



Common Errors in Tax and Compliance

Agenda

1. Form 990 Overview
2. Public Support Test
3. Common Errors
4. Unrelated Business Income
5. Other Common Issues



Form 990 Overview



Form 990

- Form 990 is an “informational return,” not a “tax return”
 - Form 990 must be complete & accurate
 - Form 990 must be available for public inspection
 - Form 990 must be filed electronically
- Form 990 is used to communicate to the IRS why the organization continues to be a tax-exempt entity
- There are substantial penalties for non-compliance
 - Late filing penalties
 - Revocation of exempt status for those failing to file for 3 consecutive years

Form 990

| | |
|---|-------------|
| Gross receipts normally less than \$50,000 | Form 990-N |
| Gross receipts less than \$200,000 and total assets less than \$500,000 | Form 990-EZ |
| Gross receipts equal to or greater than \$200,000 and total assets equal to or greater than \$500,000 | Form 990 |

Form 990-N: Electronic postcard

Form 990-EZ: 4 pages and up to 8 schedules

Form 990: 12 pages and up to 16 schedules

Private Foundations file Form 990-PF

Failure to File

- Penalties for late filing (other than 990-N)
- Failure to file 3 years in a row = Automatic revocation of tax exempt status
- IRS website states: “Organizations that do not file a required annual information return or notice for three consecutive years automatically lose their tax-exempt status by operation of law. An automatic revocation is effective on the original filing due date of the third annual return or notice.”

Exceptions to Filing Form 990

- **Churches**, their integrated auxiliaries, conventions of associations of churches, and the exclusively religious activities of a religious order
- **Schools affiliated with a church** or operated by a religious order
- Organizations that are part of a group exemption and **included on a group return** filed by the central or parent organization
- **Government units** and certain affiliates of governmental units.

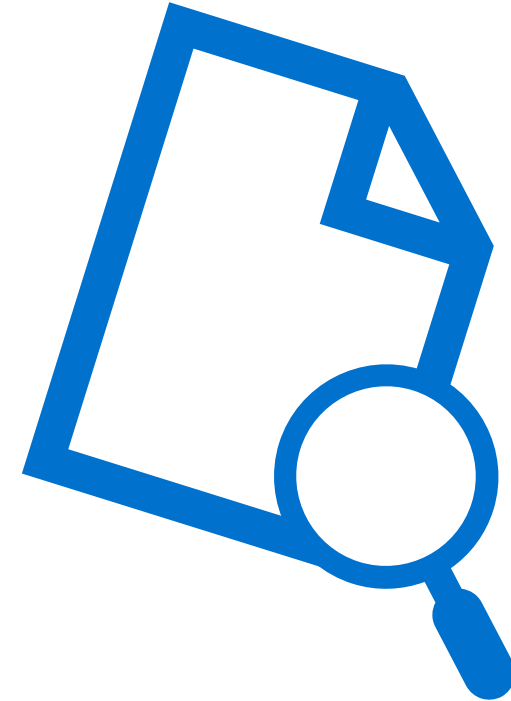
Public Disclosure

- Maintain a public disclosure copy of Form 990 and 990-T
 - 3 years should be available upon request
- Form 1023 & attachments also
- Form 990 and in some cases Form 990-T are available on Guidestar (www.guidestar.org)
- We recommend your organization, at least annually, review information posted for accuracy
- Form 990, Part VI:
 - 18** Section 6104 requires an organization to make its Forms 1023 (1024 or 1024-A, if applicable), 990, and 990-T (section 501(c)(3)s only) available for public inspection. Indicate how you made these available. Check all that apply.
 Own website Another's website Upon request Other (explain on Schedule O)
 - 19** Describe on Schedule O whether (and if so, how) the organization made its governing documents, conflict of interest policy, and financial statements available to the public during the tax year.

IRS Organization Search

- Replaces EO Select Check
- Images of newly filed 990s
 - Added monthly
- Mobile friendly
- Determination letters issued after 1/1/14
- www.irs.gov/charities-non-profits/tax-exempt-organization-search

Tax Exempt Organization Search



Who is Looking at Form 990?

- Congress
- IRS
- Media
- General public
- Donors
- Vendors
- State Attorneys General
- Other non-profits in your industry
- Other watchdog groups
- Future employees
- The Board (we hope!)

Who is Looking at Form 990?

- IRS EO Exams using **data analytics – query sets**
- Expand the use of data, machine learning, and artificial intelligence algorithms to select returns for exam.

