

# Form 990, Tax Ethics and Other Tasty Tax Topics

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## Outline of Topics

- Form 990-N
- Form 990
  - General
  - Compensation
  - Governance, Management & Disclosure
  - Related Organizations
- Form 990-T
- Tax Ethics
- Other



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## Form 990-N

- Directly from the IRS website ([www.irs.gov](http://www.irs.gov))
- Annual Electronic Filing Requirement for Small Exempt Organizations — Form 990-N (e-Postcard)

Small tax-exempt organizations whose annual gross receipts are normally \$25,000 or less may be required to electronically submit Form 990-N, also known as the e-Postcard, unless they choose to file a complete Form 990 or Form 990-EZ. If you do not file your e-Postcard on time, the IRS will send you a reminder notice but you will not be assessed a penalty for late filing the e-Postcard. However, an organization that fails to file required e-Postcards (or information returns — Forms 990 or 990-EZ) for three consecutive years will automatically lose its tax-exempt status. The revocation of the organization's tax-exempt status will not take place until the filing due date of the third year. **Due Date of the e-Postcard** The e-Postcard is due every year by the 15th day of the 5th month after the close of your tax year. For example, if your tax year ended on December 31, the e-Postcard is due May 15 of the following year. **You cannot file the e-Postcard until after your tax year ends.**



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## Form 990-N

- First 3 year due date just passed: May 15, 2010 for 2009 calendar year ends
- IRS is still working with process; encourages you to file even now (no penalty for late filing)
  - **Statement of IRS Commissioner Doug Shulman on the Filing Deadline for Small Charities**
- December 31, 2010 tentative deadline for revocation notices

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## Form 990 - General

- Changes from 2008 Form are summarized at [www.irs.gov](http://www.irs.gov)
  - Added a page to the core form
  - Added clarifying questions and instructions
- **READ THE INSTRUCTIONS, READ THE INSTRUCTIONS, READ THE INSTRUCTIONS**
- Everyone is still learning
- Ongoing dialogue between AICPA and IRS

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## Form 990 - Compensation

- IRS interest in greater transparency
- Scandals with compensation
- IRS Compensation Compliance Project

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### Form 990 - Compensation

- Core Form Part VII
- Schedule J
- Comp related ??: Core Form Part VI

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### Form 990 - Compensation

- Part VII:
  - Current officers
  - Current trustees & directors
  - Current key employees
  - Other 5 highest compensated employees
  - Certain former listed persons

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### Form 990 - Compensation

- Current
  - person held the position at any time during tax year
- Director or trustee
  - Member of governing body & has voting rights
  - Director or trustee under state law
- Officers
  - Named in organizing documents
  - Designated by governing body
  - Required by state law
  - Top management & top financial officers are always officers

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## Form 990 - Compensation

- Current Key Employees
  - At least \$150,000 of reportable comp (filing & related)
  - Responsibility test
    - Similar to an officer, director, or trustee;
    - Manages discrete segment or activity representing 10% or more of activities, assets or income of the organization;
    - Has or shares authority to control 10% or more of the organization's capital expenditures, operating budget, or compensation
  - Top 20 EEs who otherwise meet definition of KE
    - (after O,D & T have been identified)

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## Form 990 - Compensation

- Current 5 Highest Compensated employees
  - 5 highest receiving at least \$100,000 of reportable comp (filing & related)
  - After O,D, T, and KEs identified

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## Form 990 - Compensation

- Former Listed Persons
  - Had been reported in previous 5 years
  - Former Officers & KE: Reportable comp greater than \$100,000
  - Former 5 HCEs
    - Not employed at any time during the year
    - Reportable comp greater than \$100,000
    - Individual comp would place them in 5 highest comp for current
    - Not required for non 501 (c)(3)
  - Former directors and trustees- Reportable comp more than \$10,000 received in capacity as former director/trustee

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### Form 990 - Compensation

- For each person to be listed in Part VII:
  - Reportable compensation paid by filing org
  - Reportable compensation paid by related org
    - Form W-2, Box 5 Medicare Wages
    - Form 1099-MISC Box 7
  - Other compensation from filing & related org



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### Form 990 - Compensation

- Deferred compensation
  - Employer contributions to tax-deferred savings plans(401(k), 403(b), 457, etc.)
  - Increase in actuarial value of defined benefit pension benefits
  - Tax-deferred contributions to nonqualified deferred compensation arrangements (vested or non-vested)



