



Adjutant/Quartermaster Conference

Kansas City, MO
March 22 – 25, 2009

Agenda

- IRS/Tax Issues – New 990



IRS Tax Issues

- IRS Priorities
- Group Exemptions
- New 990



IRS Priorities

- New 990 Implementation/Enforcement
- Hospitals & Universities – Proprietary Activities
- Employment Tax Issues



Group Exemptions

- A central organization may apply for a group exemption if:
 - All subordinate units are affiliated with the central organization. Similar in structure, purposes and activities.
 - All subordinate units are subject to the central organization's "general supervision and control."
 - All subordinate units must be exempt under the same section of the code.

- Once a Group Exemption is granted, central organizations can add and delete subordinate units on their annual filing.



Group Exemptions (cont.)

- Group Exemptions have traditionally been obtained by Departments.
- Prior to 1972, typical group exemptions were obtained under 501(c)(4), social welfare organizations.
- In 1972, Congress passed 501(c)(19), an exemption for veterans organizations and auxiliaries.
- Maryland Problem – Catch 22
 - Non members cannot use facilities operated by a 501(c)(19).
 - Operating a bar is not an authorized exempt purpose for a 501(c)(4).



Group Exemptions (cont.)

- IRS wanted all Departments to move to 501(c)(19), but imposed a very difficult process for doing so.
- As a result, the present situation remains:
 - 43 Departments have group exemptions under 501(c)(19).
 - 8 Departments have group exemptions under 501(c)(4).
 - 4 Departments have no group exemption.
 - 3 Departments are not eligible for a group exemption.
 - ✚ Overseas Departments and Posts.



Group Exemptions (cont.)

- For Departments without a group exemption.
 - Unless Posts applied for individual exemptions, they are not tax exempt.
 - Posts with less than \$25,000 gross receipts will need to file a notice, or, after 3 years, will not be tax exempt. If they file a notice and have never officially applied for an exemption, the IRS will “discover” them.



Group Exemptions (cont.)

- For Departments with a group exemption.
 - Critical to make sure all posts are included on list and that all Posts file either a 990, 990EZ or Notice.
 - Question whether Districts and County Councils should be added to annual list submitted by Departments.
 - ✚ Run all revenue through Department?



Group Exemptions (cont.)

➤ Issues For Discussion

- Are Posts obtaining necessary EINs (990N Issue)?
- What have Departments been doing with respect to exemptions and 990s/990Ns for Districts?
- What is happening with respect to Mens Auxiliaries?
- What is the status of Ladies Auxiliary group exemption project?



New 990

- Organizations that must use the new form:
 - 2009 – Gross Receipts greater than \$1,000,000 or Total Assets greater than \$2,500,000.
 - 2010 – Gross Receipts greater than \$500,000 or Total Assets of \$1,250,000.
 - 2011 – Gross Receipts greater than \$200,000 or Total Assets of \$500,000.



990 Part I

1. Mission

- “Mission,” not “Purpose”
- Draft included in Folder

2. Discontinued Operations/Disposition of Assets

3. Number of Voting Members of Governing Body

- What is the Governing Body?
 - Council/Post Floor
 - Explanation in Schedule O
- ✚ Draft included in folder

4. Independent Members

- Not a compensated officer
- Did not receive compensation greater than \$10,000 other than expenses under an accountable plan or “reasonable” compensation as a board member
- No other personal transactions with the organization



990 Part I (cont.)

5. Number of Employees

- Total during year or total at year end?
- Best approach – probably year end.

6. Number of Volunteers

- What volunteers – Department – Post
- Draft included in folder

7. Unrelated Business Income

- Accountant question – Newspaper Advertising

8–12 Revenue

- Summary of Information from Part VIII

13–19 Expenses

- Used to be just 4 categories
- Now – Salaries and Benefits, Fundraising Fees and Fundraising Expenses Up Front.

20–22 Net Assets/Fund Balances



990 Part III

1. Mission
 - Again, “Mission” vs. “Purpose”
2. New Program Services
 - Disclose on Schedule O
3. Cessation of Program Services
 - Disclose on Schedule O
4. Describe Exempt Purpose “Achievements”
 - Same requirement as in old 990 and 990EZ
 - Need to toot our horns. Need to use the stats we spend so much effort accumulating.