Core Form

- **Part III: Program Service Accomplishments**

- Describes in detail the mission and types of programs the organization conducts including revenue and expenses

- **Part IV: Checklist of Required Schedules**

- Various questions to help pinpoint exactly how many additional schedules will be attached

- **Part V: Statements Regarding Other IRS Filings & Tax Compliance**

- Questions about foreign banking, the need to file a 990-T, items the IRS will need to know about
- Have you completed the appropriate tax forms?
- Payroll tax issues – not exempt; appropriate reporting

Core Form

- **Part VI: Governance, Management & Disclosure**
 - Various questions and disclosures that provide more detail into who manages the organization and policies in place (all best practices)
 - Are these trick questions? Yes and No.
 - Meant to shame – Do you have X Policy?
 - Why is the IRS asking about governance? *“A well-governed charity is more likely to obey the tax laws, safeguard charitable assets, and serve charitable interests than one with poor or lax governance.”* - IRS

Part VII: Compensation of Officers, Directors, Key Employees, Highest Compensated Employees & Independent Contractors

- Officers
- Directors/Trustees
- Key Employees
- Highest Compensated Employees, and
- Independent Contractors
- Schedule J
- All forms of cash and noncash payments/benefits
- Rebuttable Presumption of Reasonableness

Financial Information

- Part VIII – Statement of Revenue
- Part IX – Statement of Functional Expenses
- Part X – Balance Sheet
- Part XI – Reconciliation of Net Assets
- Part XII – Financial Statements and Reporting

Schedules

- Schedule A: Public Charity Status & Public Support Test
- Schedule B: Schedule of Contributors
- Schedule C: Lobbying Activities
- Schedule D: Supplemental Financial Statements
- Schedule F: Activities Outside the US
- Schedule G: Fundraising
- Schedule I: Grants & Other Assistance
- Schedule J: Compensation Information

Schedules (continued)

- Schedule K: Tax-Exempt Bonds
- Schedule L: Transactions with Interested Persons
- Schedule M: Noncash Contributions
- Schedule O: Supplemental Information [O stands for “Opportunity”]
- Schedule R: Related Organizations

Public Support Test



Schedule A

- Calculation of Public Support Test
- Donative charity or service provider charity
- Can switch back and forth
- Risk of tipping into private foundation status



Part II Support Schedule for Organizations Described in Sections 170(b)(1)(A)(iv) and 170(b)(1)(A)(vi)
 (Complete only if you checked the box on line 5, 7, or 8 of Part I or if the organization failed to qualify under Part III. If the organization fails to qualify under the tests listed below, please complete Part III.)

Section A. Public Support

| Calendar year (or fiscal year beginning in) | (a) 2020 | (b) 2021 | (c) 2022 | (d) 2023 | (e) 2024 | (f) Total |
|--|----------|----------|----------|----------|----------|-----------|
| 1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.") | | | | | | |
| 2 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf | | | | | | |
| 3 The value of services or facilities furnished by a governmental unit to the organization without charge | | | | | | |
| 4 Total. Add lines 1 through 3 | | | | | | |
| 5 The portion of total contributions by each person (other than a governmental unit or publicly supported organization) included on line 1 that exceeds 2% of the amount shown on line 11, column (f) | | | | | | |
| 6 Public support. Subtract line 5 from line 4 | | | | | | |

Section B. Total Support

| Calendar year (or fiscal year beginning in) | (a) 2020 | (b) 2021 | (c) 2022 | (d) 2023 | (e) 2024 | (f) Total |
|--|----------|----------|----------|----------|----------|-----------|
| 7 Amounts from line 4 | | | | | | |
| 8 Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources | | | | | | |
| 9 Net income from unrelated business activities, whether or not the business is regularly carried on | | | | | | |
| 10 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.) | | | | | | |
| 11 Total support. Add lines 7 through 10 | | | | | | |
| 12 Gross receipts from related activities, etc. (see instructions) | | | | | | 12 |
| 13 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here <input type="checkbox"/> | | | | | | |

