

TAX TALK TODAY®

PREPARING FOR THE NEW FORM 990

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(Music.)

PHYLLIS GRIMES: This is “Tax Talk Today,” the tax show for the tax pro. Today’s program: “Preparing the New Form 990. Hello, I’m Phyllis Grimes and welcome to “Tax Talk Today,” a series of programs brought to you by the Internal Revenue Service.

The “Tax Talk Today” series provides you, the tax professional, with the opportunity to interact directly with representatives of the IRS and practicing professionals on current tax issues. In addition, viewing the “Tax Talk Today” series is an easy way to earn continuing education credits. You can purchase CE credits through the “Tax Talk Today” store and earn one credit for today’s program. You will need the course number, which is given at the end of today’s program, so don’t forget to jot it down. Also, we want your questions throughout today’s program, so please e-mail your questions to questions@taxtalktoday.tv.

Any questions not answered on the program today will be posted to the “Tax Talk Today” website under resources. If you have not already done so, visit the resources section of our website. We have posted an outline for today’s program as well as additional valuable information. Now, let’s get on to today’s program, “Preparing the New Form 990.” It’s been 30 years since the IRS made major changes to Form 990 and when many tax-exempt organizations file their 2008 tax year returns, they will confront a radically redesigned form. Because the revised Form 990 is so different from previous years, today’s panel will discuss the redesigned 990, make sure you know what parts of the forms to complete and answer your questions to help you become familiar with and prepare for the changes now.

Let’s join our first panel. Today’s moderator is Les Witmer. Les brings to “Tax Talk Today” 23 years of experience with the IRS and is currently a communications consultant in Atlanta. Joining Les is Stephen Clarke, tax law specialist for rulings and agreements, exempt organizations for the IRS, and Ronald Schultz, senior technical adviser to the commissioner, Tax Exempt and Government Entities Division of the IRS. The complete bios for our guests are on the “Tax Talk Today” website. Les?

LES WITMER: Thanks, Phyllis. This show’s mentioned in the opening it’s been 30 years since the IRS has made a major change to the Form 990. We want to go into what those changes are all about and in particular look – later discuss who it affects, who’s required to file the form and how this impacts on them. But I guess a good place to start might be to make sure everyone is aware of what we’re talking about with the Form 990. Steve, what exactly is the Form 990?

STEPHEN CLARKE: The Form 990 is the information return that many tax-exempt organizations file with the IRS on an annual basis. I say information return not tax return because there is no tax that’s submitted with return. And what’s reported on the return are the organization’s programs, activities, finances, and for 2008, governance and mission as well.

MR. WITMER: Well, who exactly is required to file the Form 990?

MR. CLARKE: Most tax-exempt organizations other than churches are required to either file the 990 or a related information return. For instance, if an organization has gross receipts that are normally less than \$25,000, it can file what we call the e-postcard, the 990-N. It can do so electronically on our website and provide basic identifying information but not information on activities or finances or programs. If an organization in 2008, for the 2008 tax year, has assets of less than \$2.5 million and gross receipts of less than \$1 million, they can file the 990-EZ, which is an easier form of the 990 – much less reporting. And for 2008 we expect that nearly 200,000 more organizations will be eligible to file that than they were in the past. I'll explain that later. But for all other organizations, except for private foundations, which can file the 990-PF, all the other organizations that are required to file an information return, again, not including churches and church-related organizations, they need to file the Form 990 with the IRS.

MR. WITMER: Okay, well let's talk about the new Form 990. Ron, what was the history on this? What's the philosophy behind the change, since this is a significant change?

RONALD SCHULTZ: It is a significant change. It was last redesigned in 1979. It has been changed or revised along the way since then, but it had been done in a very piecemeal fashion. So if the law changed, we would change the form a little bit or if we saw something in the sector that we wanted to ask about, we changed the form a little bit. Over the course of 30 years, the revisions resulted in a form that just proved to be outdated and unworkable. It wasn't very logical or structured appropriately.

It got to the point where virtually nobody liked the form anymore. The filing organizations didn't like it because it was hard to fill out. The IRS really didn't like it either because it didn't request the information that we really needed to serve our compliance interests. The public didn't like it because it didn't really ask for the information in a helpful way. And then another stakeholder, the states, were not all that excited about it either for the same reasons. They have compliance needs of their own; they have transparency needs of their own. So there was universal agreement that we really needed to do something with it and that's what prompted the revision.

MR. WITMER: Okay. Later we'll get into a detailed discussion of it, but maybe you can set the stage for us. Ron, what are some of the significant changes to the 990, to this new form?

MR. SCHULTZ: Well, we made a number of changes and some of them were to content and some of them were to structure or format, but all of the changes really were made with three guiding principles in mind. One was to promote compliance, another was to enhance transparency, another was to whenever we could and to the extent we could consistent with those principles, keep the burden down for the filing organization and the public.

Circling back to the structure and format for a bit, anyone that knows or has looked at the older form and now looks at this one for the first time will see that it's very different. We went

from a form that had a core form of nine pages and a couple of schedules to one now that has a core form a little bit longer, 11 pages, and a larger number of schedules, 16 of them.

And that seems like a big increase, two to 16, but one of the major changes from the old to the new is that in the old form, organizations were required to provide what we called unstructured attachments. Buried within our instructions or across the form, we would say, there's no schedule for this; attach one of your own and provide the following information. And we eliminated many of those. We replaced many of those with these schedules. So that's really the first thing. I think it's a more logical form in that way.