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### Form 990 - Compensation

- Nontaxable benefits –must be disclosed
  - Educational assistance
  - Health insurance
  - Life insurance
  - Disability benefits
  - Long-term care insurance
  - Dependent care assistance
  - Adoption assistance



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## Form 990 - Compensation

- \$10,000 De Minimus Exception
  - Applies to Part VII of the Core Form
  - Certain specified items of comp aren't eligible
  - Is optional

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## Form 990 - Compensation

- Always Excluded:
  - No additional cost service
  - Qualified Employee Discount
  - De minimus fringes
  - Reimbursements pursuant to an accountable plan
  - Qualified transportation fringes

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## Form 990 - Compensation

- Schedule J
  - Part I-Compensation Practices
  - Part II-Compensation for ODTKEs and HCEs
  - Part III-Supplemental information
  - Schedule J-1-continuation Schedule J, Part II
  - Schedule J-2-continuation Form 990, Part VII

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## Schedule J Questions

- Deferred Compensation-Reported Only once or at least 2x (assuming paid out)?
- Which two are disclosed in Schedule J?
  - Elective deferral to 403(b) plan
  - Organization match to 403(b) plan
  - Nontaxable expense reimbursements
  - Employee pre-tax contribution to health FSA
- What about severance agreements and confidentiality?

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## Form 990-Governance, Management & Disclosure

- IRS believes that good policies equate to good governance which equates to tax-compliant, well functioning tax exempt organizations

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## Form 990-Governance, Management & Disclosure

- Page 6 of Core Form – Part VI
  - Management
  - Policies
  - Disclosure

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## Form 990-Governance, Management & Disclosure

- Line 1a-# of board members
  - Voting Only (does ED vote under bylaws?)
  - # at end of year
- Helpful to have a Board carryforward schedule
  - BOY
  - Add/delete
  - EOY

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## Form 990-Governance, Management & Disclosure

- Instructions include a requirement to include on Schedule O a description if the governing body has delegated authority at any time during the year to an executive or similar committee
  - Composition of committee
  - Any members not on the governing board
  - Scope of committee authority

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## Form 990-Governance, Management & Disclosure

- Line 1b-Number of independent voting Board members
  - Not compensated by org or related org
  - Not greater than \$10,000 as an independent contractor (org or related org)
  - Board member nor family member in a Schedule L transaction
- Exceptions
  - Donors
  - Religious exception
  - Member of charitable class served

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## Form 990-Governance, Management & Disclosure

- Line 2 – Relationships between ODTKEs
  - Family relationships
  - Business Relationships
  - Privileged relationship exception
  - Reasonable effort requirement
    - Annual disclosure (name, title, date & signed)
    - Include pertinent instructions & definitions

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## Form 990-Governance, Management & Disclosure

- Line 11 –Review of Form 990 by Board
  - Provide a copy of ENTIRE return to ALL Board members (paper, electronic, portal)
  - Can say NO
- Description on Schedule O of review process
  - Who, when, extent
  - If no say , "No review was or will be conducted."

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## Form 990-Governance, Management & Disclosure

- Other Policy Questions
  - Conflict of Interest and Monitoring
  - Written Whistleblower Policy
  - Written Document Retention and Destruction Policy
  - Independent Compensation Process

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## Form 990-Governance, Management & Disclosure

- Section C – Disclosure
  - Other website- has to be an “active” posting (you provide the posting)
  - May want to provide to GuideStar to avoid poor quality

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## Form 990-Governance, Management & Disclosure

- Consider how well your Board is functioning:
  - Setting Vision and Strategic Direction
  - Annual self-assessment
  - Strong, independent Board Chair
  - Active Audit Committee
  - Regular Training
  - Term Limits and Officer Rotation
  - Appropriate Documentation
  - Diversity (appearance, thought, talent)

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## Schedule R

- Control both direct and indirect
- Direct-Parent/Subsidiary
- Direct-Brother/Sister Commonly Controlled
- Supported/Supporting
- Disregarded entities
- Indirect-Grandparent subsidiary

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## Form 990-T

- Transparency & Compliance on Core Form
  - Part I, lines 7a and 7b
  - Part V, questions 3a and 3b
  - Part VII, column (c)
  - Part IX, line 24
  - Schedule D, Part X

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## Form 990-T

- IRS wants to know:
  - Why is there a lot of gross UBI but very little tax paid as little net UBI?
  - Most UBI results in a loss
- For 501(c)3s, Form 990-T open to public inspection

