

Revised 2008 IRS  
Form 990  
Lessons learned  
.... so far

TSCPA – Dallas Chapter  
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**Agenda**

- Overview and Background
- Approach to the return
- Practical references
  - Core Form
  - Schedules
- Concluding comments

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## Overview

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- Background
- Implications of electronic filing
- Potential users of the information
- Disclosures could cause public embarrassment as well

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## IRS initiatives

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Consider Form 990 disclosures in light of these current IRS initiatives

- International
- Employment
- Compensation
- Spending Indicator Project Commensurate Test
- Fundraising compliance checks
- Is good governance good compliance?
- Colleges/Universities
- "Data Mining" for audits
- Failure to answer questions - grounds for deeming return "incomplete"

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## Form considerations

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Did the IRS get the Form right the first time?

- There are many areas that are not clear (Schedule O is your friend).
- The return is very complex and includes many nuances that are not intuitive just by looking at the form itself.
- The same/consistent information may be required in various parts of the form.
- Read, read, and re-read the instructions (in several places) for guidance.
- Several FAQ's were issued, right up to the 11/15 filing deadline to "clarify" many of the schedules.

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## Form considerations



2009 instructions – many important changes, including:

- Significant changes in PSAs/organizing docs, termination of activities – report on form, not in letter to EO Determinations
- New option to indicate inclusion in consolidated financial statements
- Leave Questions 1c, 7g, and 7h blank if N/A
- New business codes appendix for PSR and misc. revenue
- Clarification on reporting related org., leased employee, and common paymaster comp.
- Schedules H and K– ALL parts must be completed
- If single publicly traded stock >5% of total assets, list as "other security"
- Foreign activity/investment reporting
- Glossary updated definitions including "control", "escrow and custodial accounts", "related organization", and "reportable compensation"

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## Approach to the return – Lessons Learned



- Begin with Part IV Checklist.
- In light of the 990 disclosures, consider whether the organization wants to adopt or change its policies/procedures.
- Involve subject matter experts.
- Spread out the work effort/involve PR.
- Consider board involvement/education/timing/distribution.
- Be clear, concise and accurate.
- Consider how a reader might interpret your responses (public lay person/IRS).
- Compare with similar organizations.
- Determine resource needs/constraints.
- Use the instructions and read carefully.
- Ask "Did your organization get it right the first time?"
- START EARLY!

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## Core Form 990, Part I

Summary Page Concerns



- How to project best view of the organization?
- What about large changes on the comparative information?
- Will the reader really look to the other schedules?

Line 1

### Mission statement

- This was important enough for the IRS to move it to the front page, line 1.
- Don't miss out on the opportunity here to succinctly describe what your organization does.
- There's not much space, but still important to use it wisely.
- Don't want to start the return off with just a half sentence or "See Schedule O."

Line 6

### Volunteers

- Don't overlook the opportunity to highlight your volunteers
- At least include non-compensated board members.
- Remember that estimates are allowed.

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### Core Form 990, Part III



#### Statement of program service accomplishments

Line 1

##### Board approved mission statement

- Be careful here. If the organization doesn't have a mission adopted by the board, then instructions indicate to state "none."
- Practical considerations.

Line 4

##### Description of 3 largest program services

- **CAUTION** – if significant changes from PY, must report here, not in letter to EO determinations
- Consider the important program services that you want to highlight and what makes your organization unique.
- Categories might include health care, research, charity care, community benefit, medical education, etc. It is ok if there is no associated revenue as this section is reported based on the magnitude of the expenses.
- Promote the organization the best you can here!
- Reference Schedule O or community benefit report so the reader can easily find the details.

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### Core Form 990, Part V



#### Other IRS filings and tax compliance

Asks if organization complied with various information reporting rules. Is the tax return signer comfortable that the organization is properly complying?

Lines 1 and 2

##### Compensation/payroll reporting issues

- Number of 1099's vs. W-2's may result in additional scrutiny of employee v. independent contractor issues.

Lines 7g and 7h

##### Contributions of intellectual property or vehicles

- Did the organization file appropriate forms for contributions of intellectual property or vehicles?
- "N/A" is likely most appropriate for most organizations, but a "YES" or "NO" answer must be entered.
- **NEW FOR 2009** – instructions specify to leave blank if N/A

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### Core Form 990, Part VI



#### Governance, management, and disclosure

Line 1

##### Voting members of the governing body and independent members

- Make sure to count only voting members. Ex-officios may not be allowed to vote.
- How to determine independence under the 990 definition

Line 2

##### Family and business relationships among executives

- Technically should disclose board overlap even if the entities are related.
- Also, should disclose individuals who are employees of related organizations. Instructions do not provide exceptions.
- **CLARIFICATION FOR 2009** – not a reportable relationship if two trustees/officers/directors/key employees serve in similar positions with other TE org.

Lines 6 & 7

##### Members or stockholders

- "Member" per Form 990 is not what you would typically think of as member, such as owners of an LLC.
- Exempt organizations are usually incorporated as either a membership organization or a directorship organization. Check your articles of incorporation.