Another format change is we have a summary page now that we did not have before. And we call that the snapshot; that provides some basic financial information, important financial information that people can pick up just by looking at the front page. There's some other information there, but the idea was to just provide a summary that users could look at without getting into much of the detail. In terms of content, some of the content changes, we for the first time are asking a bunch of information about foreign activities. We revised the information regarding executive compensation; we've got new governance, I think, as Steve might have said already, revised related organization reporting. It's really a pretty significant change across the board to a form now that focuses mostly on activities and still gets numbers, but the numbers that we focused on in the past, they're still there, but that's not our primary focus anymore.

MR. WITMER: It's obvious why probably most tax-exempt organizations need to be paying attention with a significant change overall. What would you say would be some of the reasons that they need to look at it now?

MR. CLARKE: It's important for organizations to look at the form, particularly the new questions on the form because a number of these questions will require information gathering in order to report the correct information. And organizations should really not only involve financial people, CFOs, financial staff, accountants, but also because the majority of the reporting on the new form involves activities, programs, mission, governance. Really, it's important to bring program staff in, managers, directors possibly, so that the organization can provide a more complete picture of the organization and answer all the questions on the form. That's one reason to pay attention.

Another reason is that this is a publicly disclosable form. Unlike most IRS forms, the 990 is disclosable to the public. So anyone can go on the Internet and find almost any Form 990 that almost any organization has filed and see what they pay their officers and key employees, see what their mission is, see what their activities are. So the organization should be cognizant that the public will be looking at their form and it gives the organization an opportunity to tell its story, to talk about the good things it's doing and the way it's serving its community.

MR. WITMER: Okay, when will organizations need to file this new form?

MR. CLARKE: The 2008 Form 990 that we're talking about is filed for the 2008 tax year, meaning for calendar year filers, the 2008 calendar year, and for fiscal year filers, the fiscal

year beginning in 2008, ending in 2009. So for calendar year filers, the form will be due on May 15th, 2009. It's the 15th day of the fifth month after the end of the taxable year. For fiscal year filers, the same principle applies, but let's say a fiscal year filer's fiscal year begins July 1st, 2008, ends June 30th, 2009. Their form would be due November 15th of 2009.

MR. WITMER: Okay, I guess the obvious question is, is the redesign complete or is there is more to come?

MR. CLARKE: It's not complete, but we're probably 95 to 99 percent of the way there. We're dotting our I's; we're crossing our T's. By early- to mid-December, we should have the final, final version up on our website. In the meantime, anyone can go to our website, www.irs.gov/eo, and find the most recent drafts of the form and instructions, and schedules and instructions. And those are substantively complete. There will be no more major substantive revisions, only relatively minor ones, cosmetic and grammatical revisions.

MR. WITMER: Okay, when we think of the charities and tax-exempt organizations, we're talking about a diverse and sometimes very complex organizations who probably their admin staffs or the people who do their financial reporting vary from very elaborate to maybe even a volunteer. What's the IRS doing to reduce some of the burden with this new form? Ron?

MR. SCHULTZ: Well, we've worked very hard to try and reduce the burden, and I think most of it fits into one of two categories. Part of our transition period or our implementation roll-out period is one category. And then the second is, what did we do the form itself, what did we do to the instructions to make it easier for organizations and their practitioners to navigate through the new form? On the implementation period, or the transition, as Steve indicated, we bumped up by 10-fold the filing thresholds or filing amounts for the Form 990-EZ, the short form, which means that many organizations, almost a couple of hundred thousand as he said, will be eligible to file the short form in 2008 when they weren't in 2007. We did that to bring the sector into the new form over a three-year period.

So that's the most immediate thing that we've done, given a choice to many organizations to either file the new form if they wish or to file the short form for the 2008 and 2009 years. Regarding the form and the instructions, we tried to, as I said earlier, build the form so it was more logical. We think that will help on burden. Using the schedules instead of unstructured attachments we think will help on burden. But the instructions are key to this whole effort as well. We tried to make them clear, we tried to make them more comprehensive than the former instructions; we've built in a number of tools which we think are useful to assist the organizations themselves and their practitioners and their preparers.

We have a sequencing checklist now that they have put in for the first time on the 990, which folks can look at and see the order in which we recommend they tackle the form and try to complete it that way. We have a glossary of key terms which we hadn't had before. And I forget the number, but it's over a hundred; it's somewhere between a hundred and 200 of the terms that are used throughout the form, so they can go right to the glossary, see what it means, and use that definition uniformly throughout the form. We've got to help on compensation

because there are so many types of compensations out there that need to be considered for reporting.

We have a compensation matrix that we built into the instructions, and we have a number of appendices as well, which provide pretty pointed and direct instructions for certain types of filers, such as those that file a group return or who have joint ventures, a very good appendix on joint venture reporting. And then some of the appendices deal with educational issues such state reporting requirements or excess benefit transactions. So we really think that a lot of the burden will be reduced or minimized by a lot of the work that we've done on the instructions.

MR. WITMER: Ron talked about all this that's there, but what have you been doing to maybe get the word out about what these – what's there and where else can they get more information about it besides appearing on shows like this today?

MR. CLARKE: The primary way we're trying to get the word out is through our website. Not only can you find our form and instructions on the website, you can also find a five page background document on the major changes to the Form 990, what needs to be done to file it, also, a longer document, closer to 50 pages, on the difference between the 2007 form and the 2008 form. So I particularly recommend it to those who are struggling with insomnia; it would be a great cure.

No, it's a very helpful document. And various other background and overview information. Also, there's a series of mini-courses available on our stayexempt.org website: www.stayexempt.org. You can listen to an audio feed describing an overview of the 990 – the major changes; what needs to be done to file it. And also, we've been working with the sector on and off for the past five years during the redesign process; it's been really a collaborative process.

