HIGHLIGHTS OF THE REDESIGNED FORM 990

PART II: OPERATIONAL ASSESSMENT FOR CORPORATE COMPLIANCE PROGRAMS

September 28, 2007

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INTRODUCTION

- Impact of Form 990 on Corporate Compliance
- Why COs need to be aware and be involved
- How to engage?
Don’t panic - Engage with management, especially finance to understand issues and how these issues and compliance exposures can be addressed utilizing compliance program processes

- Not new, just greater level of disclosure
- COs not expected to be tax experts

Have a general awareness and understanding of issues – Can you answer board questions?

What level? Identify “subject matter experts” within or for the organization in this area

Form 990 – Information gathered could lead to future rulings, regulations or enforcement action
Scope of Corporate Compliance – Federal Sentencing Guidelines

Basis for Federal Tax Exemption – Community Benefit (Rev. Rul. 69-545)

Preservation of Federal Tax Exemption

Form 990 – Detailed Information About What the Organization is Doing and How It is Doing It.

Form 990 Overlap and Interplay with Fraud and Abuse Issues

Best Practices
Message: Increased disclosures and public access to 990s increases likelihood of governmental and public scrutiny, regulation and enforcement efforts

- July 2003 House E&C Committee on Billing and Collection Practices
- May 2005 Senate Finance Committee Inquiry on Hospital Accounting for Charitable Activities
- March 2006 GAO Survey of Nonprofit Hospitals on Executive Compensation Policies and Practices
- May 2006 IRS Compliance Check Questionnaire for Tax-Exempt Hospitals and Interim Report
- February 2007 IRS Good Governance Practices Discussion Draft
DRUMBEAT ALONG THE POTOMAC

- JUNE 2007 IRS REVENUE RULING 2007-41 RE: PROHIBITED POLITICAL ACTIVITIES FOR TAX EXEMPT ORGANIZATIONS
- JUNE 2007 IRS DRAFT REDESIGN FORM 990
- JULY 17, 2007 SENATE FINANCE COMMITTEE MINORITY STAFF DISCUSSION DRAFT ON NONPROFIT HOSPITAL REFORM PROPOSALS
- JULY 24, 2007 HOUSE WAYS AND MEANS OVERSIGHT SUBCOMMITTEE HEARING REGARDING 501(C)(3) TAX EXEMPT ORGANIZATIONS
- AUGUST 27, 2007 IRS TAX-EXEMPT BOND COMPLIANCE SURVEY
Gain an understanding of how the exempt organization is organized to address tax compliance, (i.e., persons/departments responsible; identify existing programs, processes and/or practices to reasonably assure compliance);
ROLE OF CO RELATIVE TO TAX COMPLIANCE

- Determine the educational needs and audiences for relevant topics;
- Note: Form 990 is not directed solely at Health Care Organizations.
- Focus: Understand:
  - The issue generally
  - Who is responsible
  - Processes to support compliance
  - Identification and Remediation of any problematic practices
Glossary, Definitions of Note

- Audit Committee
- Conflicts of interest policy
- Control
- Disqualified Person
- Key Employee
- Independent Member of Governing Body
- Glossary, Definitions of Note (cont’d)
  - Excess Benefit Transaction
  - Excess Benefit Transaction, Donor Advised Funds
  - Excess Benefit Transaction, Supporting Organization
  - Document Retention and Destruction Policy
  - Officer
  - Related Organization
  - Whistleblower policy
Part I: Summary

- Information reported in the return and all required schedules
- Front-page snapshot of key information about the organization, e.g. number of independent Board members, highest executive compensation paid
Part II: Compensation and Other Financial Arrangements with Officers, Directors, Trustees, Key Employees, Highly Compensated Employees and Independent Contractors

- Section A: More extensive; see Glossary for definitions;
- Section B: Questions raise the issue of compliance with the IRS intermediate sanctions rules for exempt organizations (Section 4958 of the Internal Revenue Code).
Part III: Statements Regarding Governance, Management, and Financial Reporting

- Advancing good governance principles, accountability, and transparency
- L3 - conflict of interest policy
- L4 - whistleblower policy
- L5 - document retention and destruction policy;
- L6 - Board Minutes;
- L11 - Public Access to 990s; (See 26 CFR 301.6104(d))
Part IV: Statement of Revenue
- L1c-Fundraising events
- L1d-Related Organizations
Part V: Statement of Functional Expenses

Compliance with Intermediate Sanctions - § 4958

- L5 – Compensation to current officers, directors and key employees
- L6 – Compensation to disqualified persons (Not on L5) and substantial contributors

Query: Does the organization have Policies and Procedures to comply with the Rebuttable Presumption Safe Harbor?