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**Core Form 990, Part VI**  
Governance, management, and disclosure



Line 10	<b>Was a copy of the 990 provided to the governing body before it was filed?</b> <ul style="list-style-type: none"><li>To answer yes, keep in mind that each voting member of the board must receive a copy.</li><li><b>NEW FOR 2009</b> – additional conditions if 990 e-mailed to board members.</li></ul>
Line 15	<b>Process for determining executive compensation</b> <ul style="list-style-type: none"><li>What if you are an entity that has executive director/CEO, other officers and/or key employees paid by another related entity?</li></ul>
Lines 18	<b>Forms available on another's website</b> <ul style="list-style-type: none"><li>Only check this box if the organization provided the return directly to the other organization for posting on another's website.</li></ul>
Line 19	<b>Documents available to the public</b> <ul style="list-style-type: none"><li>Governing documents, conflict of interest policy, and financial statements.</li><li>Assuming information is not required to be made available to the public, what is the ramification of answering "XYZ aren't made available because they don't have to be"?</li></ul>

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**Core Form 990, Part VII**  
Compensation of officers, directors, trustees, etc.



Section A	<b>Reporting Related Organization Compensation</b> <ul style="list-style-type: none"><li>Where an executive receives compensation from a related organization, but not from the filing organization, all compensation received from related organizations must still be reported.</li><li><b>CLARIFICATION FOR 2009</b> – must report ENTIRE CALENDAR YEAR comp even if related for only part of year.</li></ul>
Section A	<b>Reporting Related Organization Hours Worked</b> <ul style="list-style-type: none"><li>Consider how to report total hours worked for both the related and filing organization.</li></ul>
Section A	<b>Determining who to report:</b> <ul style="list-style-type: none"><li>Officers – includes "top management" and "top financial" officials.</li><li>Positions</li><li>Key Employees</li></ul> <p><b>Caution:</b> All positions should be listed - but if a key employee, can't by definition be another role too.</p>

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**Core Form 990, Part XI**  
Financial Statements and Reporting



Line 2	<b>The audited financial statement questions</b> <ul style="list-style-type: none"><li>Do not answer "yes" if the organization was included in a consolidated audited financial statement and did not receive a separate company audited financial statement.</li><li>Should describe in Schedule O that the entity was included in a consolidated audited financial statement.</li><li><b>NEW FOR 2009</b> – option to check box if included in consolidated financial statement.</li></ul>
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**Schedule F**  
Foreign activities

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IRS FAQ Part I	<b>Are foreign investments disclosed?</b>
	Yes if revenue or expense meets the threshold.
	Foreign corporation: report if revenue received from the corporation meets the threshold (assume organization will not incur "expense" related to offshore corporation)
	Foreign partnership: report if organization's share of partnership's foreign activities exceeds the threshold
	Domestic partnership: no reporting even if it reports offshore activities on the K-1
	Foreign investments must disclose the region of the investment (and not the underlying — even for foreign partnerships) and the activity description is "investments"
Foreign investments should be disclosed separately from other activities in the region	
ONLY region and activity are required to be disclosed	
Foreign activity may require additional reporting, e.g. 5471, 926, 8865, FBAR, etc.	

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**Schedule F**  
Foreign activities

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IRS FAQ Part I	<b>Are foreign program related investments disclosed?</b>
	Yes if revenue or expense meets the threshold. Must provide all required information and may also require disclosure on Schedule R if control tests are met
IRS FAQ 990-EZ	Form 990EZ does not have a Schedule F requirement, but does require disclosure of foreign financial accounts
Foreign financial accounts	TDF 90-22.1 — due annually on or before June 30 by holders of foreign financial accounts if aggregate value is \$10,000 or more (including filing by persons with signature or similar authority over such accounts)
	Current IRS focus on foreign reporting — voluntary compliance program closed October 15

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**Schedule H**  
Hospital

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General	<b>Hospital</b> Includes entities that are (or are required to be) licensed, registered, or similarly recognized by the state as a "hospital"
	<b>Includes:</b> •Proportionate share of hospital joint ventures treated as partnerships (no minimum threshold)
	<b>Doesn't include:</b> •Separately incorporated entities that provide health care, charity care, community benefit, etc. •Unlicensed facilities, though some prefer to report • Consider implications for 2009 – expanded Schedule H
Joint Ventures	Be prepared to disclose relationships with outsiders in providing health care and consider whether this matches the answer regarding joint venture investments and policies from the governance section. <b>CLARIFICATIONS ISSUED IN 2009 INSTRUCTIONS.</b>
Automation	How have you automated the process for collecting this data? Community benefit can be anywhere

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**Schedule J** **Deloitte.**  
 Compensation information