We've received input from all over the sector; various associations, representatives of non-profit groups. And we've received over 800 public comments, which you can see on our website. We've incorporated many of them – made many changes – to try to make this form more relevant to the taxes in this sector and bring it into the 21st century. And we'll continue to work with the sector, because as much as we like to think that the form is perfect, we're not quite there.

MR. WITMER: Okay, good. Well, just to help our viewers out, those items that Steve just mentioned, we've linked or placed on our resource page, the "Tax Talk Today" resource page where we've either placed the material or linked it to your site where you can go and look at that material. Very good. Thanks for the overview and the background information on this. Before we go on, let's go back to Phyllis for the headline news.

MS. GRIMES: Here are the top stories from the IRS: "Small business tax calendar now available." Looking for information on the economic stimulus act? Where can you find details about section 179 expensing? Would you like to know more about disaster recovery for small businesses or learn strategies for minimizing identity theft? The 2009 small business and self-

employed tax calendar is your one-stop resource for valuable information geared toward the small business community.

Each page of this illustrated 12-month wall calendar highlights different tax issues and practical tips for small business and self-employed taxpayers. The calendar also features a tear-out hints and helps guide and a handy 2010 at-a-glance calendar for future planning. The calendar is also available in Spanish and online. To receive a copy of the 2009 tax calendar, visit the tax calendar page on irs.gov or call 800-829-3676, and tell your clients, too.

IRS e-file eliminates paper signature. To prepare for this year's tax season, the IRS is spreading the word to taxpayers and their paid preparers about the elimination of the paper signature document for an electronic tax return. All taxpayers who e-file are now required to sign their electronic income tax returns using an electronic pin. Form 8453-OL has been eliminated as an option for signing electronic returns. The five-digit, self-selected pin that taxpayers use to sign must be authenticated by the IRS.

To authenticate a pin with the IRS, taxpayers must provide a shared secret – either their adjusted gross income, or AGI, from their 2007 tax return, or the pin they used to sign last year's tax return. Taxpayers who need their AGI information may request a transcript of their 2007 tax return from the IRS. They can obtain a transcript by calling 800-829-1040 or completing and mailing Form 4506T – Request for Transcript of Tax Return – to the address listed in the instructions. Taxpayers can also call the IRS toll-free number to request their 2007 pin. Remember, that's 1-800-829-1040. The new requirement was established to help improve tax return processing by making e-filing of 1040 forms a truly secure and paperless experience.

Reminder for tax practitioners: The updated Treasury Regulations section 301.7216 that addresses disclosure or use of tax return information takes effect January 1st, 2009. The regulations were published last January and July, along with supplemental revenue procedures, 2008-35. These rules affect all tax return preparers and electronic filers, their employees, consultants, and contractors who work on the preparation of tax returns or have access to tax return information.

The new regulations and revenue procedure addresses modern business practices, updates how and when consent forms must be used, and includes new rules for tax return information sent overseas. To obtain a copy of the updated regulations, please visit today's resource page and click on the link under headline news.

Now, let's continue our conversation on preparing the new Form 990. Joining our panelists are Eve Borenstein, exempt organizations tax attorney based in Minneapolis, Minnesota, and Julie Floch, a CPA and director of not-for-profit services for Eisner in New York. Les?

MR. WITMER: Thanks, Phyllis. Welcome to both of you. We want to get into a discussion about what you heard during that first segment, but I can't help but think that our viewers and the practitioners involved in this probably have a wide range out there from people who are pretty up-to-date on this or are aware of it to those that probably aren't but need to be.

So I guess a first question would be: What is it that we really need to emphasize or focus on to maybe hit both of these groups or to be able to lead into our discussion?

EVE ROSE BORENSTEIN: Well, there's huge diversity in the sector out there, and I think that all organizations looking at moving from a nine-page form with two schedules to an 11-page form with 16 schedules need to keep their eyes on the prize in terms of the priorities of the form. And transparency and accountability, to the public and to the regulatory community, was one of the goals of the IRS, and when you look at the form, I think everyone looking at the priority of ordering in the form will reveal much.

Organizations need to pay attention to what we'll be seeing in plain English on that form, the order as you thumb through it after the summary snapshot page, in terms of the plain English parts, are program/service accomplishments – what did the organization that's tax-exempt get done during the year; the new part on governance, asking questions about who are the managers and how is the organization governed – under what policies and procedures; and then, reporting on managers, the board, officers, certain staff, who's names are named, as they always have been, and their compensation is revealed. Organizations looking at those three parts and the changes there would do well in preparing for the new filing year.

JULIE L. FLOCH: I would add a little bit to Eve's point on governance and say there's 20 some-odd questions on governance just in one section and then sprinkled throughout the form, another maybe five or six questions on governance. And it's wide-ranging questions on governance, from conflict of interest policies to do you document minutes of your meetings to how do you prepare and file your Form 990 and so on and so forth. So I think a take-away would be to make sure that organizations are very comfortable and understand those governance questions.

MR. WITMER: Okay. Ron and Steve talked about the form and also the 16 schedules. Eve, how do you know which schedules to file? Where do you start?

MS. BORENSTEIN: Well, one of the parts that I skipped over in glossing – in talking about the priorities – I skipped over part four, which is a checklist for the entirety of the 16 schedules. Part four allows the preparer to sit there and say, which of these 16 schedules will apply to me. Now, one of the schedules which we'll be spending more time on is the schedule O and it's really a mandatory schedule for all filers – it's blank pages where you state your case in response to questions where you are either mandated to give an individualized-circumstance response or you want to take the time and space to do so.

