

Meet the New Form 990:

What Every Arts Organization Should Know

Presented by:

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The Temperature Continues to Rise

- IRS Intensity unrelenting
- Congress & the Economy
- Press and Media
- States



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- 2008 Form 990 – Action Plan



New Form 990

- Money oriented – Transactions will be visible
- Board Involvement – The Form forces participation
- Expansive – Size, Time and Effort
- Radical changes
- Promotes Transparency
- “Predictive indexing” – Efiling



BIG Changes

- Compensation transparency
- Community Benefit
- Related Party transactions
- Disqualified Persons and Related Party questions from 2006 expanded
- Board of Directors are questioned on compliance and governance



The Schedules

- Schedule A – Non-private Foundation Status
- Schedule B – Donations
- Schedule C – Political Campaign and Lobbying Activities
- Schedule D – Supplemental Financial Statements
- Schedule E – Private Schools
- Schedule F – Foreign Activities
- Schedule G – Fundraising & Gaming Activities
- Schedule H – Hospitals
- Schedule I – Grants and other Assistance to other Organizations
- Schedule J – Compensation Information
- Schedule K – Tax Exempt Bonds
- Schedule L – Transactions with Interested Persons
- Schedule M – Noncash Contributions
- Schedule N – Liquidation, Termination, Dissolution
- Schedule O – Supplemental Information to Form 990
- Schedule R – Related Organizations and Unrelated Partnerships

Importance of an Independent Board

New Private Letter Ruling

2008 30028

- Organization did not qualify as tax exempt
- Lack of Independence
- No Conflict of Internal Policy Adopted
- Signals a New Tone at the IRS



Compensation!!

New Form 990 Part VII

(A) Name and Title	(B) Average hours per week	(C) Position (check all that apply)						(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
		Individual trustee or director	Institutional trustee	Officer	Key employee	Highest compensated employee	Former			
Schedule J - Supplemental Comp...										

2 Total number of individuals who received more than \$100,000 in reportable compensation from the organization

Two for the price of one – SCH J Compensation Information

- All Formers, anyone making more than 150k including “other” and people paid by unrelated orgs for services for the org.
- Leading questions on policy and perks
 - Looking to see if organization follows an “Accountable Plan”
- The “Other” and non base compensation gets detailed.
- How is compensation “established”?



Schedule J – Supplemental Compensation Information

- Includes selected individuals listed in Core form, Part VII
- Includes amounts paid by the reporting organization and any related organizations
- Amounts reported as compensation are based on Form W-2 information for the calendar year ending with or within the organization's fiscal year
- Removed reporting of qualified retirement plan amounts
- Added reporting of non-taxable expense reimbursements



Disqualified Person Compensation

2007 Forms

The New 990 Is Not Totally New

6 Compensation not included above, to disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B)

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- Identify DP's up front (Need for 990)
- Voting members of a Board
- CEOs, COOs, Treasurers, CFOs
- Persons who at any time during the previous 5 years were in a position to exercise substantial influence over the affairs of the organization
- Family members
- 35 % controlled entities

5 Receivables from current officers, directors, trustees, key employees or other related parties. Complete Schedule L

	5	
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6 Receivables from other disqualified persons (as defined under section 4958(f)(1)) and persons described in section 4958(c)(3)(B). Complete Schedule L

	6	
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Practical Steps - Compensation

- Consider Establishing A Dedicated Compensation Committee
 - Adopt a written charter
 - Independent directors
 - Authorized to approve
 - Full board approval for CEO? IRS says Yes!
- Adopt A Written Compensation Philosophy



Determining Comparability

- Appropriate Data As to Comparability Includes:
 - Compensation levels paid by similarly situated organizations, taxable and tax-exempt;
 - Independent compensation surveys compiled from independent firms;
 - Actual written offers from similar institutions;
 - Independent appraisals of the value



You Must Comply (Contemporaneous Documentation)

- Prove intent to treat as compensation
- Avoid treatment as an automatic excess benefit transaction, and
- Start statute of limitations running

What Will Hurt?