Public Support Test Part II

Section C. Computation of Public Support Percentage

| | | | | |
|------------|--|-----------|--|---|
| 14 | Public support percentage for 2024 (line 6, column (f), divided by line 11, column (f)) | 14 | | % |
| 15 | Public support percentage from 2023 Schedule A, Part II, line 14 | 15 | | % |
| 16a | 33¹/₃% support test—2024. If the organization did not check the box on line 13, and line 14 is 33 ¹ / ₃ % or more, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/> | | | |
| b | 33¹/₃% support test—2023. If the organization did not check a box on line 13 or 16a, and line 15 is 33 ¹ / ₃ % or more, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/> | | | |
| 17a | 10%-facts-and-circumstances test—2024. If the organization did not check a box on line 13, 16a, or 16b, and line 14 is 10% or more, and if the organization meets the facts-and-circumstances test, check this box and stop here . Explain in Part VI how the organization meets the facts-and-circumstances test. The organization qualifies as a publicly supported organization <input type="checkbox"/> | | | |
| b | 10%-facts-and-circumstances test—2023. If the organization did not check a box on line 13, 16a, 16b, or 17a, and line 15 is 10% or more, and if the organization meets the facts-and-circumstances test, check this box and stop here . Explain in Part VI how the organization meets the facts-and-circumstances test. The organization qualifies as a publicly supported organization <input type="checkbox"/> | | | |
| 18 | Private foundation. If the organization did not check a box on line 13, 16a, 16b, 17a, or 17b, check this box and see instructions <input type="checkbox"/> | | | |

Schedule A (Form 990) 2024

Part III Support Schedule for Organizations Described in Section 509(a)(2)

(Complete only if you checked the box on line 10 of Part I or if the organization failed to qualify under Part II. If the organization fails to qualify under the tests listed below, please complete Part II.)

Section A. Public Support

| Calendar year (or fiscal year beginning in) | (a) 2020 | (b) 2021 | (c) 2022 | (d) 2023 | (e) 2024 | (f) Total |
|---|----------|----------|----------|----------|----------|-----------|
| 1 Gifts, grants, contributions, and membership fees received. (Do not include any "unusual grants.") | | | | | | |
| 2 Gross receipts from admissions, merchandise sold or services performed, or facilities furnished in any activity that is related to the organization's tax-exempt purpose | | | | | | |
| 3 Gross receipts from activities that are not an unrelated trade or business under section 513 | | | | | | |
| 4 Tax revenues levied for the organization's benefit and either paid to or expended on its behalf | | | | | | |
| 5 The value of services or facilities furnished by a governmental unit to the organization without charge | | | | | | |
| 6 Total. Add lines 1 through 5 | | | | | | |
| 7a Amounts included on lines 1, 2, and 3 received from disqualified persons | | | | | | |
| b Amounts included on lines 2 and 3 received from other than disqualified persons that exceed the greater of \$5,000 or 1% of the amount on line 13 for the year | | | | | | |
| c Add lines 7a and 7b | | | | | | |
| 8 Public support. (Subtract line 7c from line 6.) | | | | | | |

Section B. Total Support

Public Support Test Part III

Section B. Total Support

| Calendar year (or fiscal year beginning in) | (a) 2020 | (b) 2021 | (c) 2022 | (d) 2023 | (e) 2024 | (f) Total |
|--|----------|----------|----------|----------|----------|-----------|
| 9 Amounts from line 6 | | | | | | |
| 10a Gross income from interest, dividends, payments received on securities loans, rents, royalties, and income from similar sources | | | | | | |
| b Unrelated business taxable income (less section 511 taxes) from businesses acquired after June 30, 1975 | | | | | | |
| c Add lines 10a and 10b | | | | | | |
| 11 Net income from unrelated business activities not included on line 10b, whether or not the business is regularly carried on | | | | | | |
| 12 Other income. Do not include gain or loss from the sale of capital assets (Explain in Part VI.) | | | | | | |
| 13 Total support. (Add lines 9, 10c, 11, and 12.) | | | | | | |
| 14 First 5 years. If the Form 990 is for the organization's first, second, third, fourth, or fifth tax year as a section 501(c)(3) organization, check this box and stop here <input type="checkbox"/> | | | | | | |

Section C. Computation of Public Support Percentage

| | | |
|---|-----------|---|
| 15 Public support percentage for 2024 (line 8, column (f), divided by line 13, column (f)) | 15 | % |
| 16 Public support percentage from 2023 Schedule A, Part III, line 15 | 16 | % |

Section D. Computation of Investment Income Percentage

| | | |
|--|-----------|---|
| 17 Investment income percentage for 2024 (line 10c, column (f), divided by line 13, column (f)) | 17 | % |
| 18 Investment income percentage from 2023 Schedule A, Part III, line 17 | 18 | % |
| 19a 33¹/₃% support tests—2024. If the organization did not check the box on line 14, and line 15 is more than 33 ¹ / ₃ %, and line 17 is not more than 33 ¹ / ₃ %, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/> | | |
| b 33¹/₃% support tests—2023. If the organization did not check a box on line 14 or line 19a, and line 16 is more than 33 ¹ / ₃ %, and line 18 is not more than 33 ¹ / ₃ %, check this box and stop here . The organization qualifies as a publicly supported organization <input type="checkbox"/> | | |
| 20 Private foundation. If the organization did not check a box on line 14, 19a, or 19b, check this box and see instructions <input type="checkbox"/> | | |

Schedule A (Form 990) 2024

Common Errors



Common Reporting Errors

990-N eligibility

- \$50,000 gross receipts
- 3-year average
- 509(a)(3) supporting organization cannot file

Common Reporting Errors

“Trick” questions

- Did you endorse candidates for office?
- Did you file Form 8282 when required?
- Did you complete Schedule O?