But for the 15 schedules that only apply depending on, are you operating in a certain arena, in order – alphabetical order – there are questions in part four that you go through to say, does this apply to me; am I a grant making organization; do I do fund-raising; do I have property contributions; am I terminating, in which case, those schedules would apply to you, but the good news, obviously, is that for some organizations, they don't apply, so that's where you would go to see how to complete the form fully.

MR. WITMER: Okay, we talked about it going from a financial – the philosophy here – going from a financial to more of a narrative, and you just mentioned Schedule O, which really leads us into that. Steve, can you take us through – give us a little bit of the highlights – maybe more detail. What is it that’s in Schedule O?

MR. CLARKE: Schedule O is essentially the 12th page of the core form, because all filers are required to provide at least some narrative responses in Schedule O. Schedule O is basically an outpost for narrative reporting. And no longer is the form merely a bunch of yes/no answers with numbers on it. There’s a lot of narrative information that’s required to be reported. Some of that is required to be reported in Schedule O.

For instance, in part six – the governance part – question 10, regarding, how does your organization review its Form 990 before it’s filed; all 990 filers need to answer that question in Schedule O. All 990 filers need to answer question 19 in part six, regarding whether and how they make their financial statements, organizing documents, and conflict of interest policy available to the public. And there’s a number of other questions that require responses on the Schedule O if the filer answers a certain way.

If, for instance, it engages in – or it has a joint-venture policy – a policy governing joint ventures – if it has a conflict of interest policy; if it has a whistleblower policy. For a number of different policy questions in part six, there’s some Schedule O reporting required. And filers can supplement their responses on the Schedule O. If they don’t believe that we’ve provided them enough space to provide enough narrative reporting on a given topic, they can supplement it in Schedule O and tell their story.

MS. FLOCH: So the idea behind Schedule O, really, is that the old attached schedule has really gone away, right, so that organizations now will just, basically, complete the form and they won’t be just submitting various attachments, which is particularly good for organizations, now, that are doing electronic filing, where you can no longer submit those kinds of attachments.

MR. CLARKE: That’s right.

MR. SCHULTZ: And if I could, I would like to back up to something Eve said a minute ago on the checklist. And that is – and you know, she’s absolutely correct that that’s the thing – that’s the place people go to determine which schedules they need to complete – but it also serves another function. It’s kind of – like the summary page we mentioned is the snapshot of key information – the checklist for required schedules is its own little snapshot, because we or any user of the form can look at that checklist and, really, by seeing yes and no answers to that checklist can get a pretty good feel for the kinds of activities that are being conducted by the organization, without even having to go to the schedules.

MR. WITMER: Okay. We’ve gotten, already several questions in, and there have been several in this one area of governance – the part six. In particular: “What happens if this is omitted or not complete; what are the – what could be the penalty here? Does this trigger an audit, or what’s the situation there?”

MR. CLARKE: All filers of the Form 990 are required to file part six. I think some of the confusion has come in because there's a statement at the beginning of part six that says some of the policies asked about in this part are not required by the Internal Revenue Code, which is true, but we do require all filers to answer the questions. A question that comes up, oftentimes, is why are we asking questions on governance? The reason is, because we believe there's a close link between good governance and tax compliance. Ron had mentioned that one of the guiding principles in our redesign was to promote tax compliance; another guiding principle is to promote transparency. And we think the questions in part six do both of those things.

There's not, necessarily, a right or wrong answer to the questions in part six. There's many questions about policies, about procedures, about governance. And we believe that an organization should consider what policies are most appropriate to reduce its potential tax liabilities and to comply with applicable taxes and law. To the extent a board of an organization is proactive, engaged, informed; to the extent that it adopts good risk-management policies that reflect applicable tax law, we believe that organization is more likely to comply with the tax law and less likely to engage in excess benefit transactions, excessive UBITs, prohibited political campaign activities, and other areas which could jeopardize its tax exemption, so we're encouraging organizations not to necessarily adopt the policies that are referenced in part six, but to consider what policies are appropriate for the organization.

MS. BORENSTEIN: Part six clearly is playing an important role in terms of behavior modification and education for the sector. And one point to make is that the questions asked there are asking, do you have these policies. Many groups may not have them, and you have an opportunity to think through adopting them in the future and still state your case that you're a well-run organization in the present time. But many of the questions allow you to report on the last day of the tax year, so there's still time in the 2008 filing year to make some changes comporting with what might be baseline practices or better practices in the sector, or at least planning to do so.

MS. FLOCH: Or at least addressing whether or not those practices are appropriate for your organization. Because there are some questions on there that an organization might say, well clearly, even though I'm going to have to check no, I do not have this kind of policy, for my particular organization, it wouldn't make sense to have that policy. And, again, that goes back to why Schedule O is so important, because you have the opportunity there to explain exactly what you do, on it, as an organization.

MR. WITMER: Okay. There are some key questions in the schedule and one of them is question one: "What is meant by independent voting member of the governing body and how can the organization determine whether a voting member is independent?"

MR. CLARKE: Well, first of all, when we say member of a governing body, we don't mean honorary, emeritus members who just sit around and observe what happens; we mean members that have the right to vote on all matters that come before the board. And within that class of members, the question is, how many are independent? By independent – we really struggled with the definition here, because there's no definition of independence in the code or

regs that apply to such organizations. We came up with what we think is a cognizable test. It's a three-part test.

All three parts need to be met for a given director to be considered independent. First, they cannot have been paid as employees or officers by the filing organization or any related organizations. Two, they cannot have been paid over \$10,000 as independent contractors unless they're paid as directors and paid reasonable compensation. So if a director were an outside contractor as well and were paid over \$10,000, that director wouldn't be independent.

