



# Philanthropic NEWS

WINTER  
2008

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## IRS RELEASES FINAL REDESIGNED FORM 990

The Internal Revenue Service released the final version of the redesigned Form 990. The new form consists of an 11-page core to be completed by filers, and 16 supporting schedules that will be completed by organizations depending on their specific activities.

The final form comes after a public comment period over the summer, when the IRS issued a draft form for comments and discussion. The IRS received close to 700 responses during the 90-day comment period from experts, accountants, and state regulators offering input on the redesigned form. In response to public comments, the IRS incorporated many recommendations in the new form, including changes to some of the more controversial disclosure requirements proposed in the draft version.

In particular, the draft form would have required an organization to report certain percentages, including compensation paid to top officials of the charity as a percentage of its program expenses, fundraising expenses as a percentage of total contributions, and total expenses as a percentage of net assets on the first page.

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## U.S. SENATE INTRODUCES “PROTECTING THE SPIRIT OF GIVING ACT”

The recent holiday season saw a dramatic increase in the number and types of “cause marketing” efforts by retailers. These retailers have discovered that cause marketing, where a company links its business or products to one or more causes, often by promising to make donations to charity, is an effective way to build sales and improve image.

One type of cause marketing is a “commercial co-venture,” in which a retailer promises customers that each sale will result in a donation to charity. Commercial co-ventures are regulated by law, but many retailers – even large national retailers – are either unaware of the rules or choose to ignore them. A recent series of articles in the New York Times shed light on some of the abuses that occur with commercial co-ventures. These include the use of charities’ names without their permission, instances when the promised donations are never made, and retailers making claims that mislead consumers to think that their purchase will benefit charity when in fact it will not.

In reaction to these stories, Senator Bob Menendez (D-NJ) has introduced S.2529, the “Protecting the Spirit of Giving Act,” in the U.S. Senate. The Act would require that manufacturers, retailers, and others who put consumer products into the stream of commerce comply with certain rules.

Under the proposed law, no manufacturer or retailer could use the name of any charity to solicit donations for that charity, or to market its products by promising that a

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### **IRS RELEASES FINAL FORM 990**

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This format drew criticism from the nonprofit sector because the percentages could reflect poorly on an organization without providing space for further explanation. The final form does away with the percentages and allows an organization to describe its exempt purposes and mission upfront.

The new form will be used for the 2008 tax year for returns filed in 2009. The IRS plans to release related instructions in the early part of this year.

#### **Grace Period for Smaller Organizations**

The IRS also announced a transition period over the next 3 years for smaller organizations to begin filing the new 990. Organizations with annual revenue between \$25,000 and \$1 million or total assets of less than \$2.5 million will be allowed to file the Form 990-EZ for the 2008 tax year. The filing threshold for the tax year 2009 will cover organizations with revenue between \$25,000 and \$500,000 or assets of less than \$1.25 million. The threshold will be set permanently beginning in the tax year 2010, when organizations with revenue between \$50,000 and \$200,000, or assets of less than \$500,000 can choose to file the 990-EZ.

#### **e-Postcard Filing Requirements**

Small nonprofits that were not required to file returns may be required to file the new Form 990-N, an annual electronic notice also called the "e-Postcard." Exempt organizations whose gross receipts are \$25,000 or less will now have to file an e-Postcard electronically with the IRS on an annual basis. There are some exceptions to the rule, such as organizations included in a group return. Organizations that do not file the e-Postcard or an annual information return, such as the 990 or 990-EZ, for three consecutive years will risk having their tax-exempt status revoked by the IRS.

Beginning in 2008, the e-Postcard will be due annually by the 15th day of the fifth month after the close of an organization's tax period. The new form will include information such as the organization's legal name, address, employment identification number, and the name and address of a principal officer. Starting with the 2010 tax year, the filing threshold for organizations required to file the e-Postcard will be raised from \$25,000 to \$50,000.

### **U.S. SENATE INTRODUCES ACT**

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portion of proceeds from sales of the product will benefit any charity unless it has: (1) notified the charity of its intention to use the charity's name or logo in a specific manner; (2) disclosed to the charity the amount of any donation or portion of sales proceeds that the charity will receive; (3) obtained the charity's permission; and, (4) limited its use of the charity's name or logo to the uses that were approved by the charity.

Second, manufacturers and retailers must: (1) disclose to consumers the actual or intended amount of donation or percentage of purchase price that will go the charity; (2) disclose whether the amount that goes to charity is subject to a cap; (3) disclose the time period during which sales will result in a payment to charity; and, (4) provide contact information for the charitable recipient. These disclosures must be made clearly and in writing.

The law would classify any violation as an unfair or deceptive trade practice, and confer enforcement power on the Federal Trade Commission.

For further information about the proposed law, contact Allen Bromberger at (212) 889-0575.

### **USPS ANNOUNCES NEW SYSTEM FOR NONPROFIT POSTAL RATES**

The U.S. Postal Service (USPS) recently announced a new system for determining postage costs for nonprofits and other mailers. Under this system, postage costs will be pegged to inflation. In the past, new rates were determined in hearings conducted by an independent body based on research and comments submitted by charities.

The new system allows the USPS to increase rates annually but requires that the increases be no higher than the rate of inflation. Postal officials will rely on the most recent monthly inflation average, as compiled by the Bureau of Labor Statistics, to set the new postage rates. In addition, the new law requires the Postal Service to give a 45-day notice before increasing postal rates. Postal experts have indicated that the notice period will likely be increased to 90 days, to give mailers more time to adjust their schedules. The USPS is expected to announce new rates in February that will take effect in May.

