



Philanthropic NEWS

FALL
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IRS COMPLETES FORM 990 AND FORM 990-EZ INSTRUCTIONS

The Internal Revenue Service (IRS) recently released instructions for completing the redesigned Form 990. The revised instructions and several background papers summarizing changes to the redesigned Form 990 and instructions are now available on the IRS website at www.irs.gov/charities. Organizations should use this information for guidance as they prepare to file the new 990.

The IRS has implemented a three-year transition period for smaller organizations to begin filing the new 990. To provide transitional relief for smaller organizations, the less complex Form 990-EZ's filing thresholds were increased to allow more organizations to file it instead of the new Form 990. Beginning with the 2008 tax year, an organization may file a Form 990-EZ if its gross receipts are between \$25,000 and \$1 million and its total assets are less than \$2.5 million. For the 2009 tax year, the 990-EZ filing threshold will be for an organization with gross receipts of between \$25,000 and \$500,000 and total

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IRS ELIMINATES ADVANCE RULINGS

The IRS recently eliminated the process for advanced classification as a publicly supported charity when applying for tax exempt status. The IRS was able to eliminate the advance ruling period because the revised Form 990 makes it easier for an organization to demonstrate that it is publicly supported. Nearly 95% of organizations that received advance rulings are later recognized as publicly supported charities so the IRS deemed the two-step advance ruling process both burdensome and unnecessary.

Under the old regulations, an organization seeking recognition as a publicly supported charity had to go through a two-step process. First, the organization had to declare on its application for tax exemption that it expected to be publicly supported on an on-going basis, after which it was granted public charity status for an initial five year period. After five years, the organization would have to file a Form 8734 with the IRS to demonstrate that it actually received a substantial part of its support from the public during the preceding five year period.

Now if an organization can demonstrate in its application for tax-exemption that it can reasonably be expected to meet the public support test during its first five years of existence, it will be classified as a public charity. An organization will retain public charity status for the first five years regardless of the amount of public support it actually receives during that time.

Beginning in its sixth taxable year, instead of filing a Form 8734, an organization now must demonstrate to the

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IRS COMPLETES FORM 990

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assets of less than \$1.25 million. For the 2010 and later tax years, organizations with gross receipts of between \$50,000 and \$200,000 and total assets of less than \$500,000 will be eligible to file the Form 990-EZ. Although the Form 990-EZ was not completely redesigned for 2008, some changes were made, including replacing the previous unstructured attachments with new schedules from the redesigned Form 990 and updating the instructions. Additional guidance is available on the IRS website at www.irs.gov/charities.

The background paper Form 990 - Moving from the Old to the New, provides an overview of the changes to the new form, schedules, and instructions. This paper lists and summarizes the parts and schedules of the new form, highlighting which portions are new or significantly revised. The paper also explains the key points and effect on reporting for each part of the core form and each schedule, including how an organization determines which schedules it must complete. By breaking down the new core form and schedule into component parts, this document is a helpful resource for organizations to use for focused guidance on particular items.

Organizations should begin to familiarize themselves with the new Form 990 as the 2009 filing season approaches because the new form substantially changes reporting requirements and may make filing a more time intensive process than in previous years. For more information, please contact this firm at (212) 889-0575.

PASTORS CHALLENGE IRS RULES FROM THE PULPIT

Challenging the federal law that bars tax-exempt organizations from involvement in political activity, 33 clergy recently participated in a protest by endorsing a presidential candidate from the pulpit. The Alliance Defense Fund, a socially conservative group, organized the protest called Pulpit Freedom Sunday, challenging the 54-year old law that religious organizations have no constitutional right to engage in political speech while accepting deductible contributions.

In response to this action, over 180 members of the clergy have signed a pledge from the Interfaith Alliance, a group that works to separate religion and politics, agreeing to not endorse a candidate from the pulpit. The IRS also announced it will “monitor the situation and take action as appropriate.” The goal of Pulpit Freedom Sunday is to create a court challenge to the law, although it seems unlikely that this settled law will be overturned.

IRS ELIMINATES ADVANCE RULINGS

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IRS that it is actually publicly supported on the annual Form 990 information return.

Transition rules apply to organizations that have already received advance rulings. Organizations with advance rulings that expired on or after June 9, 2008 will now be classified as publicly supported charities and their advance rulings considered final determinations. The old rules will continue to apply to organizations whose advance rulings expired before June 9, 2008. These organizations will need to submit a Form 8734 to avoid being re-classified as private foundations after the five-year period. Any pending applications submitted before September 9, 2008 will be processed under the new rules. Until the IRS publishes a revised Application for Tax-Exemption reflecting these changes, new organizations should continue to request an advance ruling in their applications, as this requires less documentation than the final ruling process and there is now no effective distinction between the two types of rulings.

FCC RESTRICTS ROBOCALLS

New restrictions on pre-recorded telemarketing calls, also known as “robocalls”, which affect charitable solicitation messages left by telemarketing firms were recently issued by the Federal Communications Commission (FCC). The new restrictions were issued as amendments to the Telemarketing Sales Rule (TSR) and apply to any prerecorded messages, whether answered in person by a donor, by an answering machine, or by a voicemail service.

