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NYSSCPA

certified | public accountants

530 fifth avenue, new york, ny 10036-5101
www.nysscpa.org

January 29, 2003

Internal Revenue Service
1111 Constitution Avenue, NW
Washington, DC 20224

Attn: David W. Jones
T:EO:RA

By email to *TE/GE-EO-1@irs.gov

Dear Mr. Jones:

The New York State Society of Certified Public Accountants, the oldest state accounting association, represents 30,000 CPAs whose daily work activities will be substantially affected by the *Internal Revenue Service Announcement 2002-87 on Proposed Revisions to IRS Form 990, "Return for Organization Exempt from Income Tax."* The NYSSCPA is grateful for the opportunity to comment on the IRS Form 990 proposed changes.

The NYSSCPA Exempt Organizations Committee drafted the attached comments. Members of the committee would be pleased to meet with you for additional discussion about the comments. Please contact Martin S. Cantor, chair of the committee, at (212) 840-3456 or Ernest J. Markezin, NYSSCPA staff, at (212) 719-8303 if such discussions would be helpful.

Sincerely,

Jo Ann Golden
President

Attachment

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**NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC
ACCOUNTANTS**

COMMENTS PURSUANT TO INTERNAL REVENUE SERVICE

**ANNOUNCEMENT 2002-87 ON PROPOSED REVISIONS TO IRS
FORM 990, RETURN FOR ORGANIZATION EXEMPT FROM
INCOME TAX**

JANUARY 28, 2003

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NEW YORK STATE SOCIETY OF CERTIFIED PUBLIC ACCOUNTANTS
COMMENTS PURSUANT TO INTERNAL REVENUE SERVICE
ANNOUNCEMENT 2002-87 ON PROPOSED REVISIONS TO IRS FORM 990,
RETURN FOR ORGANIZATION EXEMPT FROM INCOME TAX

JANUARY 28, 2003

General Comments

The NYSSCPA commends the Service for seeking comments prior to finalizing changes to Form 990, Return for Organization Exempt from Income Tax, and welcomes the opportunity to set forth its specific comments on these proposed changes.

Specific Comments

1. Should it be mandatory for all organizations to complete columns (B), (C), and (D) of Part II? (Note, currently all Form 990 reporting organizations must provide total functional expenses and §501(c)(3) and (4) organizations and §4947(a)(1) trusts are required to provide amounts applicable to program services, management and general, and fundraising.)

Potential benefits resulting from additional reporting should be measured against the cost or reporting burden. The requirement for all organizations to complete columns (B), (C) and (D) of Part II would not necessarily result in more meaningful reporting by these organizations.

In addition, the extent to which this information would satisfy state and local filing requirements would be minimal because of the unique nature of their current filing requirements. Therefore, any current changes in this section should not result from current state and local filing requirements.

2. Should organizations be required to complete Part II in accordance with Statement of Position (SOP) 98-2 (financial accounting standards for accounting for costs of joint activities)?

While greater uniformity and better comparison of fundraising costs across organizations is desirable, it is important to take into account that SOP 98-2 neither proscribes nor prohibits any allocation methods; rather, it includes a discussion to help users determine whether an allocation is reasonable and provides illustrations to help explain the discussion. Currently, many smaller

organizations do not prepare financial statements (because they are not required to under state statutes or by contractual requirements such as a financial lending institution or funding source) in accordance with Generally Accepted Accounting Principles (GAAP), and therefore they are not required to adopt SOP 98-2. Many of these smaller organizations that have not adopted SOP 98-2 would find the mandatory imposition of SOP 98-2 costly and burdensome. Consequently, Form 990 should not require reporting organizations to complete Part II in accordance with SOP 98-2, unless it is applicable and required for financial statement reporting purposes. Generally Accepted Accounting Principles (GAAP) as adopted by the Financial Accounting Standards Board (FASB) should determine the applicability of SOP 98-2 to financial statements.

3. Should Form 990 be changed to provide the Service, states and the public with additional information about fundraising practices?

On balance, information about fundraising activities reported on the existing Form 990, properly completed, is adequate but has room for improvement.