<b>Part I, Lines 5,6,7</b>	<b>Questions Regarding Compensation</b> <ul style="list-style-type: none"> <li>Contingent on revenues;</li> <li>Contingent on net earnings;</li> <li>Non-fixed payments</li> </ul>
<b>Part II, column B IRS FAQ</b>	<b>Breakdown of W-2 compensation</b> <ul style="list-style-type: none"> <li>Amounts in columns B(i) to B(iii) should agree to the employee's W-2. Issues arise when certain amounts could be included in base pay and other columns.</li> <li><b>Can an organization reduce base pay in column B(i) for amounts that should be reported in column B(iii) such as employee deferrals 401(k) and 403(b) plans?</b></li> <li><b>Answer:</b> Yes.</li> </ul>
<b>Part II, column F IRS FAQ</b>	<b>2008 calendar year compensation reported on prior year's 990</b> <ul style="list-style-type: none"> <li>Amounts reported on Part VII and Schedule J must be on a calendar year basis even if the organization is a fiscal year end, yet the amount on Part IX is on a fiscal year and needs to be computed using same methodology.</li> <li>Duplication can occur if compensation was deferred in 2007 and paid in 2008, or a fiscal year entity that reported compensation on a fiscal year basis in 2007, but a calendar year basis in 2008.</li> <li><b>Answer:</b> Can't back out any amounts on the 2008 return. However, use Schedule J, Part II, column F to report the amounts included in the prior year return.</li> </ul>

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**Schedule J** **Deloitte.**  
 Compensation information

<b>Determining who to report</b>	<b>If centralized payroll and no common paymaster arrangement in place</b> <ul style="list-style-type: none"> <li>Unclear. For common paymaster arrangements, report compensation on the Form 990 for which the individual's pay is allocated.</li> <li><b>CLARIFICATION FOR 2009</b> – treat common paymaster payments as if paid directly by the org or related org itself.</li> </ul> <b>Key employee</b> <ul style="list-style-type: none"> <li><b>Caution:</b> who is in a position to determine whether the responsibilities of the individual rise to the level of a key employee? Remember, the 10% test is cut a lot of different ways.</li> </ul>
<b>Unrelated party</b>	<b>Caution:</b> Identifying when and how to report compensation from an unrelated party can be a challenge. Compensation from unrelated parties could arise under management agreements or executive loan situations, for example. <p>Obtaining compensation amounts from an unrelated party can be a challenge – ask early.</p>
<b>Severance</b>	<b>Caution:</b> Many severance arrangements are confidential – may need to negotiate with severed party in order to be able to legally disclose on Form 990. Going forward, severance arrangements should not be confidential at least as to the items required to be disclosed on the Form 990.

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**Schedule L** **Deloitte.**  
 Transactions with interested persons

<b>General</b>	Generally includes disqualified persons and others depending on what part of the form you are filing such as officers, directors, trustees, key employees, and family members. For some purposes, scholarship committee members as well. Definition varies depending on disclosure to be made. <b>CLARIFICATION FOR 2009</b> – does not include governmental units and instrumentalities. <p>Best practice: Use of questionnaire to meet reasonable efforts exception plus to obtain information to assist with other disclosures. (Loans do not have a reasonable efforts exception.) Process to be described in the Form 990.</p>
<b>Cautions</b>	Since transactions reportable on Schedule L cause the involved board member to no longer be considered independent, care should be exercised in determining whether a transaction is in fact reportable on Schedule L. Conservative reporting on Schedule L could have other ramifications. <p>Reasonable efforts requires the questionnaire to include "pertinent instructions and definitions." Such definitions and instructions are complex and include many nuances. It is not easy to develop a questionnaire that meets the reasonable efforts requirements AND is easy for the responders to understand. Consider appropriate education as well.</p>

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## Schedule R Related Organizations and Unrelated Partnerships



<b>General</b>	<b>Identifying related organizations impacts disclosures throughout the Form 990</b> Includes: <ul style="list-style-type: none"><li>•Disregarded entities</li><li>•Controlled entities (more than 50%)</li><li>•Partnerships, if managing partner, member or general partner and there are 3 or fewer such parties</li><li>•Unrelated organizations if the filing organization conducted 5% or more of its activities through such partnership or LLC that is taxed as a partnership</li><li>•<b>CLARIFICATION FOR 2009:</b> may include government entities</li></ul>
	<b>Indirect control uses IRC section 318 attribution rules. This is not new but many organizations did not understand these rules.</b>  <b>Best practice:</b> obtain and maintain copies of organizing documents of entities organization has an ownership interest in.
<b>Part V</b>	For Part V — don't rely solely on memory — consider what kind of system queries could be run in order to capture the necessary information. For large, multi-entity systems, the Schedule R can be quite lengthy.
<b>Best practice</b>	Public charity status is the box number that is checked on Schedule A.

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## Conclusion



- Exercise care in completing the return.
- Devote the appropriate time and efforts to completing the return.
- Be consistent between related party returns in how questions are answered.
- Involve others — at least the first time around — as it is a lot of work.
- Start early.
- Remember the Form 990 is a public document.
- Prepare media strategy.

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# Questions?

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