

NEW IRS FORM 990

Paul A. Burkett
January 26, 2009

RATH YOUNG PIGNATELLI

National Impact. Uniquely New Hampshire.

www.rathlaw.com

One Capital Plaza
Concord, New Hampshire 03301
(603) 226-2600

Why Are We Here?

- New Form 990 is first major revision since 1979
- Multi-year IRS project – final Form 990 released December 2007
- New “core” form and many new schedules (not all apply)
- A learning experience for all!

Focus of Changes

- Transparency – snapshot of key financial and operating information on front page
- Governance – disclosure of non-mandatory practices to increase tax compliance
- Organization – 16 schedules instead of 2!
 - Formal schedules for some items previously “attached”
 - Expand existing Schedule A (Supplemental Information) into 4 separate schedules
 - Some new information requirements

Benefits and Burdens – The Party Line

- IRS believes most organizations will benefit from use of new Form 990 because standardization of presentation (rather than free-form “attachments”) will ease compliance
- IRS acknowledges (and intended) that organizations with more complicated compensation arrangements, related entity structures and activities that raise compliance concerns will have increased administrative burdens

Be Not Afraid!

- New Form 990 allows you to “tell your story”
- Much disclosure is the same as in prior form – private school questionnaire the same but moved from Schedule A to new Schedule E
- Some disclosures more relaxed – threshold for reporting compensation increased from \$50,000 to \$100,000
- Some tools provided for filling out form
- Transition rule will allow smaller organizations to delay full implementation of new Form 990

Tools to Help Complete Form

- Glossary of key terms
- Checklist of required schedules
- Sequencing list

Transition Rule

- Three-year phase-in – more filers will use Form 990-EZ in 2008- 2009
- Can use Form 990-EZ:
 - For 2007, if receipts < \$100,000 and total assets < \$500,000
 - For 2008, thresholds are \$1MM/\$2.5MM (185,000 more EZ filers than 2007)
 - For 2009, \$500K/\$1.25MM (140,000 more)
 - Thereafter, \$200K/\$500K

“New” Form 990-EZ

- Not re-formatted
- No new disclosure requirements in basic form
- But some new 990 Schedules required to be used

Same vs. New – Core Form

Same

- Program service accomplishments
- Tax compliance questionnaire
- Financial statements

New

- Summary information
- Governance disclosures
- Accounting methods and reviews

Summary – Activities and Governance

- Narrative description of mission or most significant activities
- Make-up of board – total directors and number of independent directors
- Total number of employees and volunteers
- Unrelated business revenues and income

Summary – Financial Information

- Prior year and current year:
 - Contributions and grants received
 - Program revenues
 - Investment income
 - Grants made
 - Benefits paid to or for members
 - Employee compensation and benefits
 - Fundraising fees and expenses
 - Total assets and liabilities

Governance

- New Form 990 requests information not required by the Internal Revenue Code but important to aid compliance
- New Schedule O provides form to supplement responses and allow organization to tell its own story

Governance – Management

- Number of independent directors
- Management contracts
- Any material diversion of assets
- Contemporaneous documentation of meetings or written actions
- Local chapters or affiliates
- Internal process to review return

Governance – Policies

- Conflicts of interest
- Whistleblowers
- Document retention and destruction
- Compensation
- Joint ventures

Compensation – Covered Persons

- Report all directors and officers regardless of compensation
- Report up to 20 “key employees”:
 - >\$150,000 compensation
 - Responsibility for at least 10% of organization’s activities
- Report up to 5 others with compensation >\$100,000
- Compensation includes most benefits

Compensation – Additional Information

- Supplemental compensation:
 - Travel
 - Tax payments
 - Housing
 - Memberships
 - Personal services
 - Severance, change of control, retirement
- Contingent compensation
- How compensation determined

Same vs. New – Schedules

Same

- Public charity status
- Contributors
- Lobbying
- Private schools
- Fundraising/Gaming
- Grantmaking
- Insider transactions
- Asset dispositions

New

- Financial data
- Foreign activities
- Hospitals
- Compensation
- Tax-exempt bonds
- In-kind contributions
- Related entities/joint ventures

THANK YOU!