

## The Form 990 Evolution Continues — IRS Releases 2009 Update

After completely overhauling the Form 990 annual information return for the 2008 tax year, the IRS has issued the updated form and instructions for the 2009 tax year. The new documents reflect the benefits of a year's experience on the part of both the IRS and the exempt organization community, and offer a substantial number of changes and clarifications. The IRS has prepared a chart summarizing the significant changes in the 2009 version, which appears at: <http://www.irs.gov/charities/article/0,,id=218938,00.html>.

Many of the changes are much needed and welcomed, including clarifications regarding audited financial statements on a separate versus consolidated basis, reporting of compensation from related organizations, and reporting of certain business relationships between organizational leaders. Organizations also have been reassured that posting the Form 990 to a board-restricted website prior to filing can be sufficient to permit an affirmative answer to the relevant question in Part VI.

While the IRS chart of significant changes is very helpful, it is not exhaustive, and organizations will find many more nuggets buried in the revised form and instructions when they sit down to prepare their 2009 returns. For example, the Core Form inquiry regarding excess benefit transactions has been changed so as to broaden, in terms of timing, the net being cast. The question previously asked whether the organization "became" aware (during the tax year, presumably) of an excess benefit transaction from a prior year, but now asks whether the organization "is" aware of such a transaction. The effect of this minor change in wording is that organizations need to address even those facts and circumstances that were not discovered until after the end of the tax year for which the filing is being made. Another clarification not included in the IRS summary chart appears in the instructions to Schedule L, which now confirm that the "ordinary course of business" exception to reporting of business relationship between individual leaders does not apply to the reporting of business transactions between such leaders and the filing organization.

It should not be assumed that the changes or clarifications are all favorable to, or will make life easier for, exempt organization filers. For example, the modified instructions regarding disclosure of Form 990 on another's website now suggest that filing organizations cannot rely on Guidestar postings as a basis for checking this box. Similarly, the number of organizations filing Schedule F may now expand due to new

language in the instructions indicating that activities outside the U.S. include sending agents to attend and speak at conferences. Also, organizations registered to engage in fundraising throughout the United States previously could report “all states” on Schedule G, but now must separately list each state.

Finally, the revised instructions reiterate certain procedural points that IRS officials have made in recent public statements and revenue procedures. For example, organizations that make substantial changes to their organizational documents or activities should use Form 990 to notify the IRS of such changes, rather than sending a letter to the IRS Determinations Office; that office will no longer issue letters confirming continued exempt status (although it will continue to issue affirmation letters after organizational name changes). On the flip side, the instructions clarify that organizations changing their public charity status must separately contact the Determinations Office if they want the IRS records to be updated accordingly; that is, IRS records will not be updated based solely on the Form 990 filing.

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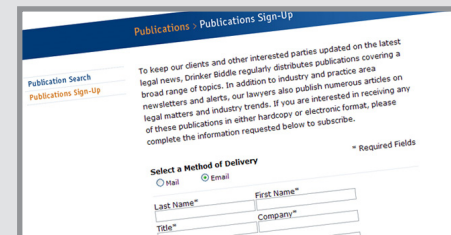
If you have questions regarding the updated Form 990 and its implications for your tax-exempt organization, please contact Linda Moroney at (414) 221-6057 or [Linda.Moroney@dbr.com](mailto:Linda.Moroney@dbr.com), T.J. Sullivan at (202) 230-5157 or [TJ.Sullivan@dbr.com](mailto:TJ.Sullivan@dbr.com), or another member of Drinker Biddle’s Tax or Health Law Teams.

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