Increased accountability can be achieved with the disclosure of additional details of professional fundraising fees reported on Part II, line 30. For example, Schedule A, Part II could be modified to include details (i.e., name, address, type of service and compensation) for all professional fundraising fees, regardless of amount. Alternatively, an additional Schedule A section can be added specifically to provide information regarding professional fundraising fees.

Committee members' experience suggests that confusion runs through the general public about what constitutes "direct expenses other than fundraising expenses" and proper reporting on Part I, line 9b, rather than Part II, column (D). Similarly, there is confusion regarding special events that generate both revenue and contributions, specifically the contribution amount to be reported both on Part I, lines 1a and 9a (within the parentheses). While Form 990 instructions are well written and have helpful examples, the Service could increase public awareness of proper reporting by including this area in the "Checklist for a Properly Completed Return." (e.g., "Be aware that special events and activities may generate both contributions and revenue reported on Part I, lines 1 and 9. See Part I instructions for proper reporting.") In addition, TE/GE Education and Outreach could include this area in conferences, workshops, and seminars. EO staff could also prepare a handout on proper reporting of fundraising activities.

4. Should Form 990 be changed to require §501(c)(4), (5) and (6) (i.e., including social welfare organizations, labor organizations, and business leagues, respectively) and §527 organizations (i.e., political organizations) to complete all or part of Schedule A?

Form 990 should require §501(c)(4) organizations to complete Sections I and II of Schedule A because this type of organization operates in the public interest. Completion of these sections would increase accountability.

5. Should Form 990 be changed to add a new part for reporting fund transfers and transactions between §501(c)(4), (5), or (6) organizations and §527 organizations?

Form 990 should not be changed to add a part for reporting fund transfers and transactions between non-charitable exempt organizations and political organizations. Because contributions to non-charitable exempt organizations are member driven, additional reporting requirements would not benefit the public. §527 organizations are subject to their own reporting requirements that disclose the transfer of funds to these organizations. In addition, indirect expenses are not currently defined under the regulations (§1.527-6(b)(2)) and, as a result, there is no guidance to determine the nature and amounts of exempt function expenditures to be reported.

6. Should Form 990 be changed to move Part VII of Schedule A to the Form 990 and require all §501(c)(3), (4), (5) and (6) organizations and §527 organizations and §4947(a)(1) trusts that are not private foundations to complete?

The benefits of increased public disclosure concerning information regarding transfers to and transactions and relationships with noncharitable exempt organizations warrant that this proposed modification should be made. Again, this information, especially the transfers to noncharitable exempt organizations, would increase accountability and bring public confidence to a higher level in both the exempt area and the political arena.

7. Are there any other changes to the form that would improve the information reported about §527 organizations?

Committee members have observed that there is confusion by the general public about the filing requirements of various §527 organizations. This includes "who must file" and, for those §527 organizations required to file, which sections of Form 990 are required to be completed. Appropriate guidance to reduce such confusion among preparers and the public could come from providing a grid or flowchart with Form 990 instructions or on the. In addition, the instructions to Form 990 currently do not provide guidance for §527 organizations reporting grants and allocations on Part II, line 22 as well as Schedule B contributions requiring disclosure. Incorporating such instructions would improve the level of compliance.

8. Should a separate schedule of grants to foreign organizations be required in light of the events of September 11, 2001?

A separate schedule of grants to foreign organizations would not be necessarily beneficial. The current Form 990 requires an attached schedule for grants made by exempt organizations requiring (a) each class of activity; (b) donee's name, address, and the amount given; and (c) (in the case of individuals) relationship of donee if related by blood, marriage, adoption, or employment to any person or corporation with an interest in the organization, such as a creator, donor, director, trustee, officer, etc. The current schedule should be modified to require reference to the geographic area involved.

9. Should domestic charities conducting foreign activities be required to provide more specific information about the flow of funds involved in these activities, or about the recipients of these funds?

