

# Blazek & Vetterling

CERTIFIED PUBLIC ACCOUNTANTS

## E-MAIL NEWS

### **Governance, Management, & Disclosures on 2008 Form 990**

**We updated our email sent in October 2008 to remind those with fiscal years ending in June-November of policies the IRS expects to be in place before the year ends. They have said little about the consequence of a “no” answer except to say they would be interested in an entity that reports financial transactions with directors and has no conflict of interest policy.**

The 20 questions displayed on new Part VI of the 2008 Form 990 evidence the IRS opinion that the existence of an independent board and adoption of the practices and policies suggested by the questions leads to good governance and assures the 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 will help you anticipate any challenges the preparation of Part VI will present on the 2008 return. For example, Line 12 asks, and most will prefer to answer “Yes,” we do have a conflict of interest policy 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 required on the 2008 Form 990. We can assure you, now that we have completed a few 2008 Form 990s,

that it is complicated and contains an amazing expansion of data over that reported in the past. Many say our new electronic data gathering worksheets make it understandable, but no less time consuming for all of us.

## **POLICIES & PRACTICES**

Helpful guidance, though not necessarily welcomed, was provided when the IRS released the final instructions.

- Question 10 asks if a copy of Form 990 was provided to each board member/trustee before it is filed. The actual 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 the review is requested in Schedule O. We would prefer not to sign a return that says “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 entity with a conflict of interest policy must describe in Schedule O:
  - (1) which persons are covered under the policy,
  - (2) level at which determinations of whether a conflict exists are made,
  - (3) the level at which actual conflicts are reviewed, and
  - (4) 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” and be able to describe how compensation (1) is reviewed and approved by persons independent of the person receiving compensation, (2) comparability data is gathered, (3) contemporaneous substantiation of the deliberation and decision is maintained, and (4) how often reviews are conducted. Intermediate Sanctions Penalties are imposed on those that receive what is found to be excess compensation or benefits. To avoid penalties, the first three factors can form a “rebuttable presumption” of reasonableness to protect compensated persons.

- An important decision to make this year is the level of public disclosure shown on lines 18-19. Should the governing documents, conflict of interest policies and financial statements be made available to the public, and if so how?

### **YEAR END STEPS TO TAKE**

- Adopt conflict of interest, document retention, compensation review, whistleblower, and 990 review policies. Review 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. Consider whether board should be expanded or contracted.
- Expand or implement annual board member questionnaire for reporting of conflicts of interest and lack of independent due to family and business relationships.

### **MANAGEMENT**

Expanding on questions added to the form in 2005, questions 1-4 of Part VI ask for the number of voting board members compared to those that are independent. Any family or business relationships among board members must also be described. The answer to these questions obviously indicate whether board decisions are made in an impartial manner and coupled with the policy questions reflect the organization's governance style. A page containing the definitions of the terms "family" and "business" relationships is enclosed for your use in preparing a board questionnaire to seek this information. The filing entity is expected each year to make a "reasonable effort" to ask its board members to report any such relationships to report on the return.

Prepared by Jody Blazek  
June 16, 2009

# INDEPENDENT BOARD MEMBER

## Form 990 Definition

A member of the governing body is considered “**independent**” only if all three of the following circumstances applied at all times during the organization’s tax year:

- Member was **not compensated as an officer or other employee of the organization** or of a related organization (controlled).
- Member did not receive total compensation or other **payments exceeding \$10,000** during the organization’s tax year from the organization or related organizations **as an independent contractor**, other than reimbursement of expenses under an accountable plan **or reasonable compensation for services provided in the capacity as a member of the governing body**. For example, a person who receives reasonable expense reimbursements and reasonable compensation as a director of the organization does not cease to be independent merely because he or she also receives payments of \$7,500 from the organization for other arrangements.
- Neither the **member, nor any family member** of the member, was **involved in a transaction with the organization** (whether directly or indirectly through affiliation with another organization) that is required to be reported in Schedule L for the organization or a related organization. **Family** includes a person’s spouse, ancestors, brothers and sisters (whole or half blood), grandchildren, great-grandchildren, and their spouses.

A member of the governing body is **not considered to lack independence merely because** of the following circumstances:

- Member is a donor to the organization, regardless of the amount of the contribution;
- Member has taken a bona fide vow of poverty and receives nontaxable income from a religious order.
- Member receives financial benefits from the organization solely in the capacity of being a member of the charitable or other class served by the organization in the exercise of its exempt function, such as being a member of a §501(c)(6) organization, so long as the financial benefits comply with the organization’s terms of membership.

**Business relationships** between two persons include any of the following:

- One person is employed by the other in a sole proprietorship or by an organization with which the other is associated as a trustee, director, officer, key employee, or >35% owner.
- One person transacts business with the other, except in ordinary course of either party's business on the same terms as are generally offered to the public,
- Two persons are each a director, trustee, officer, or greater than 10% owner (measured by stock in corporation, profits or capital in partnership or LLC, membership interest in a nonprofit corporation, or beneficial interest in a trust) in the same business or investment entity.
- Privileged relationships (doctor/patient, lawyer/ litigant, clergy/church member) are not treated as business relationships.