And the third test is, was the director involved in a transaction reportable on Schedule L dealing with things with interest of persons, access benefit transactions, loans, gifts and grants and business transactions? If the director was involved in such transactions, that director is not independent for purposes of part six, question one. The director needs to meet all three of those tests in order to be considered independent.

MR. WITMER: Another question, question two, relates to family and business relationships: How can an organization determine whether these exist?

MR. SCHULTZ: Well, it's a difficult area and, in the past, it's provided a lot of questions and anxiety by the filing community. But what we've tried to do in the instructions is lay out some pretty clear rules regarding the types of family relationships and business relationships that we're interested in and requiring reporting for. So the first place to go is to the instructions. In those instructions, we also provide a process, recommend a process, a reasonable efforts process that – (audio break) – can try to use so that if they do this, exercise some due diligence in accordance with that kind of a process, we're satisfied that they went out and did what they needed to do to try to obtain that information because, in particular instances, it's not always that easy to come up with.

MS. BORENSTEIN: And I think that level of disclosure about the board, how many voting members and how many are independent, which that question hits at the last day of the filing period or the filing year, that question and whether or not there are family and business relationships among board members just gives readers of the form and certainly the regulatory community as well some sense into the size of the board, the number of directors who would be able to vote on possible transactions where there were duality of interests. And not that it's necessarily bad to have people bring resources to the organization, be connected to each other or some of them not be independent, but there is a notion that, at some point, you'd want a core – (inaudible) – of individuals who were independent. So, again, behavior modification and education is a desirable outcome of part six.

MR. WITMER: Okay, here's a question that's come in: "Will the new 990 require that all directors be given the 990 to review before it's filed? Will the filing requirements be the same regardless of size of the organization?"

MS. BORENSTEIN: Well, I think question 10 is the question you're speaking to – (audio break) – given the 990 for review before filing. But then there is a mandate to report as to what the organization's processes for reviewing the form 990. And here there may be a huge

difference between an answer that the board has or hasn't and what process is actually undertaken internally.

MS. FLOCH: And something to add there is that I think that's a great example of behavior modification that we're going to see because I think that the days of organizations saying to their paid preparers, here's all our information; please go fill it out and let us know when it's all filed; you're not going to be able to do that anymore. And that's a good thing. Ownership of the form and the information that's on that form is going to more become the responsibility of management and the board as it should be.

MR. WITMER: Okay, let's switch gears here and move along. Another key change to the form 990 is part seven, compensation. Steve, what does the organization have to report on in this section?

MR. CLARKE: Well, first of all, compensation reporting is not new. We've always required some reporting on compensation. And in 2008 we're consolidating various reporting sections on compensation, hopefully making it a little easier to complete. As far as who must be reported, all of the directors, officers and trustees of the organization need to be listed in part seven, section A. Regardless of whether they're compensated or not, they need to be reported. In addition to those, all key employees of the organization need to be reported. We have a three-part test for key employees. It has to do with whether an individual who's an employee has responsibility or management authority over 10 percent or more of income, assets, activities, budget, compensation of the organization. And, if they do, and if they receive over \$150,000 in reportable or W-2 compensation from both the organization and related organization, they need to be reported. No more than 20 of those key employees need to be reported.

And then, in addition to those key employees, officers, directors and trustees, the five most highly compensated employees of the organization who make over \$100,000 in reportable compensation, that is, compensation reported on the form W-2 of the filer and any related organizations, need to be reported as well.

But then, also, there's reporting required of certain former officers, directors, trustees, key employees and highest-compensated employees who exceed certain compensation thresholds. By former we mean anyone who should have been reported in any of the last five forms 990 as an officer, director, trustee or key employee. I use this term "reportable compensation" from the filing organization and related organizations. Again, reportable compensation means W-2; it doesn't mean determining the fiscal-year compensation of the filer. It means looking at the W-2 of the tax year ending with or within the fiscal year that the organization is filing for.

And by related organizations, we mean parents of the organization, subsidiaries, brothers or sisters under common control and 509(a)(3) supporting or supported organizations. So before even completing the part seven, it's important for an organization to determine who it's related organizations are and to determine, are those organizations paying compensation to any of the filers, officers, directors, trustees or key employees?

MR. WITMER: There's a question that gets to that. Who is a related party? We are related to a university so are we related to all of the entities that are related to or just the ones that have the interactions with during the fiscal year? What do you want us to report?

MR. CLARKE: Schedule R is the related organizations schedule. We'll be talking about that in a little while. That provides a definition of related organizations. And the organizations should look out structural legal control; it doesn't have any parents that can elect a majority of its board or all of its board members. And does it have a subsidiary of which it can elect the entire board or majority of the board members? These are examples of related organizations to report.

Are there any brothers or sisters that have common parental control where the common parent appoints all or a majority of the board, of both the filer and the related organization? Those brothers or sisters need to be reported. And, finally, 509(a)(3), supporting or supported organization, relationships, those need to be reported as well.

MS. BORENSTEIN: Getting this list right in part seven is of course imperative. I mean, it's embarrassing to not know who your board members were during the year or be missing key employees. But inherent in what Stephen just said was a sea change with two changes for the entire reporting sector: One is that the definition of "key employee" has changed. We now have different thresholds about responsibilities in the organization but also tied to reportable compensation, only parties who are getting W-2 compensation that would have to be reported at greater than \$150,000 and limiting it to 20 people; and then this notion of highest compensated, which has been a notion that, in the past, has only applies to the 501(c)(3) community, to charities who had to report their high fives.