Common Reporting Errors

Missing applicable schedules

- Answers to Part IV, Checklist of Required Schedules shows which schedules should be attached.
- IRS can deem missing schedules an incomplete return and assess late filing penalties.
- Note Part IV, Line 38 must be “yes” and Schedule O must contain applicable narratives.

| | | | | |
|----|---|----|--|--|
| 38 | Did the organization complete Schedule O and provide explanations on Schedule O for Part VI, lines 11b and 19? Note: All Form 990 filers are required to complete Schedule O | 38 | | |
|----|---|----|--|--|



Common Reporting Errors

- Board Members and Independence
 - Number of voting board members at year end
 - Independence impaired if:
 - Receiving any W-2 compensation
 - Receiving Income as Independent Contractor of \$10,000 or more
 - Schedule L transactions in excess of specified thresholds reported for organizations owned more than 35% by the board member, providing compensation to a relative of the board member

Common Reporting Errors

Part VII, Section A, Compensation

- Fiscal year filers report compensation using data from the calendar year ending within the fiscal year
- Use W-2 and 1099
- Deferred compensation (ER portion) and nontaxable benefits (EE+ER portions) should be reported
- All voting board members serving during the year should be listed, and officers of the board are checked as both director and officer
- List top management official and top financial official as officers

Part II Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees. Use duplicate copies if additional space is needed.

For each individual whose compensation must be reported on Schedule J, report compensation from the organization on row (i) and from related organizations, described in the instructions, on row (ii). Do not list any individuals that aren't listed on Form 990, Part VII.

Note: The sum of columns (B)(i)–(iii) for each listed individual must equal the total amount of Form 990, Part VII, Section A, line 1a, applicable column (D) and (E) amounts for that individual.

| (A) Name and Title | | (B) Breakdown of W-2 and/or 1099-MISC and/or 1099-NEC compensation | | | (C) Retirement and other deferred compensation | (D) Nontaxable benefits | (E) Total of columns (B)(i)–(D) | (F) Compensation in column (B) reported as deferred on prior Form 990 |
|--------------------|------|--|-------------------------------------|-------------------------------------|--|-------------------------|---------------------------------|---|
| | | (i) Base compensation | (ii) Bonus & incentive compensation | (iii) Other reportable compensation | | | | |
| 1 | (i) | | | | | | | |
| | (ii) | | | | | | | |
| 2 | (i) | | | | | | | |
| | (ii) | | | | | | | |

Common Reporting Errors

Part VII, Section B, Independent Contractors

- List five highest compensated independent contractors that received more than \$100,000 of compensation.
- Should be reported using calendar year data.
- A 1099 report may not include all vendors.

Common Reporting Errors

In-kind Donated Services

- Donations of advertising, rent, compensation
- Included in financial statements, but should be excluded from both revenue and expenses on the Form 990
- Do not report as noncash on Schedule B, Schedule of Contributors, or Schedule M, Noncash Contributions

Common Reporting Errors

Fundraising Events

- Revenue and Expenses missing non-cash donations
- Contributions vs Gross Receipts
 - Not tracking separately to aid with Schedule G reporting

Fundraising Events

Part II Fundraising Events. Complete if the organization answered "Yes" on Form 990, Part IV, line 18, or reported more than \$15,000 of fundraising event contributions and gross income on Form 990-EZ, lines 1 and 6b. List events with gross receipts greater than \$5,000.

| | | (a) Event #1 | (b) Event #2 | (c) Other events | (d) Total events |
|-----------------|--|---|--------------|------------------|---------------------------------|
| | | (event type) | (event type) | (total number) | (add col. (a) through col. (c)) |
| Revenue | 1 | Gross receipts | | | |
| | 2 | Less: Contributions | | | |
| | 3 | Gross income (line 1 minus line 2) | | | |
| Direct Expenses | 4 | Cash prizes | | | |
| | 5 | Noncash prizes | | | |
| | 6 | Rent/facility costs | | | |
| | 7 | Food and beverages | | | |
| | 8 | Entertainment | | | |
| | 9 | Other direct expenses | | | |
| | 10 | Direct expense summary. Add lines 4 through 9 in column (d) | | | |
| 11 | Net income summary. Subtract line 10 from line 3, column (d) | | | | |