“Robocalls” can only be made to members of a nonprofit charitable organization on whose behalf the calls are placed, or to individuals who previously donated to the charity. The message left must include a prompt keypress or voice-activated opt-out mechanism.

The new restrictions do not apply to purely informational calls that are made as part of a larger telemarketing campaign or to charities that place their own pre-recorded calls. Some organizations raised concerns that charitable solicitation calls should not be subject to any restrictions because of the enhanced First Amendment protections awarded to charitable speech. For example, the National Do Not Call registry does not apply to charitable solicitation calls. However, the FCC believes that these restrictions “achieve the appropriate balance between the strongly-protected right of non-profit organizations to reach donors through telefunding, and

the privacy rights of those potential donors to be free, in their own homes, of prerecorded message calls that they do not want.” These new restrictions go into effect on December 1, 2008.

IRS WARNS PUBLIC ABOUT IDENTITY THEFT SCAMS

The IRS has been distributing warnings about a new wave of scams using the IRS name in identity theft e-mails. The IRS has been reminding the public that it generally does not send e-mails to taxpayers and does not request security-related personal information. The most common scams are as follows:

- **The Refund e-Mail Scam** in which an e-mail claiming to come from the IRS states that the recipient is eligible for a tax refund and asks the recipient for personal information.
- **The Economic Stimulus Payments Scam** in which a taxpayer receives an e-mail which states that they are eligible for an economic stimulus payment and must click on a link to complete and submit an online form containing personal and financial data, including checking or savings account numbers, to obtain the payment.
- **The Substitute Form 1040 Fax Scam** involves a faxed letter stating that the IRS is updating its files and that anyone who fails to immediately return the form attached to the email risks additional taxes and withholding. The form requests a large amount of detailed personal and financial information, such as mother’s maiden name, bank account numbers, estimated assets and more. It asks the recipient to sign and fax back the completed form and a copy of the recipient’s driver’s license and passport.
- **The Company Report Scam** involves an e-mail that appears to come from an IRS.gov e-mail address, stating that the IRS has a report on the company. The email asks the recipient to review a copy by clicking on a link to download the report. When the link is clicked malware, or malicious code is downloaded to the recipient’s computer.
- **The Tax Court Scam** involves an e-mail that appears to come from the U.S. Tax Court containing a petition between the IRS and the recipient. The document instructs the recipient to download other files which transfer malware to the recipient’s computer.

Those who have received questionable e-mail claiming to come from the IRS may forward it to phishing@irs.gov. Anyone who has received a suspicious email should also read the article titled [“Protect Yourself from Suspicious E-Mails or Phishing Schemes”](#) available at www.irs.gov for tips on how to protect themselves from scams.

WHAT CHARITIES SHOULD KNOW ABOUT OFAC

Unless your nonprofit organization has regular dealings abroad, you may not have heard of the Office of Foreign Assets Control (“OFAC”). However, if your organization has international programs or supports humanitarian causes in particular OFAC-sanctioned countries, you may be risking heavy fines, and in worst-case scenarios, criminal prosecution if your organization does not comply with OFAC regulations.

OFAC administers and enforces economic and trade sanctions based on US foreign policy and national security goals against targeted foreign countries, terrorists, international narcotics traffickers, and those engaged in activities related to the proliferation of weapons of mass destruction.

It may seem like there would be no intersection between OFAC’s goals and the charitable purposes of nonprofit organizations. Yet nonprofits can run into problems with OFAC if they have dealings with certain sanctioned countries, even if the organization had no intent to support any ill-willed activities in or related to those countries. Currently, the twelve OFAC-sanctioned countries are the Balkans, Belarus, Burma, Côte d’Ivoire, Cuba, Democratic Republic of the Congo, Iran, Iraq, Former Liberian Regime of Charles Taylor, Sudan, Syria, and Zimbabwe. The prohibitions on dealings with each country are different. For example, the restrictions for dealings with Cuba are particularly strict. Prohibited activities in dealing with sanctioned countries include limitations on operating in certain areas of the country, conducting business with certain persons or entities, sending money to sanctioned countries, and even importing certain goods from sanctioned countries.

OFAC does permit charities to have some dealings with sanctioned countries if a license is applied for ahead of time. Also, OFAC may, from time to time, lift certain bans in response to world events, such as the devastation caused by the recent cyclone in Burma.

RECENT SPEAKER EVENTS and ANNOUNCEMENTS

SETH PERLMAN attended the annual National Association of Attorneys General/National Association of State Charity Officials (NAAG/NASCO) conference on October 6, 2008, in Santa Fe, New Mexico.

ALLEN BROMBERGER spoke at a fundraising seminar on October 17, 2008, on choice of entity for social enterprise. The event was sponsored by Starting Bloc and was held in New York City. Allen will also be attending the Social Venture Network annual conference in San Diego, CA on October 23-26, 2008.

ALLEN BROMBERGER is currently developing a hybrid legal structure for Social Enterprise Ventures that combines business forms with 501 (c) (3) forms.

PERLMAN & PERLMAN, LLP welcomed **BARBARA NAGEL** as “of counsel” to the firm on September 9, 2008. Barbara is an experienced business attorney who will focus on a wide range of legal matters, especially mission-driven commercial and business activities and structuring “Fourth Sector” enterprises, which is a growing part of our practice. Barbara may be contacted at barbara@perlmanandperlman.com.

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