990 Part IV

➤ Supplemental Financial Statements

1. Schedule A – Public Charity Status; Public Support

- Only applies to 501(c)(3)
- If you fail the test, may be treated as a Private Foundation and subject to excise tax
- 990 and 990EZ

2. Schedule B – Schedule of Contributors

- Must file with respect to any donor aggregating more than \$5,000
- Includes Grant Money from National
- Not open to public Inspection
- 990 and 990EZ



990 Part IV (cont.)

➤ Supplemental Financial Statements

3. Schedule C – Part I – Political Campaign and Lobbying Activity
 - Direct or Indirect Campaign Activities on candidates
 - Shouldn't have any
4. Schedule C – Part II – 501(c)(3) Lobbying Activity
 - If you have a (c)(3) foundation and have to file a 990, need to make sure the Foundation is not attempting to influence legislation, including influencing public opinion on a legislative matter
 - 990 and 990EZ
5. Schedule C – Part III – 501(c)(4), (5) and (6) Organizations use of dues for campaign and lobbying activities
 - Need to be able to say “NO”



990 Part IV (cont.)

- Supplemental Financial Statements
 - 6. Schedule D, Part I – Donor Advised Funds
 - 7. Schedule D, Part II – Conservation Easements
 - Open Space, Historical Structures, Posts?
 - 8. Schedule D, Part III – Collections of Art, Historical Treasures
 - 9. Schedule D, Part IV – Trustee or Custodian of funds Owed to Third Parties
 - 10. Schedule D, Part V – Endowment Funds
 - 11. Schedule D, Parts VI – X – Ownership of Various Assets
 - IRS is looking for difficult to value assets and liabilities to force disclosure of bogus valuations and valuation methods
 - 12. Schedule D, Parts XI – XIII – Reconciliation of Tax Return to Audited Financial

990 Part IV (cont.)

➤ Supplemental Financial Statements

13. Schedule E– Schools

14. Schedule F, Part I – Office, employees or agents outside the U.S. or aggregate revenues or expenses from activities outside the U.S. of \$10,000.

- Typically wouldn't apply – MAP Grants to Overseas units?

15. Schedule F, Part II – Aggregate of more than \$5,000 to organizations or entities outside U.S.

- Typically, wouldn't apply – MAP Grants or Assistance to Overseas Units.

16. Schedule F, Part III – Grants to individuals outside the U.S. totaling \$5,000.

- Money going to individuals overseas.
- Unclear whether it is \$5,000 to one individual or \$5,000 total.



990 Part IV (cont.)

➤ Supplemental Financial Statements

17. Schedule G, Part I – Fundraising Services

- Amounts paid to non-employee, independent contractors
- Includes mail houses, telemarketers, etc. – Any time when a vendor is getting paid to raise money or gets a cut of the money raised

18. Schedule G, Part II – Fundraising Event Revenue

- Aggregate revenue from Fundraising events like dances, auctions, casino nights, door to door sales

19. Schedule G, Part III – Gaming

- Includes all kinds of gaming, including raffles and video Bingo
- Gross revenue, not net

Schedule G is applicable to both 990 and 990EZ



990 Part IV (cont.)

➤ Supplemental Financial Statements

20. Schedule H, Hospitals

21. Schedule I, Parts I and II – Grants to Organizations and Governments

- Grants to another Organization or Governments totaling over \$5,000

22. Schedule I, Parts I and II – Grants to Individuals

- Grants to an individual totaling over \$5,000

23. Schedule J – Compensation

- Refers to Part VII, which is completely about compensation

24. Schedule K – Tax Exempt Bonds



990 Part IV (cont.)

➤ Supplemental Financial Statements

25. Schedule L, Part I – 501(c)(3) and (c)(4) Excess Benefit Transactions
 - An excess benefit transaction is any transaction in which an excess economic benefit is provided to a disqualified person. A disqualified person is a family member or a 35% controlled entity of a disqualified person
 - This is a bad thing to have
26. Schedule L, Part II – Loans to current or former officers, directors, key employees, highly compensated employees and disqualified
 - Applies to all organizations
27. Schedule L, Part III – Grants to officers, directors, trustees, key employees or substantial contributors or persons related to them
 - Applies to all organizations
28. Schedule L, Part IV – Business and family relationship between and among current and former officers and directors
 - Need an acknowledgement each year. Form provided in folder.



