

## Changes to 2005 IRS Form 990

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The Internal Revenue Service recently released a revised 2005 Form 990, Return of Organization Exempt from Income Tax, for Section 501(c) organizations.<sup>1</sup> The revised Form 990 includes changes with respect to reporting of compensation and foreign grants and activities. Similar changes have not yet been made to the Form 990-PF filed by private foundations. The IRS is in the process of completing compensation audits of 2,000 organizations. It expects to issue a report on those compensation audits in the fall of 2006. Based on those audits, IRS officials have stated that there must be changes in the way compensation is reported on the Form 990. The changes to the 2005 Form 990 are likely only the first of many changes with respect to reporting of compensation.

### COMPENSATION

Part V, *Current Officers, Directors, Trustees, and Key Employees*, has been re-titled, three new questions have been added, and one has been revised. New line 75a requires the total number of officers, directors, and trustees permitted to vote on organization business at board meetings. New line 75b asks whether any officers, directors, trustees, key employees, highest compensated employees, or highest compensated independent contractors are related to each other through family or business relationships. If the answer is "yes," the organization must attach a schedule identifying the related individuals and explaining the relationships. New line 75d asks whether the organization has a written conflict-of-interest policy.

On the 2004 Form 990, line 75 asked whether any officer, director, trustee, or key employee received aggregate compensation of more than \$100,000 from the organization and related organizations, of which more than \$10,000 was provided by the related organization. New line 75(c) of the 2005 Form 990 is a revised version of this question. It asks if any officer, director, trustee, key employee, highest compensated employee, or highest compensated independent contractor received compensation from an organization that is related to the filing organization through common supervision or control. The revised Instructions indicate that an organization must answer "yes" to this question if any officer, director, trustee, key employee, highest compensated employee, or highest compensated independent contractor received aggregate compensation amounts of \$50,000 or more from the filing organization and related organizations. If the answer is "yes," the filing organization must attach a statement identifying the individuals, explaining the relationships between the filing organization and the related organizations, and describing the compensation arrangements, including amounts paid to each individual by each related organization.

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<sup>1</sup> All section references are to the Internal Revenue Code of 1986, as amended.

The revised Form defines “related organizations” to include section 509(a)(3) supporting organizations. The revised Instructions go on to state that related organizations are tax-exempt or taxable entities with a close connection to the filing organization. A close connection may include common control of one or more of the organizations; direct or indirect control of one organization by another through common governance; direct or indirect ownership of one organization by another; control of one organization by another through authority to approve budgets or expenditures; coordination of operations as to facilities, programs, employees, or other activities; and common persons exercising substantial influence over all of the organizations. The close connection that creates related entities is broader than direct or indirect ownership or control. The revised Instructions also define “common control” and give examples of related organizations. Those examples include: (1) the filing organization and the other organization were created at approximately the same time and by the same persons; and (2) the filing organization and the other organization operate in a coordinated manner with respect to facilities, programs, employees, or other activities.

A new Part V-B has been added, which requires disclosure of compensation and other benefits paid in the 2005 fiscal year to a former officer, director, trustee, or key employee.

#### **FOREIGN GRANTS AND ACTIVITIES**

In Part III, Statement of Program Service Accomplishments, an organization is now required to check a box indicating if any amounts include foreign grants. In Part VI, Other Information, the revised Form adds new line 91b, which specifically asks whether the organization has an interest in or signature or other authority over a financial account in a foreign country, and the name of the foreign country. The revised Instructions state that an organization must answer “yes” if the combined value of the accounts was more than \$10,000 at any time during year. The organization must also answer “yes” if it owns more than 50% of the stock of any corporation that would have to answer “yes.” The revised Form also adds new line 91c, which asks whether the organization maintained an office outside of the United States during the calendar year, and, if so, requires the name of the foreign country.

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