



ISANNE Annual Meeting

Sarbanes-Oxley & Form 990 Revisions

Presented by

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In accordance with Internal Revenue Service rules, we hereby advise you that any tax advice contained in these materials or any attachment hereto is not intended to be used, and cannot be used, by any taxpayer for the purpose of avoiding penalties that may be imposed on the taxpayer by the Internal Revenue Service.

BERRY DUNN MCNEIL & PARKER

B D M P

**BERY DUNN MCNEIL & PARKER
MEMBERSHIP CORPORATION**

On the light side...

The Treasury Department has just issued a new dollar bill to reflect the state of the economy..





Today's Topics

- Sarbanes-Oxley
- Panel on the Nonprofit Sector
- Updated Form 990
- Other Miscellaneous Tidbits



Sarbanes-Oxley – A Brief History

- Federal Law enacted in 2002
- Response to highly publicized scandals in publicly traded companies
 - Enron
 - WorldCom
 - Many others
- An attempt to:
 - Strengthen independence of auditing firms from the companies they audit
 - Heighten corporate responsibility
 - Improve accountability
 - Board of Directors/Trustees
 - Management
 - External Auditors



Sarbanes-Oxley Impact

- Only applies to companies whose stock is traded on a public exchange
- *Non-Profits are not subject to the majority of the Act*, but it may be relevant because:
 - Several states have considered legislation which includes aspects of SOX
 - Bonding agencies and insurers may consider governance issues of SOX important
 - Accreditation review teams may expect educational organizations to develop best practices
 - Trustees who serve on non-profit board may expect adoption of certain aspects of the Act



Panel on the Nonprofit Sector

- ✓ Convened October 2004 on recommendation of the Senate Finance Committee
- ✓ Board members, volunteers, donors, government officials and others
- ✓ Examination of the NFP industry governance, transparency, accountability and ethical standards
- ✓ Improving transparency and accountability, and providing oversight from abuses



Panel Recommendations

- ✓ For Board members
 - ✓ Compensation to board members discouraged
 - ✓ Prohibition of loans to board members
 - ✓ Approval of CEO compensation, by the full board, annually and in advance of the period for which it will be paid
 - ✓ Review the organization's staff compensation program periodically
 - ✓ Include members with financial literacy
 - ✓ Full review of organizational and governing instruments at least once every five years
 - ✓ Review the 990 annually



Panel Recommendations

- ✓ For Congress and the IRS
 - ✓ Increase penalties on board members and management who approve self-dealing transactions, including excessive compensation
 - ✓ Private inurement
 - ✓ Intermediate sanctions
 - ✓ Increase resources for enforcement and oversight
 - ✓ Create a federally funded program to assist states with oversight and education
 - ✓ Define and regulate donor advised funds
 - ✓ Increased penalties on organizations that do not enforce easements



Panel Recommendations

- ✓ For Organizations
 - ✓ Adopt and enforce a conflict of interest policy
 - ✓ Establish a whistleblowers policy
 - ✓ Establish a travel policy, including prohibiting payment of travel expenditures for spouses or other relatives **unless they are involved in the business purpose**
 - ✓ Highest ranking officer sign the 990
 - ✓ Audit requirement for organizations with revenues in excess of \$1 million annually



Form 990-EZ Reporting Thresholds

Many small and mid-size organizations will be allowed to file Form 990-EZ for 2008 and 2009:

- 2008 if Gross Receipts (GR) < \$1,000,000 & assets < \$2,500,000
- 2009 if GR < \$500,000 & assets < \$1,250,000
- 2010 & later if GR < \$200,000 & assets < \$500,000



Redesigned Form 990: 2008 Tax Year

- 11-page core Form 990
- Snapshot of organization on page 1
- 16 additional schedules
- Schedule A filed by all 501(c)(3) orgs
- Schedule B



Redesigned Form 990

Part I Summary

- # of voting members
- # of independent voting members (reasonable efforts & revised standard)
- # of volunteers
- gross unrelated business income
- net unrelated business taxable income

Part II (pg 1) Signature Block

Part III (pg 2) Statement of Program Service Accomplishments



Redesigned Form 990

- Part IV (pgs 3-4) Checklist of Required Schedules

- 37 questions (44 boxes)