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## Form 990-T

- Have to file a Form 990-T if:
  - Have \$1,000 or more of gross income
  - Owe recapture taxes, Section 1291 tax, or certain other items (see instructions)
  - Are liable for proxy tax imposed on Section 501(c)(4) (5) (6) organizations (see instructions)

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## Form 990-T

- Statute of limitations generally 3 years; have to file to start
- If filed, the 25% material omission threshold (extends statute 3 more years) is based on income shown on Form 990-T
- Preparer penalties associated with filing positions on Form 990-T

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## Form 990-T

- Penalties on the organization:
  - Section 6622 20% accuracy-related penalty for underpayment attributable to:
    - Negligence or disregard to rules or regulations
    - Any substantial understatement of income tax
  - Disclosure will generally provide protection

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## Form 990-T

- Required to make estimated payments if estimated tax is \$500 or more
- Deposit requirements for estimated pmts
- Form 2220 used to calculate estimated tax late penalties

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## Form 990-T

- Losses generated from unrelated activities can offset income from profitable activities on Form 990-T
- Must be from an activity which is trade or business
  - Be able to defend why years of losses and business plan to turn around

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## Form 990-T

- Watch expense allocations
  - Pure direct expenses
  - Allocations
    - Consistency, reasonableness and documentation

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## Tax Ethics

- IRS Section 6694 Preparer Penalties
  - Final & proposed regulations issued 12/22/08
  - Penalties substantially increased; greater of \$1,000 or ½ preparation fee for understatement; willful or reckless conduct: greater of \$5,000 or ½ preparation fee
  - Undisclosed positions: no substantial authority (non tax shelter)
  - Disclosed positions: no reasonable basis

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## Tax Ethics

- IRS Circular 230
  - September 1 implementation for 2011 returns
  - Each signer register on line, pay a fee, get PTIN
  - Registered preparers-exempt from testing and mandatory CPE if CPA employed by a CPA firm
  - CPE and testing (based on 1040) would apply currently to non-CPAs that substantially prepare in CPA firms—AICPA working to address
  - Potential changes expected within a month

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## Tax Ethics

- IRS Circular 230
  - Furnishing Information
  - Knowledge of Client Omission
  - Diligence as to Accuracy
  - Prompt Disposition of Pending matters
  - Fees
  - Return of Client Records
  - Conflicting Interests

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## Tax Ethics

- IRS Circular 230
  - Best Practices for Tax Advisors
  - Tax Return Position Standards
  - Requirements for Covered Opinions
  - Procedures to Ensure Compliance
  - Requirements for Other Written Advice
  - Sanctions
  - Incompetence & Disreputable Conduct

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## Tax Ethics

- AICPA Statements on Standards for Tax Services (effective 1-1-2010)
  - SSTS No. 1 Tax Return Positions
  - SSTS No. 2 Answers to Questions on Returns
  - SSTS No. 3 Certain Procedural Aspects of Preparing Returns
  - SSTS No. 4 Use of Estimates

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## Tax Ethics

- AICPA Statements on Standards for Tax Services
  - SSTS No. 5 Departure From a Position Previously Concluded
  - SSTS No. 6 Knowledge of an Error: Return Preparation and Administrative Proceedings
  - SSTS No. 7 Form and Content of Advice to Taxpayers

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## Tax Ethics

- Additional AICPA Guidance
  - Updated Interpretation 1-1 and 1-2
  - Q&As
  - Practice Guides
  - Various articles

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## Other Matters

- Use of IRS website as a resource
  - EO newsletter
  - Revocations
  - Form 990 Resources and Tools
  - FAQs

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## EO Newsletter-July 9, 2010 Edition

- **Issue Number: 2010-16**
- **Inside This Issue**
- [IRS Issues Prohibited Tax Shelter Final Regulations](#)
- [IRS Live: Free Webinar on Affordable Care Act](#)
- [Help Wanted: TE/GE Seeks Candidates for Senior Tax Law Specialist Positions](#)
- [IRS Invites Public Comment on New Reporting of Payments Made in a Trade or Business](#)
- [Nine Tax Tips on the Ten Percent Tax on Tanning Services](#)

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## IRS Governance Check Sheet

- To be used by EO Revenue Agents in the examination of IRC 501(c)3 public charities
- Available on IRS website ([www.irs.gov](http://www.irs.gov))

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