That notion now expands to all filers and the threshold is doubled from what it had been. But, again, it's tied to reportable compensation, W-2, greater than \$100,000. So there will be individual employees, either key or five-highest-comped, if they hit these thresholds, that all organizations need to be looking at the new definitions for clarity and making sure they've got the right list.

MS. FLOCH: And just also, to clarify, too, what you said before. This is calendar year so the information that's going to be shown on this schedule is going to be calendar year information. And yet, for organizations that are fiscally your organizations, they will still be showing this on a calendar-year basis. But other places in the form, they'll be showing their compensation on a fiscal year basis. So that's going to be a change as well.

MR. CLARKE: We should provide some reassurance to smaller organizations that this might be very easy for them to fill out. If they're not compensating anyone over \$100,000, it's going to be very simple to complete; they would just need to list their officers, directors and trustees.

MS. BORENSTEIN: One of the features of part seven is that, in the long run, we'll have comparability information available regarding salaries paid in the sector. Going to the W-2 or 1099 measure will allow us to see what an individual who was a key employee or was in the five-highest-comped or served as an officer, what they were being paid in the calendar year that

closed during the filing year, assuming it's a fiscal-year filer, otherwise, the calendar year, and so all of the returns you can line up for different organizations and see what a similar person, function, at different organizations were all being paid in the same period. So that will assist us with having a handle on salaries in the sector and having apples-to-apples information whereas, right now, it's all over the map depending on fiscal-year filers.

MR. WITMER: We talked about W-2 reportable compensation. What about other compensation: benefits and even independent contractors? How does that impact?

MR. CLARKE: Good question. After you've determined who you need to report in part seven, the second question is, what do you need to report for them? There's three columns. The first column deals with W-2 comp from the filer, the filing organization. The second column is W-2 compensation, form W-2, typically box-five compensation from related organizations. And the third column is for other compensation which you're asking about, which would include health-plan benefits, retirement-plan benefits, non-qualified deferred compensation plan benefits, other deferred comp benefits and other compensation, maybe personal services, employer-provided housing. There's a three- or four-page compensation matrix, we call it, a table, that's in our instructions for part seven that describes whether and how certain benefits need to be reported as compensation in part seven and also in Schedule J because many of the filers of part seven will have to continue their compensation reporting in Schedule J for certain individuals.

For instance, if any of the officers or directors reported in part seven are paid over \$150,000 of reportable compensation during the year, they need to be listed in Schedule J. And there's various questions in Schedule J about types of compensation, the process for determining compensation, whether there is any contingent compensation that's provided. And there's an additional breakdown that's required of W-2 compensation and other compensation in Schedule J.

MR. WITMER: Okay. We're getting quite a few questions and I think we're going to get to some of them and we'll see if we hit those; if we don't, I'll try to bring them up. But I think what we're talking about are the schedules that would be in part eight through 11, the financial statement and balance sheets. Maybe for time's sake, maybe I can throw out what the different schedules are and one of you – or you can join in and maybe let me know what we're talking about.

Let's start with Schedule A. Ron?

MR. SCHULTZ: Sure. Two or three things that are important to know about Schedule A: First is it's been streamlined significantly from the old Schedule A in the 2007 form. The 2007 Schedule A was for public charities, but it contained a bunch of information that was really a hodgepodge of things, just a number of questions that were not connected in any way other than we required the reporting of that information by public charities. Now it's streamlined so that it focuses exclusively on the status of that organization, that charity, as a public charity.

This means that it continues to house all of the public support test information. And one major change from 2007 to 2008 is in the accounting method rules. In 2007, organizations were

required to complete the public support test – or those that were required to complete it had to do it on the cash method of accounting regardless of what their method of accounting was for the overall form.

We changed that for 2008 and going forward. Now the organization is to use the method of accounting that it uses for the overall form 990 when it does the Schedule A, public support test calculations.

MS. FLOCH: And, effectively, what that will mean for organizations will be – since it's on a going-backwards basis as well, so, for the 2008 form, organizations who have completed this on a cash basis but in point of fact are now going to the accrual basis will need to go back and recalculate their public support for their old years, not just their current year. So that's something that organizations need to be aware of.

MR. WITMER: How about Schedule D?

MR. CLARKE: Schedule D is a collection of supplemental financial information. It's an important schedule in part because we estimate that two-thirds or so of filers will need to complete Schedule D. If a filer holds donor-advised funds, conservation easements; if it maintains historical treasures or art collections – museums, for instance – if it maintains some endowment funds; if it has escrow accounts such as credit counseling escrow accounts; if it has land – if it owns land, buildings, equipment; if it files or receives audited financial statements, those filers will need to file Schedule D.

For any Schedule D filer that has an audited financial statement and has what we call a thin 48 footnote – this is a footnote in the audited financials that reports on potential tax liability for uncertain tax positions, we'll want the filer to report, verbatim, the entire footnote, the entire 1048 footnote from its audited financials.

MS. FLOCH: If it has it.

MR. CLARKE: If it has it.

MS. FLOCH: And when it's applicable, yes.

MR. CLARKE: That's right.

MR. WITMER: Okay. How about Schedules I and F?

MS. BORENSTEIN: Well, I and F deal with two different scenarios, however, they come together and both of them require reporting on grant-making. And Schedule I is for grant-making in the United States and its possessions to – there's a part for grant-making to individuals. There's a part for grant-making to organizations.

So the detail that's been required on the 2007 form regarding who were the recipients of grants out are now situated in the schedule that has pre-formatted requirements as to what is

being sought. You need the taxpayer ID number for the recipient grantees who are organizations. For individuals, you no longer need to list names of individuals. So that was a helpful pullback.