Examples of Fundraising Events per Form 990

Fundraising Events Include:

- Dinners/Dances
- Door-to-door sales of merchandise
- Concerts
- Carnivals
- Sports events
- Auctions

Fundraising Events Do Not Include:

- Sales or gifts of goods or services of only nominal value
- Raffles or lotteries in which prizes have only nominal value
- Solicitation campaigns that generate only contributions

Proceeds from these activities are considered contributions and should be reported on line 1f

Common Reporting Errors

Anonymous Donors

- Only report as “anonymous” on Schedule B, Schedule of Contributors, if nobody at the organization knows the identity.
- Donors are still anonymous to the public as the names and addresses of contributors are not subject to public disclosure.

Unrelated Business Income & Other Common Issues



Unrelated Business Income (UBI)

- Net income from an activity unrelated to the exempt purposes
- Three-part test
 - Is the activity a trade or business?
 - Activity carried on for the production of income from sale of goods or services
 - Is the activity regularly carried on?
 - Questions the frequency and continuity of the activity comparable to for-profit taxable entities
 - Is the activity substantially related to the exempt purposes?
 - Must have a substantial relationship to achieve the entity's exempt purpose
 - A source of funding for other exempt activities is not enough

Unrelated Business Income (UBI)

- Examples of common UBIT our clients see:
 - Advertising income
 - Debt-financed rental income
 - Investment in pass-through entities (Box 20V on K-1)
- Silo'ing Rules

- UBIT is not a four-letter word

Unrelated Business Income (UBI)

Exceptions and Modifications to UBI

- Passive royalty exception
- Qualified Sponsorship rules
 - Acknowledgment vs. advertising
- Volunteer exception
- Convenience exception
- Leasing
- Sale of merchandise
- Debt-financed income
- Cause-related marketing
 - Services by charity to co-venture partner
 - Use of constituent mailing lists – active or passive?
 - Endorsement issues – is clicking “like” an endorsement?

Unrelated Business Income – Form 990-T

- Alternative investments, such as distressed debt, natural resources & private equity are frequently held in a partnership structure.
 - These investments generate Schedule K-1s for partner's share of income.
- The Schedule K-1 reports:
 - Unrelated business income
 - State taxable income
 - Foreign reporting (Form 926, 5471, 8865)
 - Investments in foreign countries over \$100,000 will also require reporting on Form 990, Schedule F (activities in foreign countries).

Unrelated Business Income (UBI)

- Direct activity (silo)
- For profit subsidiary (Corporate Blocker)
 - Tax separateness
 - LLC as pass-through vs. corporate taxation
- Joint ventures
 - Accidental?
 - Contractual
 - Charity controls

Lobbying and Political Activity

- 501(c)(3) Public Charities
 - only insubstantial Lobbying Activity
 - prohibited from engaging in Political Campaign Activity
- 501(c)(3) Private Foundations
 - may not engage in Lobbying Activity or Political Campaign Activity
- 501(c)(4) and 501(c)(6) organizations may engage in substantial lobbying and some political activity

Compensation Issues

- **Private Inurement**

- Excessive compensation paid to a disqualified person, an insider.
- This doctrine does NOT prohibit transactions between a public charity and the insiders – rather, the doctrine requires that these transactions be tested against a standard of reasonableness

- **Intermediate Sanctions/Excess Benefit Transactions**

- Public charity overpays an insider or enriches an insider by exceeding fair market value of what the organization receives in return.
- Rebuttable presumption of reasonableness test for compensation

Compensation Issues

- **Self Dealing – Private Foundation**

- A private foundation paying compensation to a disqualified person is generally an act of self-dealing.
- Not self-dealing if the compensation: (1) is not excessive, (2) is for personal services, and (3) is reasonable and necessary to carry out the private foundation’s exempt purposes.

- **Section 4960 – Excess Tax-Exempt Organization Executive Compensation**

- Applicable tax-exempt organization pays remuneration in excess of \$1 million to any of the organization’s covered employees who are among the five highest paid employees (For tax years beginning after December 31, 2026, the definition of covered person changed under the OBBBA).
- Applicable tax-exempt organization pays an “excess parachute payment” to any covered employee.

Questions?



Thank You!



Contact

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