- Part V Statements Regarding Other IRS Filings and Tax Compliance

- 12 questions (30 boxes)

- # 1099s filed

- # 8282s filed - (Donee Information Return (Sale, Exchange or Other Disposition of Donated "In-Kind" Property)

- Part VI Governance, Management and Disclosure



Governance Policies & Issues

- Governance & management policies
 - Governing body
 - Independence/relationships
- Organizational documents
- Diversion of assets
- Minutes
 - Governing body and committees
- Form 990 - review by the board
- Transparency and accountability



Governance Policies & Issues

- Conflicts of interest policies
- Ethics and whistleblower claims
- Document retention and destruction
- Executive compensation
- Investments in joint ventures with taxable entities
- Fundraising - gift acceptance policies



Redesigned Form 990

○ Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors

- current officers, directors, trustees – no min comp threshold
- more than \$150,000 current key employees
- more than \$100,000 for 5 highly comp ee's and 5 high Independent Contractors
- more than \$100,000 for former (5 yrs) officers, key or highly comp ee's
- more than \$10,000 to former (5 yrs) directors or trustees received in that capacity



Redesigned Form 990

Part VII Continued

Officer defined:

- Elected or appointed to manage daily operations, includes president, vp, secretary, treasurer, etc.
- Top management official
- Top financial official
- Service at any time during the year - deemed a current officer



Redesigned Form 990

Part VII Continued

Key employee defined – must meet all of the following 3 tests:

1. Comp > \$150,000
2. Responsibility test:
 - a) org-wide control or influence
 - b) manages at least 10% of the org's activities, assets, income, or expense; or
 - c) has or shares authority to control or determine at least 10% of org's capital expenditures, operating budget, or comp for employees
3. Top 20 Test: within the group of org's top 20 highest paid who satisfy both the \$150K and responsibility tests



Redesigned Form 990

○ Part VII Continued

- Must report health and retirement plan benefits as other compensation regardless of amount – can estimate
- Other benefits only need to be reported if each > \$10,000 (except on Sch J)
- Provides detailed instructions for reporting deferred compensation



Redesigned Form 990

○ Part VIII Statement of Revenue

- enter bus codes for program service & misc revenue
- break out 5 largest sources of program service revenue

○ Part IX Statement of Functional Expenses

- detail of “fees for services” (mgmt, leg, acct, lobby, prof fund, inv mgmt, other)
- new: adv, IT, ins, office, roy, govt ee travel
- “miscellaneous” cannot exceed 5% of total expenses

○ Part X Balance Sheet

○ Part XI Financial Statements and Reporting



Supplemental Schedules

Supplemental schedules include (but are not limited to):

- Schedule A – Public Charity Status/Support
- Schedule B – Contributors
- Schedule D - Supplemental financial statements
- Schedule E – Schools
- Schedule F – Grants or Assistance to individuals outside the US
- Schedule G - Fundraising
- Schedule J - Compensation
- Schedule K - Tax exempt bonds
- Schedule R - Related organizations
- Schedule M - Non-cash contributions

Best Practices

- Review the new Form now
 - Determine what will be applicable to your organization
- Policies
 - Make sure your policies are up to date
- Governance
 - Make sure your governance structure is up to speed
 - 990 review process





Resources

IRS Website

<http://www.irs.gov>

IRS 990 Form and Instructions

<http://www.irs.gov/charities/article/0,,id=181091,00.html>

IRS Workplan

http://www.irs.gov/pub/irs-tege/finalannualrptworkplan11_25_08.pdf



Electronic Filing Reminder

Form 990:

- Tax years ending on or after 12/31/2006
- \$10 million or more in total assets and
- File 250 or more returns in one year

Form 990-PF:

- Regardless of asset size and
- File 250 or more returns in one year



Other

- Form 990-N Annual Election Notice
 - Annual gross receipts less than \$25,000
 - Failure to file notice for 3 consecutive years may result in revocation of exempt status
 - Electronically file at <http://epostcard.form990.org>
- 403(b) Plan Requirements
- UPMIFA – NH only