- Independence
- Comparative Data
- Contemporaneous Documentation
L11d-Lobbying

- Determine nature and scope
- Compliance with Federal and/or State Registration Requirements and limitations (See generally www.irs.gov/charities/article/0,,id=141537,00.html)
Part VI: Balance Sheet

- L5 — Receivables from current officers, directors, trustees, key employees and related parties. (Schedule L)
- L6 — Receivables from Other Disqualified Persons (See Definition in Glossary) and Section 4958 (c)(3)(B) (Schedule L)
- L21 - Tax-Exempt Bond Liability (Schedule K)
- L23 — Payables to Officers, Directors and Trustees, or Key Employees (Schedule L)
Part VII: Statements Regarding General Activities – A Trap for the Unwary

- L 1a) Activities outside the U.S. – Impact on Border States

- L 6 Tax Exempt Bonds

(See IRS Tax Exempt Bond Financings Compliance Check Q’s, August 2007)
Part VII: Statements Regarding General Activities (cont’d)

L 8a  Exempt Activities through Partnerships (Rev. Rul. 98-15; Redlands Surgical Services; St. David’s Health Care System, Inc.

L 9  Hospitals - Schedule H

L 11  Policies to review investment or participation in … joint ventures

L 12  Policy(s) relating to protection of exempt status in transactions with related organizations (see p. 42 of Instructions)
Part VIII: Statements Regarding Other IRS Filings

- L 1 & 2: Lobbying and Political Campaign Activities
  - Political campaign activities on behalf of a candidate for public office is prohibited
  - Does the organization have a policy banning internal and external communications by employees regarding political activities?

- L 5: Excess Benefit Transactions (see 26 CFR 53.4958-IT) – Self-Disclosure
Part IX: Statement of Program Service Accomplishments

- A document of much more serious importance and attention than in the past in justifying continued tax exemption.
- Opportunity to tell your story
SUPPLEMENTAL SCHEDULES

- **Schedule**
- **Description**

- A • Public Charity Status
- B • Contributions
- C • Political & Lobbying Activities
- D • Financial Statement (including FIN 48)
- E • Schools
- F • Foreign Activities
- G • Fundraising & Gaming
- H • Hospitals
- I • Grants
- J • Compensation
- K • Tax-exempt Bonds
- L • Loans
- M • Non-cash Contributions
- N • Termination Significant Disposition Assets
- R • Related Organizations
SCHEDULES TO REVISED FORM 990

- **Schedule C: Political Campaign and Lobbying Activities**
  - (See Glossary, Rev. Rule 2007-41 and 2006 IRS Compliance Initiative)
  - Relevant State laws?
  - Internet Policies?
  - Has the organization ever made a Section 501(b) election? (IRS Form 5768)
SCHEDULES TO REVISED FORM 990

- Schedule F: Statement of Activities Outside of U.S.
  - Issue of greater significance in Border states
  - Mission Activities?
Schedule G: Supplemental Information Regarding Fundraising Activities

- L3 - listing all jurisdictions in which the organization is authorized to solicit. (Compare with states where it actually solicits). See The Unified Registration Statement Multi-State Filter Project (http://www.multishtatefiling.org)

- Has the organization properly registered with each applicable state?
SCHEDULES TO REVISED FORM 990

Schedule H: Hospital

Part I: Community Benefit
Charity Care Policies and Data

Part II: Billing & Collection Practices
- Policy; Scope & Compliance
- State Consumer Protection Laws
- Fair Credit Reporting Act
- Vendor Compliance
SCHEDULES TO REVISED FORM 990

Schedule H: Hospital (cont’d)

Part III: Management Companies and Joint Ventures

- Good cross-check for known Joint Ventures and Fraud & Abuse Compliance
- Relevant also to Tax Exempt Bond Compliance; private use limitations.

SCHEDULES TO REVISED FORM 990

- Part IV – General Information
  - Community/Health Care Needs Assessment – see CHA
  - Community Benefit Reporting Model
  - ER Policies – Tax v. EMTALA
  - Patient Assistance Eligibility Procedures
SCHEDULES TO REVISED FORM 990

- Schedule J: Supplemental Compensation Information
  - Relevant to Intermediate Sanction Rule Compliance
  - Written travel and entertainment expense policies
  - Per Se Excess Benefit Transactions – Certain Personal Expenses (PPA 2006)
Schedule K: Information on Tax Exempt Bonds

- Typically beyond purview of COs
- See IRS Tax Exempt Bond Compliance Check Questionnaire, July ‘07

Suggested Areas for Compliance Review and Process Development

- Policies
- Education
- Documentation of Private Use
SCHEDULES TO REVISED FORM 990

Schedule K: Information on Tax Exempt Bonds (cont’d)

- Form 13907 – Tax-exempt Bond Financings Compliance Check Questionnaire – Information regarding post-issuance bond compliance and record retention
Schedule L: Supplemental Information on Loans
(To/From Officers, Directors, Key Employees and Disqualified Persons)

- Relevant to Compliance with SOX; Intermediate Sanction Rules and where physicians involved, the Federal Fraud & Abuse Rules.
- Loans from 509(a)(3) Supporting Organization to Disqualified Persons and other 509(a)(3) organization are per se excess benefit transactions (PPA 2006)
SCHEDULES TO REVISED FORM 990

