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Proposed Changes to Tax-Exempt Organization Information Reporting: How Will the "Redesigned" IRS Form 990 Impact Your Health Care Organization?

On June 14, 2007, the IRS released a redesigned draft of Form 990, the annual return for tax-exempt organizations. The IRS employs Form 990 as its primary tax compliance tool for tax-exempt organizations. The recent draft represents the first significant redesign of Form 990 since 1979 and the IRS anticipates its implementation for the 2008 tax year (forms filed in 2009). The release of the redesigned form initiated a 90-day public comment period that closes on September 14, 2007. During this period, the IRS is soliciting comments regarding the revisions to Form 990. We provide the following overview regarding the stated purposes of the revisions to Form 990, the format of the revised Form 990 and the impact that the revisions may have on health care organizations.

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1. Purposes of Form 990 Revisions

In redesigning Form 990, the IRS employed three guiding principles: enhancing transparency, promoting compliance, and minimizing the burden on filing organizations. To advance these ends, the revised Form 990 expands the required information for tax-exempt organizations, requiring additional information regarding governance, general activities of the organization, and compensation for officers, directors, trustees and key employees. The IRS is particularly concerned about the effectiveness of the form in increasing the transparency of information about tax-exempt organizations for the agency and the public, as well as the form's effectiveness as a compliance tool.

2. Revised Format of Form 990

The revised Form 990 includes a 10-page core form and 15 attached schedules. In contrast, the current Form 990 includes a nine-page core form, two schedules, and 36 possible attachments. An organization must only complete the schedules applicable to its particular organization, though the redesigned form may require it to complete up to 15 schedules. The 10-page draft core form contains nine subparts, including a summary section comprising page one. Notable

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requirements of the redesigned core form include: expanded information on the compensation of officers, directors, trustees and other key employees, information regarding certain governance and financial statement practices, information regarding general activities of the organization, and information regarding the program services and exempt function activities of the organization. The redesigned core form also inquires whether the organization's governing body reviews the Form 990 before filing. Certain questions contained in the core form may "trigger" the Form 990 schedules an organization must complete. These "triggering questions" include inquiries about activities of the tax-exempt organization and its compliance with various IRS filing requirements.

3. Impact on Health Care Organizations

The redesigned Form 990 will increase the reporting burden for tax-exempt health care organizations by requiring expanded information. This expanded, publicly-available information may result in increased scrutiny of tax-exempt health care organizations.

a. **Increased Reporting Burden on Health Care Organizations**. The redesigned Form 990 will result in an increased reporting burden for larger organizations engaged in more complex activities, such as health care organizations. The IRS anticipates that the revised Form 990 will generate a lengthier completed form for tax-exempt health care organizations than the current Form 990. In addition to the 10-page core form, many health care organizations will complete a large number of the 15 possible schedules. Reporting requirements within these schedules that are of particular interest to health care organizations include the following:

- Schedule H - Hospitals. Schedule H requires hospitals or organizations that operate a facility that provides hospital or medical care to report aggregate community benefits for all its facilities, to list all facilities and describe the activities and services conducted at each, to provide information regarding billing and collections practices, and to provide information regarding the organization's participation in management companies and joint ventures. Schedule H employs the community benefit reporting model developed by the Catholic Health Association to quantify community benefit.
- Schedule J - Compensation. Schedule J requires expanded reporting of compensation for current and former officers, directors, trustees, key employees, and highest compensated employees.
- Schedule R - Related Organizations. Schedule R requires a listing of related

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organizations, including disregarded entities, related tax-exempt organizations, partnerships, corporations and trusts and requires certain operational information regarding each entity. In addition, the schedule requires disclosure of transactions with related organizations and non-charitable exempt organizations.

b. **Increased Scrutiny of Tax-Exempt Health Care Organizations**. The redesigned Form 990 increases the publicly-available information regarding tax-exempt health organizations and may result in increased public or media scrutiny. The redesigned form requires tax-exempt organizations to disclose expanded information regarding charity care and community benefits, compensation of officers and other key employees, and financial transactions with other entities. This information may be used by legislative bodies, state attorneys general, and other groups as a basis for comparisons with non-exempt health care entities, as a basis for evaluating tax-exempt status, or as a basis for oversight1.

Conclusion

The redesigned IRS Form 990 requires expanded reporting for tax-exempt health care organizations. Though the draft form does not make substantive changes to the law, the redesigned form makes changes to the amount and detail of required information regarding items such as compensation, facilities and services, organizational governance, and financial ventures of the organization. The IRS seeks to increase transparency, enhance compliance, and minimize reporting burden on organizations through its implementation of the redesigned form. However, the agency's attempt to minimize the burden on reporting organizations generally will not benefit tax-exempt health care organizations, but rather, will result in an increased reporting burden. In addition, the enhanced disclosures required by the redesigned Form 990 will make more information publicly-available, which may lead to increased scrutiny of tax-exempt health care organizations.

The revised IRS Form 990 with schedules, instructions, and additional background information is on the IRS website. For more information regarding the redesigned IRS Form 990 and its impact on tax-exempt health care organizations, please contact a member of the Reinhart Boerner Van Deuren s.c. Health Care Department at 414.298.1000.

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