Schedule F is paired with Schedule I for discussion purposes because it reports on grants to individuals and organizations that are outside the United States. Schedule F does a dual function. It is F for foreign operations and activities, reflects a need for the IRS to be gathering information that is completely new from that compared to the current form on activities and operations. And Ron, I know you were asked to say a little bit more about Schedule F.

MR. SCHULTZ: Yeah, I mean, I said that earlier in my remarks that this was one of the major changes to the form. Many organizations – not all but many of the organizations – that are engaged in foreign activities will have to complete the Schedule F. We've got some thresholds for it, so folks should pay attention to those.

But it really is a significant increase in the amount of information that we're seeking with respect to foreign activities. The old form 2007 asked one question on a foreign bank account, basically. And I think there was some foreign reporting, maybe in grant-making area. But that wasn't all that clear to many.

The Schedule F is pretty clear going forward. We want information regarding grant-making, fundraising, exempt activities, business activities, and investments. And we want that reporting done on a regional basis.

MS. FLOCH: And by regional, you mean there's nine actual regions, so an organization – when they're filling out the form – they don't specifically list the countries per se; they list the regions that they're engaged in.

MR. SCHULTZ: That's right.

MR. CLARKE: And they don't have to list the individuals to whom they've made grants.

MR. WITMER: What about Schedule G?

MS. FLOCH: Schedule G is the schedule that organizations use to report their fundraising events and their gaming activities. There's a lot of interesting information that is asked on that schedule. For starters, for organizations that use professional fundraisers, there is information and this threshold, this \$15,000 threshold. But they are required to provide some information about their relationship with those professional fundraisers.

There is also information that is requested on the form about their compliance with states. Are they registered to solicit in the various states that they're soliciting? There is questions about their fundraising activities. Some of the revenues that will come in the direct expenses with a specific format of how to complete that – again, the old form had an attached schedule. This is very direct as to what the information is being requested. There is questions on gaming.

Does the organization conduct gaming activities? Are they licensed to conduct those gaming activities? So much more to compliance requirements and regulations.

MS. BORENSTEIN: And I think it really needs to be emphasized that Schedule G is likely to be required for many, many charities. The information sought on special events and fundraising sales. Events – your annual dinner – groups do these things; the current 990 asks for information as to what was the charitable portion? What was the transaction exchange amount? What were your direct expenses? And I think the IRS was frustrated not getting that attached schedule. And now you see it in part two of the Schedule G. It's triggered at a very low threshold – gross receipts of \$15,000 – that includes the charitable contribution portion – will trigger it.

And part of why I emphasize that is that part of the Schedule G will be required of Form 990-EZ filers. So here is a new schedule that even for the groups who have the benefit of the transition period, they are still going to see this new schedule, partly because it duplicates information that the form had already been asking for.

MR. CLARKE: Form 990-EZ filers don't have to complete part one on professional fundraisers.

MR. WITMER: Okay. How about Schedule H?

MR. SCHULTZ: Schedule H is the new hospital schedule. It is required to be completed by those organizations that operate one or more hospitals. And we define hospital to mean a facility that is recognized as a hospital under state law, state licensing law, certification law. So it requires a facility; it requires looking at state law to see if it's defined to be a hospital under those state requirements. Once it's determined that the organization has at least one of those, then they file one Schedule H for all the hospitals.

What the Schedule H then does is it has six parts to it. Most of the parts – or many of the parts – ask questions regarding quantifiable and qualitative community benefit being provided by the hospitals and other facilities of the organization. But in addition, Schedule H requests information regarding bad debt expense, Medicare, some collection practice questions, some joint-venture management company questions, and then some narrative questions where we're seeking to obtain information that really goes to the heart of the kinds of activities that the organization engages in, so that they have the opportunity to show how they're serving the communities in promoting health.

One important thing to note about Schedule H is that it is a required schedule for 2008, but not all parts are required to be completed. For 2008 tax, there is only the part that requests information regarding facilities. A list of facilities must be completed. And the other parts are optional. But all parts are required beginning with 2009.

MR. WITMER: Okay. How about Schedule M?

MR. CLARKE: Schedule M is a brand-new schedule on non-cash contributions. There is also a new question in part eight of the statement of revenues, Line 1G asks: “How much of an organization’s contributions for the year are attributable to non-cash contributions?” And if that amount is over \$25,000, the filer has to complete the Schedule M. Or if the filer has received works of art, historical treasures, qualified conservation contributions, those also trigger Schedule M filing.

For Schedule M, the filer has to break out different categories of non-cash contributions, for instance, clothing and household goods, real estate, automobiles and other vehicles, securities. And for each of those different types, has to report either the number of contributions made or the total number of items received, and then has to report the revenues attributable to that particular category that is reported in Part A, and for each of those determinations of revenue, a description of how the organization determines that revenue. Did it use, for instance, resale value, fair-market value, appraisals? We’re not mandating any specific type of means for determining the revenues. We’re just asking the organization to describe to us. And Schedule M also asks for information on policies, practices, and procedures for receiving non-cash contributions.

MS. FLOCH: So here is one of those examples where you’ve got governance-type questions that are kind of sprinkled throughout the form not specifically on the governance area. But the question about gift-acceptance policies, which is what does your organization do to determine what gifts are good gifts to accept? Who can make those determinations, and so on and so forth – that’s a governance question.

MR. WITMER: Okay. How about Schedule R?