- Benefits not on a W-2
- Unaccountable plans



Fringe Benefits

Don't Forget to Include:

- Health Insurance Plans
- Pension Plans
- Deferred Compensation
- Auto Allowances
- Expense Accounts
- Housing Allowances
- Club Dues
- Cell Phones
- Spousal Travel
- Loans without security



How Do We Avoid Intermediate Sanctions?

Section B

3 For the CEO, Executive Director, Treasurer, and CFO listed in Section A, did the process for determining compensation include a review and approval by independent members of the governing body, comparability data, and contemporaneous substantiation of the deliberation and decision?

Yes	No

Avoiding Intermediate Sanctions

- It's All About Reasonableness
- It's All About Process
- It's All About Documentation
- It's All About Reporting

Be Proactive!



Protection is the Key!

The Rebuttable Presumption of Reasonableness

1. Transaction approved in advanced of independent board
2. Comparability data used prior to decision
3. Adequate documentation to support the basis for the decision



Professional opinion gives more protection to EO. CPA or attorney with valuation experience. Protects organizational manager from 10% penalty.



Related Parties/Conflicts of Interest

- 28 During the tax year, did any person who is a current or former officer, director, trustee, or key employee:
- a Have a direct business relationship with the organization (other than as an officer, director, trustee, or employee), or an indirect business relationship through ownership of more than 35% in another entity (individually or collectively with other person(s) listed in Part VII, Section A)? *If "Yes," complete Schedule L, Part IV*
 - b Have a family member who had a direct or indirect business relationship with the organization? *If "Yes," complete Schedule L, Part IV*
 - c Serve as an officer, director, trustee, key employee, partner, or member of an entity (or a shareholder of a professional corporation) doing business with the organization? *If "Yes," complete Schedule L, Part IV*

28a	
28b	
28c	

Schedule L

Part II Loans to and from Interested Persons

To be completed by organizations that answered "Yes" on Form 990, Part IV, line 26, or Form 990-EZ, Part V, line 38b.

(a) Name of interested person and purpose	(b) Loan to or from the organization?		(c) Original principal amount \$	(d) Balance due \$	(e) In default?		(f) Approved by board or committee?		(g) Written agreement?	
	To	From			Yes	No	Yes	No	Yes	No
Total				▶ \$						

Part III Grants or Assistance Benefitting Interested Persons

To be completed by organizations that answered "Yes" on Form 990, Part IV, line 27.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of grant or type of assistance

Part IV Business Transactions Involving Interested Persons

To be completed by organizations that answered "Yes" on Form 990, Part IV, lines 28a, b, or c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction \$	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No

Excess Benefit Transaction

SCHEDULE L
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Transactions with Interested Persons

▶ To be completed by organizations that answered "Yes" on Form 990, Part IV, lines 25a, 25b, 26, 27, 28a, 28b, or 28c, or Form 990-EZ, Part V lines 38b or 40b.

OMB No. 1545-0047

2008

Open To Public Inspection

Name of the organization

Employer identification number

Part I Excess Benefit Transactions (501(c)(3) and (c)(4) organizations only)

To be completed by organizations that answered "Yes" on Form 990, Part IV, lines 25a or b, or Form 990-EZ, Part V, line 40b.

1	(a) Name of disqualified person	(b) Description of transaction	(c) Corrected?	
			Yes	No

2 Enter the amount of tax imposed on the organization managers or disqualified persons during the year under section 4958 ▶ \$ _____

3 Enter the amount of tax, if any, on line 2, above, reimbursed by the organization ▶ \$ _____

3 Elements:

1. Must Involve a Tax Exempt Organization
2. Must Involve a Disqualified Person
3. Transaction between 1&2 with 'Uneven Consideration'



Section 4958 Excise Taxes

Intermediate Sanctions

- Disqualified Person
 - 25% Tax on 'Excess'; additional 200% if the transaction is not timely corrected
- Organization Manager (powers & responsibilities similar to those of officers, directors or trustees)
 - Approved Transaction knowingly, willfully, and without reasonable cause; IRS bears burden of proof
 - 10% Tax ; max \$20,000 (up from \$10,000 PPA)
- No Penalty on the EO



Schedule R – Related Organizations

- Listing of related organizations by type, disregarded entities, tax-exempt, partnerships, corporations and trusts
- Asks for certain operational information on each related entity
- Must list transactions with related orgs
- Disclosure of transactions with related organizations and noncharitable exempt organizations.