This new system will benefit nonprofits despite the more frequent rate increases because the increases themselves will be significantly lower and organizations will be better able to predict increases.

## IRS EO COMMISSIONER HINTS AT IRS FUTURE

The remarks made by Steven Miller, the Commissioner of Tax Exempt and Government Entities for the Internal Revenue Service, before the Independent Sector in Los Angeles last October, offered clues about what to expect from the IRS in the near future. In his remarks, Mr. Miller identified several “troubling themes,” including:

- Nominally charitable pursuits that have been twisted to capitalize on gaps in the marketplace and then used to make a profit rather than to serve a public purpose;
- Schemes in which a donor claims a deduction but maintains control over the contributed assets, often using them for personal benefit, and the acceptance by charities of unusual non-cash assets that are of questionable utility to the charity;
- A sense of entitlement by donors and those in charge, arising from a lack of accountability, illustrating the problem of organizational insiders who are not accountable to their board of directors, to the public or to the IRS; and
- The blurring of lines between the for-profits and non-profits, where nonprofit organizations undertake commercial activities that mimic those carried by tax-paying for profit organizations.

Mr. Miller called the current regulatory environment one in which “some are questioning whether the public benefits that tax-exempt organizations are providing are commensurate with the organizations’ resources and the tax subsidies they receive.” He then went on to share some of the IRS’s responses to this environment which include a “renewed emphasis on compliance illustrated by the increasing number of examinations,” and a vigorous look at problem areas such as “credit counseling, down-payment assistance, assessing the community benefit test for hospitals, executive compensation, [and] improper campaign intervention.”

## ETHICAL STANDARD UPDATE

The DMA Non-Profit Federation recently updated the ethical standards for the Commitment to Consumer Choice regarding the collection, use, and transfer of personal data in mailing campaigns and other media. The updated standards are available at: <http://www.the-dma.org/nonprofitfederation/ethics.shtml>.

## CHARITIES BUREAU ONLINE REGISTRY SEARCH RETURNS

After a year-long absence, information on New York nonprofits is once again available online through the state Attorney General’s website and the newly launched Project Sunlight website. The Charities Bureau Registry Search allows users to search for specific charities and has been expanded to provide access to certain documents, like bylaws and 1023s, of organizations registered since November 13, 2006. Information on older charities is available through FOIL requests. The registry search is located at [http://bartlett.oag.state.ny.us/Char\\_Forms/search\\_charities.jsp](http://bartlett.oag.state.ny.us/Char_Forms/search_charities.jsp).

Project Sunlight aims to make state government more transparent. It allows users to search and cross-reference statewide government information about elected officials, legislation, lobbying, state contracts, campaign financing, registered corporations, and charities. The site is found at [www.sunlightny.com](http://www.sunlightny.com).

## LOBBYING LAWS APPLY TO NONPROFIT ORGANIZATIONS

Under New York state law, lobbyists and their employers may be required to register and disclose detailed financial transactions related to lobbying activities, which are made open for public inspection. The New York State Lobbying Act, which was amended in September 2007, requires individuals and organizations, and those employed or retained by them, to register with the New York State Lobbying Commission and to file periodic reports disclosing the organizations use of funds to influence actions (including funding) by agencies or officials. In addition to state-level regulation, organizations may also have to comply with lobbying laws on the local level.

At the state level, registration requirements apply to for-profit and nonprofit organizations alike if they employ an individual or corporation to perform lobbying activities and pay such individual or corporation more than \$5,000 annually. Nonprofit organizations are also required to register as a lobbyist for the lobbying activities of their paid employees (such as individuals who work on advocacy or government relations or CEO’s who spend a substantial amount of their time on lobbying activities) if the organization spends more than \$5,000 per year on such activities.

For more information on the lobbying registration requirements for your organization, please contact Catherine Oetgen at [catherine@perlmanandperlman.com](mailto:catherine@perlmanandperlman.com).

## UPCOMING SPEAKER EVENTS

**Seth Perlman** will be speaking on March 14, 2008 at the Practicing Law Institute in New York City advising non-profits about the law of charitable fundraising. He will also be speaking with Michael S. DeLucia of the New Hampshire Attorney General's office, on April 1, 2008, on "Who is Watching You Now," at the AFP International Conference in San Diego, CA. On May 30, 2008, Seth will speak at the Cause Marketing Forum in Chicago Illinois on "Federal and State Regulation of Cause Related Marketing" with Tracy McCurdy, the Director of the Bureau of Charitable Organizations in Pennsylvania.

**Allen Bromberger** spoke on January 17, 2008, about "Embedding Your Values into Corporate Documents" at the SVN Call Series Peer to Peer Learning Calls. He will also be lecturing on February 7, 2008 at the Columbia Business School in New York on "Alternative Business Forms." From February 10 -12, 2008, Allen will participate in a Criterion Convergence conference on "Structures of Change" in Boston, MA. He will also be participating in the SEA Leadership Summit workshop on March 10, 2008, regarding "Emerging Corporate Structures for Hybrid Organizations" in Boston, MA.

*Copies of this publication and prior editions of Philanthropic News can be downloaded from the firm's website, [www.perlmanandperlman.com](http://www.perlmanandperlman.com).*

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