MS. BORENSTEIN: Schedule R is the very last schedule that is possibly to be used on the form. And it, like Schedule L, you will see in the sequencing list as one that you should actually look at or complete earlier in the form with respect to knowing who the right people are and how much they are compensated. You need to know your related organizations. Once you’ve made that determination of who is a related organization, Schedule R is where you’re going to be disclosing information as sought by the IRS, which differs depending on the type of entity.

So the first four parts of the Schedule R ask for information on the controlled organizations or those you control. That was the definition of related, which is fairly elegant and much simpler than the current form, I might add. But the four types would be a disregarded entity, an organization who was exempt itself, an organization who is taxable as a partnership, organizations taxable as a corporation or a trust. And you’ll see that each of those parts has different questions or different focuses to what the IRS is seeking.

There is a following part five on that Schedule asking for reporting of some of the transactions between you the filer and the related organization. And then the very last part of Schedule R actually is perhaps illogical in terms of being fit in there since it relates to unrelated organizations when they are joint ventures and the filer is conducting 5 percent or more of its activities through that joint venture. In fact, there is reporting on that. It’s in part six of

Schedule R. And I know Ron speaks very articulately about the IRS' interests on the Schedule R disclosures.

MR. SCHULTZ: I'm not sure how articulate I am. But it is one of the big changes from the old form. It's one of the important schedules to modernize the overall form. Not all organizations out there are stand-alones. Many of them conduct their activities either directly or indirectly through other related organizations, whether they're exempt or otherwise. And it was very important for us to recognize that and try to build a related organization schedule that captured that kind of information.

MR. CLARKE: Another thing to note is that even if an organization doesn't have to complete Schedule R, if it engages in any kind of joint ventures, it's required on the Form 990 to report its proportionate share of that joint ventures assets, expenses, income, activities at various places on the form.

MR. WITMER: Okay. We've gotten several questions. I think we've covered a lot of the questions that have come in doing that little exercise going through the schedules. But here's one that we've gotten several of this type of question. "If an exempt organization can file the 990-EZ and does not have to file a new 990, would you recommend filing the new 990 anyway, given the advantages for donors, readers, and for transparency reasons. Eve?"

MS. BORENSTEIN: I think the question for the groups who can take advantage of the transition year or two is whether or not they're going to take advantage of it to educate themselves about filling out the entire Form 990, the new one, and understand what's required. If they're going to not do any of that learning and just wait for 2010 as the first required year, I think that they're doing themselves a disservice or disadvantaging themselves. I think it's worth trying to do the larger 990 if groups are ready to do so and want to undertake that learning curve now. It remains to be seen what determinations people will make as to what's a better public relations posture.

MS. FLOCH: Yeah, I agree with you. I think the other thing is for organizations that decide that they're going to stick with a 990-EZ, they should at least be very cognizant of the kind of information that the 990 is asking, because in the two years when they themselves are subject to it, now is a great opportunity to start to make sure they have that information.

MS. BORENSTEIN: And that's a great segue to what I know is going to be your last question, Les, which is what organizations should be doing now in light of the new 990. I never thought I'd be saying this – or at least 10 years ago, I never thought I'd be saying this – but when you look at the instructions, there is a daunting length. However, they've not been formatted yet for the typical IRS formatting. You're reading them in a larger font. They are well written. They're in plain English. And they are short and sweet with respect to each of the parts. And I think it's imperative for organizations, preparers of forms, and the organizations themselves to start educating themselves about what the new parts are, what the key requirements are. And reading the instructions is a wonderful place to start.

MS. FLOCH: And I would echo that and add also in the instructions and any number of places – and we’ve touched upon that today – there are examples. So if you’re not sure whether something qualifies or whether it meets a definition, you take a look at those examples and they’re incredibly helpful and very user-friendly.

I would add to that and say that organizations should be very cognizant of the kinds of information that is being requested on the form. And make sure, particularly organizations who are calendar year, who only have another two months – but organizations even that are fiscal year – make sure that they have gathered the required information or started the process of gathering that information so that they’re not waiting until the last possible minute.

MR. WITMER: We’ve got just about a minute left. Real quickly, we’re talking federal. What about the states? Some states mirror and have the exact same – use the 990 in the past or have their own versions of it. What’s happening now?

MR. CLARKE: Nearly 40 states require organizations that are tax-exempt to file either the Form 990 or EZ, whatever they filed with the IRS. It remains to be seen exactly whether states will accept a Form 990-EZ from an organization that formerly filed a Form 990 but is exempt from doing so under our increased thresholds. So it’s very important for organizations to check with their states to see what forms are required.

MR. WITMER: Okay. We’re out of time. We have many more questions that we could have gone into and probably discussed this for a little bit longer. Thanks for a very interesting discussion. And again, as always, if your question was not answered by the panel, we will be posting questions and answers on our resource page as well as the information we talked about before. So be sure and check out the resource page. There is a wealth of information there again. Thanks again for an interesting discussion. But before we close out, let’s go back to Phyllis.

(Music.)

MS. GRIMES: That brings us to the end of today’s program. But mark your calendar for Tuesday, January 13th, 2009 for our special 100 minutes and two CPE-credit program: “Getting Ready for Filing Season 2009: Individual and Business.” Remember that you will be able to view today’s and other “Tax Talk Today” programs by going to archives on our site. And you can download a podcast of the programs from the homepage of “Tax Talk Today” and click on audio podcasts – podcasts may also be found under archives. Additionally, written transcripts of our program are available on our site under news.

Now, to receive CE credit for viewing today’s program, click on your account, and fill out and submit the evaluation form. And we want your feedback, so send your comments to mail@taxtalktoday.tv. Finally, tell your colleagues to watch “Tax Talk Today.” I’m Phyllis Grimes. And we’ll see you in January. Thanks for watching.

(Music.)
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