The reporting requirements for Part III (Statement of Program Service Accomplishments for each of the four largest program services) should be modified to include the locations of these activities if they are being conducted outside the United States. This could provide useful information to the reader of Form 990 without substantially increasing the burden of compliance to organizations.

In addition, it would be beneficial for Form 990 to include a question similar to that found on Forms 990-T and Form 1040, Schedule B regarding financial account(s) in a foreign country. If the organization has an interest in or signature or other authority over a financial account in a foreign country, it would be required to indicate "yes", and the name of the foreign country would require disclosure. The organization may also be required to file Treasury Form TD F 90-22.1, report of Foreign Bank and Financial Accounts.

10. Should transactions other than grant-making, such as sales or leases where funds flow outside the United States, be more extensively reported?

More specific information about sales or leases with funds flow outside the United States would not necessarily be beneficial enough to outweigh the compliance burden to reporting organizations.

11. Should exempt organizations be required to disclose on Form 990 whether they have adopted conflicts of interest policies or have independent audit committees?

Boards of directors of nonprofits should have structures in place to avoid problems before they occur. Moreover, the adoption of conflict of interest policies can substantially increase corporate responsibility and governance at a relatively small cost to the reporting organization. In addition, under the regulations of §4958, explaining when intermediate sanctions can be imposed, members of the authorized body having a conflict of interest must be identified and documented to establish the rebuttable presumption of reasonableness.

Nonetheless, because there is no legal or statutory requirement for organizations to adopt conflict of interest policies, it is not appropriate for the Service to make such an inquiry about their existence on Form 990.

Organizations should be encouraged however to adopt conflict of interest policies and the Service can increase public awareness of corporate responsibility in a number of ways, including:

- A separate section to Form 990 instructions and posting them to the IRS website
- Examples of conflict of interest policies
- Coverage of these problems in TE/GE Education and Outreach conferences, workshops, and seminars
- An EO staff handout with guidance on conflict of interest policies.

Finally, conflict of interest policies were discussed in CPE for hospitals and other health care organizations in 1997 and 2000. The Service could provide material on governance for non-profits (not limited to hospitals and other health care organizations) in the next CPE Text.

While the existence of an independent audit committee could certainly be beneficial, many small organizations are not required to have an independent public accountant's audit report. To require these organizations to have an independent audit committee and an independent public accountant's audit report would be unnecessarily costly and burdensome. Therefore, exempt organizations should not be required to disclose on Form 990 whether they have an independent audit committee.

12. Should noncharitable exempt organizations be required to disclose information about transactions with its substantial contributors, officers, directors, trustees, and key employees similar to the disclosures required in Schedule A, Part III, Question 2?

As in (4) above, Form 990 should require §501(c)(4) organizations to complete Sections I and II of Schedule A.

13. Should exempt organizations be required to disclose on Form 990 any information in addition to that required in Schedule A, Part III, Question 2 about transactions or financial relationships with its substantial contributors, officers, directors, trustees and key employees?

The information currently requested is sufficient to provide the IRS with the information required by §6033.

14. Are there any other changes to the Form 990 or other requirements that would increase public confidence in the integrity of exempt organization disclosures?

At this time there are no other reporting changes that would increase public confidence in the integrity of exempt organization disclosures. There, are however, two related issues the committee would like to address.

- Although the IRS has not requested comments on this matter, Form 990 should include a section for the organization to appoint a third party designee. This would allow another person, typically the preparer, to discuss the return with the IRS without the requirement of securing a duly executed Power of Attorney.
- U.S. Department of the Treasury issued on November 8, 2002 **Anti-Terrorist Financing Guidelines: Voluntary Best Practices for U.S. - Based Charities**, available in a six-page document from U.S. Treasury web site at <http://www.treas.gov/press/releases/docs/tocc.pdf>. The Treasury deserves commendation for developing anti-terrorist financing guidelines. If the intention of the Treasury is to make these guidelines mandatory, it would not be reasonable to either impose the responsibility for compliance on independent CPAs providing financial or technological support to U.S.-based charities. It would be inappropriate for the Treasury to assume that independent CPAs should be responsible for U.S.-based charities to adopt and follow these guidelines.