?

Finally, Question 91 has been expanded to ask for information about foreign bank accounts and offices, including a reminder that individuals controlling a foreign bank account may need to file Form TD 90-22.1, *Report of Foreign Bank and Financial Accounts*.

The changes the IRS has made are consistent with its interest in transparency and in understanding relationships between and among EOs that share directors, officers, or key employees, and the risks associated with foreign grants. Individuals responsible for providing information to an EO's accountant or other Form 990 preparer will need to be gathering this new information well ahead of time to ensure that the Form 990's filing is not delayed past the due date. In addition, governing boards will need to ensure that they, too, understand the complete compensation package that key employees received from all "related" organizations, and that they have taken reasonable steps to ensure that foreign grants, like domestic grants, are used for their intended charitable and/or religious purposes.

¹ In general, only churches, associations of churches, their integrated auxiliaries, and EOs with gross revenues of less than \$75,000 over the most recent 3-year period are exempt from filing Form 990.

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