Part 1 Summary – Board Members

Part I Summary

Activities & Governance

- 1 Briefly describe the organization's mission or most significant activities:
.....
.....
.....
- 2 Check this box if the organization discontinued its operations or disposed of more than 25% of its assets.
- 3 Enter the number of voting members of the governing body (Part VI, line 1a)
- 4 Enter the number of independent voting members of the governing body (Part VI, line 1b)
- 5 Enter the total number of employees (Part V, line 2a).
- 6 Enter the total number of volunteers (estimate if necessary)
- 7a Enter total gross unrelated business revenue from Part VIII, line 12, column (C)
- b Enter net unrelated business taxable income from Form 990-T, line 34

Prior Year

Board Review of Form 990

Part VI Governance, Management, and Disclosure (Sections A, B, and C request information about policies not required by the Internal Revenue Code.)

Section A. Governing Body and Management

For each "Yes" response to lines 2–7b below, and for a "No" response to lines 8 or 9b below, describe the circumstances, processes, or changes in Schedule O. See instructions.

		Yes	No
1a	Enter the number of voting members of the governing body		
1b	Enter the number of voting members that are independent		
2	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee?		
3	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person?		
10	Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990		
11	Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O		

New Policies & Procedures

- Written document retention and destruction policy
- Written whistleblower policy
- Written policy or procedure to review the organization's investments or participation in disregarded entities, joint ventures, or other affiliated organizations (exempt or non-exempt)
- Written policy that requires the organization to safeguard its exempt status with respect to its transactions and arrangements with related organizations
- Written conflict of interest policy
- Governing body approval of 990 before filing?
- For Hospitals:
 - Charity care policy
 - Written debt collection policy
- Schedule J - Compensation:
 - Written policy concerning payment / reimbursement of travel and entertainment expenses.

Blanks will not work – YOU MUST COMPLY

Plans must be implemented by end of specific FYE in order to say Yes



Unrelated Business Income

IRS “ aware & interested in under-filing and losses”

Now it will be highlighted on Front page of 990

- Lab fees
- Debt financed income
- Retail Pharmacy
- Advertising vs. sponsorships
- Joint ventures
- Equipment Rentals
- Rental Income from debt-financed property



Public Disclosure Requirements

- Must make available for public inspection
 - Last three years of Form 990 & Form 990-T
 - Application for Exempt Recognition (Form 1023 or Form 1024)
- If request is made in person – must be made available same day
- If request was made in writing – must be submitted within 30 days.



Substantiation Requirements

- Written acknowledgement for donations of \$250 or more in a day. Must contain:
 - Name of organization,
 - Amount of cash contribution,
 - Description (but not value) of non-cash contribution,
 - Statement that no goods or services were provided by the organization or a good faith estimate of the value received.



Quid Pro Quo Contributions

- Payment that is part donation part for services/goods
- If total is more than \$75, a written disclosure statement must be provided.
 - Inform donor that only the excess over FMV is deductible for federal tax purposes &
 - Provide donor with a good faith estimate of the FMV of goods/services received.



Next Steps

- Educate Board/Management about excess benefit transactions, disqualified persons, and their responsibility as a board member
- Identify areas of concern – develop action plans
- Consider restructuring financial arrangements and procedures that present the best views to the public
- Annually create a list of potential disqualified persons
- Complete the rebuttable presumption steps for all disqualified persons
- Adopt new policies and procedures outlined in new 990
- Perform Arbitrage Rebate Calculation and quantify private use on an annual basis



Questions??

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