Schedule R: Related Organizations

Relevance:

- Awareness of new related organizations
- Determination of applicability of compliance program to related organization
Suggested Compliance Planning

- Education – Start with the Board
- Identify individuals within the organization with operational responsibility for preparation of Form 990, etc.
- Prepare Mock Form 990
- Prepare Mock Form 13907 (Bonds)
- Review IS to assess capability to capture required information for Form 990
- Review hospital/community benefit assessment and compliance - Quantify
Suggested Compliance Planning

- Inventory Policies and Procedures cited in Form 990 and Update
- Identify “Key Employees” and Review Compensation Policies for Compliance with the “Rebuttable Presumption”
- Review and Document Joint Venture Arrangements
- Update Organization Chart for Related Organizations and JVs
Suggested Compliance Planning

- Adoption of Best Practices – Transparency
  - Conflict of Interest
  - Independent Audit Committee – Financial Expertise
  - Compliance with SOX principles – Whistleblower/Non-Retaliation and Record Retention
  - Reevaluate the scope of financial and governance information available on organization’s website
  - Post Form 990 on organization’s website
Suggested Compliance Planning

- Board review and approval of Form 990
- Consider adopting a policy for CEO to sign Form 990
ADDITIONAL RESOURCES

- JULY 2003 HOUSE E&C COMMITTEE ON BILLING AND COLLECTION PRACTICES
  - Additional Related Websites:
    - [http://republicans.energycommerce.house.gov/108/Letters/04252005_1502print.htm](http://republicans.energycommerce.house.gov/108/Letters/04252005_1502print.htm) (Follow up letter sent on April 25, 2005 to 10 hospitals on uninsured and self-pay patients and billing and collection practices)
ADDITIONAL RESOURCES

http://energycommerce.house.gov/reparchives/108/Hearings/06242004hearing1299/hearing.htm (Hearing held in June 2004 by O&I SubCommittee on billing and collection practices)

http://republicans.energycommerce.house.gov/108/Letters/01222004_1195print.htm (Letter from Energy & Commerce O&I Subcommittee on January 22, 2004 to HHS Secretary Thompson requesting additional information on hospital billing and collection practices)
ADDITIONAL RESOURCES

MAY 2005 SENATE FINANCE COMMITTEE INQUIRY ON HOSPITAL ACCOUNTING FOR CHARITABLE ACTIVITIES


MARCH 2006 GAO SURVEY OF NONPROFIT HOSPITALS ON EXECUTIVE COMPENSATION POLICIES AND PRACTICES

ADDITIONAL RESOURCES

- MAY 2006 IRS COMPLIANCE CHECK QUESTIONNAIRE FOR TAX-EXEMPT HOSPITALS AND INTERIM REPORT
  - [http://www.irs.gov/charities/charitable/article/0,,id=172267,00.html](http://www.irs.gov/charities/charitable/article/0,,id=172267,00.html) (General Information on IRS Interim Report and includes links to Compliance Check Questionnaire and Interim Report)

- FEBRUARY 2007 IRS GOOD GOVERNANCE PRACTICES DISCUSSION DRAFT
JUNE 2007 IRS REVENUE RULING 2007-41 RE:
PROHIBITED POLITICAL ACTIVITIES FOR TAX EXEMPT ORGANIZATIONS
http://www.irs.gov/charities/article/0,,id=165718,00.html

JUNE 2007 IRS DRAFT REDESIGN FORM 990
http://www.irs.gov/charities/article/0,,id=171216,00.html
  (general information)
http://www.irs.gov/charities/article/0,,id=171213,00.html
  (redesigned form and schedules)
ADDITIONAL RESOURCES

- JULY 17, 2007 SENATE FINANCE COMMITTEE MINORITY STAFF DISCUSSION DRAFT ON NONPROFIT HOSPITAL REFORM PROPOSALS
  - 7-18-07 Grassley Releases Staff Discussion Draft of Potential Non-profit Hospital Reforms, Solicits Public Comment
  - Staff Discussion Draft of Potential Non-profit Hospital Reforms
  - (Links to .pdf documents, see also http://www.senate.gov/~finance/sitepages/grassley.htm; scroll down to July 18, 2007 for additional links.)
ADDITIONAL RESOURCES

- JULY 24, 2007 HOUSE WAYS AND MEANS OVERSIGHT SUBCOMMITTEE HEARING REGARDING 501(C)(3) TAX EXEMPT ORGANIZATIONS
AUGUST 27, 2007 IRS TAX-EXEMPT BOND COMPLIANCE SURVEY

- [http://www.irs.gov/taxexemptbond/article/0,,id=132042,00.html](http://www.irs.gov/taxexemptbond/article/0,,id=132042,00.html) (Second Item on Page, entitled TEB and EOCA Partner in Qualified 501(c)(3) Bonds Compliance Questionnaire includes general information and a link to the Compliance Questionnaire).

- On-Line Workshop for Exempt Organizations – Including Form 990 Preparation (60 min.)