990 Part IV (cont.)

➤ Supplemental Financial Statements

29. Schedule M, Part I – Non Cash Contributions Greater than \$25,000 – Gifts in Kind

- IRS is really interested in valuations
- Record Keeping Issue

30. Schedule M, Part II – Contributions of Art, Historical Treasures or Conservation Easements

31. Schedule N, Part I – Liquidation, termination or cessation of operations

32. Schedule N, Part II – Sale, exchange, disposition or transfer of 25% of the “net assets”

33–37. Questions concerning related organization



990 Part V

PART V – Trap For the Unwary

- Inquires about compliance with other tax laws
 - If you answer yes, and you haven't complied, IRS can charge you with perjury as well as pursue the non compliance.
 - If you answer no, then the IRS has a clean shot with your admission of non compliance.
- 1. Compliance with non employment reporting and withholding rules like 1099s, 1098s, W26s.
- 2. Compliance with “all” required federal employment tax returns.
 - Burden is on filer to know what is required.



990 Part V (cont.)

3. Unrelated Business Income Greater than \$1,000 and, if so, has a 990T been filed.
 - Need to be sure you don't have UBIT.
4. Foreign Country Accounts
5. Were you a “party” to a prohibited tax shelter transaction.
6. Solicitation of Donations that are not tax deductible.



990 Part V (cont.)

7. Organizations that may receive tax deductible contributions.

- Section 170 of the IRC authorizes the deductions of contributions to organizations of “war veterans.”
- a/b Goods or Services offered in exchange for a donation of \$75 or more require a disclosure of the value of the goods or services. Must confirm compliance.
- e/f Personal Benefit contracts.
 - Life Insurance, Annuities or Endowments that benefit the donor/transferor or his/her family instead of the organization.
- g. Intellectual Property – Form 8899.
 - Again – IRS looking at valuations and methods of value.



990 Part VI

- Governance, Management Disclosure
 - IRS has taken it upon itself to require disclosures of Governance information not required by the IRC.
 - Need to be able to answer questions the “right” way, the way that satisfies state regulators, watch dog groups and donors.



990 Part VI (cont.)

➤ Governance, Management Disclosure

1. Voting Members/Independent Members of Governing Body.

- Council is governing body, explain Convention in Schedule O – Draft in folder.
- Independence
 - ✚ Not a compensated officer.
 - ✚ Compensation less than \$10,000, other than expenses under an accountable plan.
 - ✚ No personal transactions with the organization.

2. Family or business relationship between and among officers and Council members.

- Disclosure form in folder.



990 Part VI (cont.)

➤ Governance, Management Disclosure

3. Delegation of Control to a Management Company
4. Significant Changes to Organizational Documents
 - National Charter & By Laws; Department Articles of Incorporation and By Laws
 - Changes in key policies like compensation, conflicts of interest
5. Awareness of a Material Diversion of Assets
6. Members of Stockholders
7. Decisions of Governing Body Subject to Approval of Members
 - Convention vs. Council?
 - Explain in Schedule O



990 Part VI (cont.)

➤ Governance, Management Disclosure

8. “Contemporaneous” documentation of meetings or written actions by governing body (and committees with authority to act for the body).
 - Contemporaneous means by the next meeting, or within 60 days, whichever is first.
9. Local Chapters or Branches? Written Policies or Procedures governing activities.
 - Tricky questions – Liability Issues
 - By Laws
10. Is 990 reviewed by the Directors (Council) before filing? Review Process in Schedule O.
11. Officer Mailing Addresses.



990 Part VI (cont.)

➤ Section B – Policies

12. Conflict of Interest – Annual Disclosure of Potential Conflicts

- Need to be able to say yes to both
- Code of Ethics – Acknowledgment

13. Written Whistleblower Policy

- Need to answer yes
- Draft Policy in folder

14. Document Retention & Destruction Policy

- QM Manual

15. Process for Determining Compensation

- Independent Persons, Comparability Data and Substantiation of Deliberation

16. Joint Ventures



990 Part VI (cont.)

➤ Section C – Disclosures

17. List States in which Form is Required to be Filed.
 - Typically only your state and only if you have a charitable registration.
18. Method by which 990 available for Public Inspection.
19. Availability of “Governing Documents, Conflicts Policy and Financial Statements to the General Public.”
20. Name, Address and Phone Number of Person with Books and Records.



990 Part VII

- Compensation of Officers, Directors, Key Employees, Highest Compensated Employees

SECTION A – Compensation

- Not much different than current form

SECTION B – Independent Contractors - \$100,000

- New Requirement
- Includes Professional Fundraisers

