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ABA Comments on Draft Redesigned Form 990


Tax-exempt healthcare organizations are generally required annually to file IRS Form 990 - Return of Organization Exempt from Income Tax. In June 2007, the IRS released for public comment a draft of a redesigned Form 990. The draft is the first significant redesign of Form 990 since 1979. The IRS intends that the redesigned Form 990 will enhance transparency, promote tax compliance and minimize the burden on the filing organization. The draft consists of a Core Form required to be completed by all filers and 15 schedules potentially required, based on the organization and its activities. The Core Form's first page is a summary page providing a snapshot of the filer's key financial, compensation, governance and operational information. Of particular interest to the healthcare industry is Schedule H, which must be completed by organizations that operate a hospital or a facility that provides medical care. Schedule H requires reporting of aggregate community benefit provided including charity care, eligibility for charity care and whether the filer has a charity care policy. This schedule also requires reporting of billing and collecting information (gross charges, discounts, net expected and fees collected) by payor source, i.e., Medicare, Medicaid, other governmental programs, insured and uninsured, as well as the filer's definition of "bad debt" and a description of debt collection practices. Finally, this schedule requires reporting of information on (i) management companies and joint ventures in certain circumstances where the filer is a partner, (ii) reporting of general information on exempt activities and community needs assessment, and (iii) identifying all facilities the filer operates for the provision of hospital or medical care.

The IRS has received over 650 comments on the draft. On October 4th, the American Bar Association Section of Taxation and Health Law Section released their comments on the draft. Below is their summary of their suggested

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revisions.¹

1. Modify the first page of the Core Form to add room for a description of the organization's three most significant programs and the expenditures on such programs; eliminate questions that are not "key" to an understanding of the organization's purposes and operations.
2. Eliminate the percentage "efficiency indicators" from page one of the Core Form because they do not provide meaningful information.
3. Revise the questions regarding conflict of interest policies to encourage their use and elicit information regarding their contents.
4. Eliminate the separate lines on the Statement of Functional Expense and the Balance Sheet for compensation and loans to "disqualified persons" who are not officers, directors or key employees, because the standards for determining the identities of such persons are not clear.
5. Modify Schedule C and the related questions on the Core Form to (a) make it clear that the definitions of lobbying and political activity reported differ based on the type of exempt organization that is involved, (b) eliminate the requirement to collect and report volunteer hours, and (c) eliminate questions asking an organization to determine whether its lobbying activity was "substantial."
6. Rather than requiring organizations to report only their FIN 48 footnote, permit organizations to include their entire audited financial statements (as well as any other attachments necessary to explain responses on the return), and ask organizations to report any activity that may jeopardize their exempt status.
7. Permit hospitals to report other community benefit expenditures, including portions of bad debts that may be reasonably determined to represent charity care.
8. Eliminate the requirement that grants to "friends-of" groups based in the United States be treated as foreign grants, rather than grants to organizations in the United States.
9. Eliminate from Schedule J the reporting of nontaxable fringe benefits and nontaxable expense reimbursements in order to produce more accurate compensation information.²

Some of the ABA Section of Taxation and Health Law Section's comments were addressed when Ronald J.

Schultz, senior technical advisor to the commissioner, IRS Tax Exempt and Government Entities Division, detailed revisions to the draft at the September 28, 2007 ABA meeting. These revisions include the following: The IRS will eliminate questions on compensation percentages, fundraising percentages and comparisons of an organization's net assets to total expenses, as well as eliminate the column of percentages of total contributions and expenses from the draft's summary page; the governance section will be retained, but the questions will be revised; and the reporting of program service accomplishments will be moved from the back to the front of the Core Form. At this meeting, Mr. Schultz also stated that a third of all comments received related to Schedule H and made the following comments relating to it:

1. The IRS will need to address the definition of "hospital" and is receptive to using a definition based on licensing or certification by states.
2. The billing and collecting information could be revised and/or moved to another part of the form.
3. There is a "pretty realistic chance" there will be transitional relief of one year or more for filing Schedule H.
4. The IRS will retain the joint venture reporting of Schedule H.

¹The complete text of their comments can be located at: www.abanet.org/health/04_government_sub/media/Form990_TaxExemptOrgs_071004.pdf.

² American Bar Association Section of Taxation and Health Law Section Comments Concerning Discussion Draft of Redesigned Form 990 for Tax-Exempt Organizations, Executive Summary, pages 4-5.

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