

# Blazek & Vetterling

Certified Public Accountants

## E-MAIL NEWS

### Governance Section of the 2008 Form 990

Dear Calendar Year 990 Filers,

We are again sending our email news describing new Part VI entitled Governance, Management, and Disclosure to be completed in the 2008 Core Form 990. The 16 Yes-No Questions are to be answered according to policies and procedures in place on the last day of the year 2008. The IRS states on the top of the form that the policies are not required by the tax code, but you can imagine they will be interested in the answers. We recommend the memo be shared with your organization's executives or other persons responsible for governance matters. Please call us if you have any questions.

The 20 questions displayed on new page 6 of the 2008 Form 990 evidence the IRS opinion that existence of an independent board and adoption of the practices and policies suggested by the questions lead to good governance and assure dedication of assets to the purposes for which an organization was found to be tax-exempt. Though they admit, at the top of the page, that the policies are not required by the Internal Revenue Code, the IRS considers the practices are needed to foster tax compliance. Despite criticism of this position, filers of the 2008 Form 990 must answer all of the questions or face penalties for filing an incomplete return. It is also reasonable to assume the IRS may choose to scrutinize organizations that do not follow recommended practices in the future.

We hope a review of this page now will help you anticipate any challenges the preparation of this page will present next year. For example, Line 12 asks, and most will prefer to answer "Yes," we do have a conflict of interest under which we gather conflict disclosures from our officials each year. Another important "Yes" will appear on Lines 8 and 15 that ask about the written documentation of meetings and the compensation approval system. We highly recommend you study the questions and begin to consider the answers. Adoption of policies prior to year-end will allow positive answers and the detailed explanations requested on Schedule O should be carefully written.

Many of you have already talked to our tax managers, Amanda Adams and Barbara Murphy, and we encourage you to continue the conversation as you anticipate the enhanced reporting that will be required on the 2008 Form 990. We are continuing to study the form in preparation for a presentation at the United Way on October 14 (flyer following) and a revised edition of our Form 990 Preparation Guide.

**New Practices and Information Requested**

Helpful guidance, though not necessarily welcomed, was provided when the IRS released the final instructions about information requested in the Governance part on August 19th.

- An electronic or physical copy of Form 990 must be provided to each board member/trustee before it is filed. The review and approval of the return can be delegated to “a committee of the board or to management.” Specifics of who conducted the review, when they conducted it, and the extent of any such review is requested in Schedule O. We hope we will not need to sign a return that has to say “No review was or will be conducted.” We also urge plans to hasten the return preparation process to avoid completion of returns too near the deadline for the new approval system.
- An organization with a conflict of interest policy must describe in Schedule O: (1) which persons are covered under the policy, (2) the level at which determinations of whether a conflict exists are made, (3) the level at which actual conflicts are reviewed, and (4) an explanation of any restrictions imposed on a person with a conflict, such as prohibiting them from participating in the governing body’s deliberations and decision in the transaction.
- Line 14 instructions suggest, “A document retention and destruction policy identifies the record retention responsibilities of staff, volunteers, board members, and outsiders for maintaining and documenting the storage and destruction of the organization’s documents and records. In order to answer “Yes,” the organization must have implemented such a policy on or before the last day of the organization’s tax year.
- It is important for an organization that pays its officials and managers to answer Line 15 “Yes,” compensation is (1) reviewed and approved by persons independent of the person receiving compensation, (2) comparability data is gathered, and (3) contemporaneous substantiation of the deliberation and decision is maintained. Intermediate Sanctions, or penalties, are imposed on those that receive what is found to be excess compensation or benefits. To avoid penalties, the three factors can form a “rebuttable presumption” of reasonableness to protect compensated persons.
- An important decision to make before year end is level of public disclosure to be described on lines 18 and 19. Should the governing documents, conflict of interest policies and financial statement be made available to the public, and if so how?

- Steps an organization should consider taking before year-end would include:
  - Adopt conflict of interest, document retention, compensation review, whistleblower, 990 review policies, plus contemporaneous documentation of meetings of governing body and committees. Consider policies for investments, endowment funds, gift acceptance, personnel, and others not mentioned by the IRS.
  - Evaluate board composition with a view to balance of independent versus compensated, related, or otherwise conflicted members. Ask if board should be expanded or contracted.
  - Expand annual board member conflict of interest questionnaire to include questions of independence and business relationships.
  - Review filing requirements for states in which the organization conducts activities or solicits financial support.

**Part VI Governance, Management, and Disclosure** (Sections A, B, and C request information about policies not required by the Internal Revenue Code.)

**Section A. Governing Body and Management**

		Yes	No
For each "Yes" response to lines 2-7 below, and for a "No" response to lines 8 or 9b below, describe the circumstances, process, or changes in Schedule O. See instructions.			
<b>1a</b>	Enter the number of voting members of the governing body . . . . .		
<b>1b</b>	Enter the number of voting members that are independent . . . . .		
<b>2</b>	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? . . . . .		
<b>3</b>	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? . . . . .		
<b>4</b>	Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed? . . . . .		
<b>5</b>	Did the organization become aware during the year of a material diversion of the organization's assets? . . . . .		
<b>6</b>	Does the organization have members or stockholders? . . . . .		
<b>7a</b>	Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body? . . . . .		
<b>7b</b>	Are any decisions of the governing body subject to approval by members, stockholders, or other persons? . . . . .		
<b>8</b>	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
<b>a</b>	the governing body? . . . . .		
<b>b</b>	each committee with authority to act on behalf of the governing body? . . . . .		
<b>9a</b>	Does the organization have local chapters, branches, or affiliates? . . . . .		
<b>b</b>	If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization? . . . . .		
<b>10</b>	Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990 . . . . .		
<b>11</b>	Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O . . . . .		

**Section B. Policies**

		Yes	No
<b>12a</b>	Does the organization have a written conflict of interest policy? If "Yes": . . . . .		
<b>b</b>	Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .		
<b>c</b>	Does the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this is done . . . . .		
<b>13</b>	Does the organization have a written whistleblower policy? . . . . .		
<b>14</b>	Does the organization have a written document retention and destruction policy? . . . . .		
<b>15</b>	Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision:		
<b>a</b>	The organization's CEO, Executive Director, or top management official? . . . . .		
<b>b</b>	Other officers or key employees of the organization? . . . . . Describe the process in Schedule O.		
<b>16a</b>	Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? . . . . .		
<b>b</b>	If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable Federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements? . . . . .		

**Section C. Disclosure**

- 17** List the States with which a copy of this Form 990 is required to be filed. . . . .
- 18** IRC Section 6104 requires an organization to make its Form 1023 (or 1024 if applicable), 990, and 990-T (501(c)(3)s only) available for public inspection. Indicate how you make these available. Check all that apply.  
 own website     another's website     upon request
- 19** Describe in Schedule O whether (and if so, how), the organization makes its governing documents, conflict of interest policy, and financial statements available to the public.
- 20** State the name, physical address, and telephone number of the person who possesses the books and records of the organization: . . . . .