



April 4, 2024

Mr. Robert Malone  
Director, Exempt Organizations  
Tax Exempt & Government Entities  
Internal Revenue Service  
1111 Constitution Ave., NW  
Washington, DC 20224

**Re: Comments on Form 990, *Return of Organization Exempt from Income Tax*, Form 990-T, *Exempt Organization Business Income Tax Return*, and Form 990-PF, *Return of Private Foundation*, and Related Instructions**

Dear Mr. Malone:

The American Institute of CPAs (AICPA) is pleased to provide comments and recommendations related to Form 990, *Return of Organization Exempt from Income Tax*, Form 990-T, *Exempt Organization Business Income Tax Return*, and Form 990-PF, *Return of Private Foundation*, and related instructions. We acknowledge and appreciate that several of our recommendations from prior year comment letters<sup>1</sup> have been previously incorporated into the forms and related instructions.

## **SPECIFIC COMMENTS**

### **1. E-Filing Initiatives**

#### Overview

While the mandatory electronic filing (e-filing) process can be easily accomplished by the majority of exempt organizations, there are instances where it is challenging for our members.

#### Recommendations

The AICPA recommends that the IRS provide clarification and workarounds for the 990 Series Form instructions, as well as Publication 4163, *Modernized e-File (MeF) Information for Authorized IRS e-File Providers for Business Returns*, to help practitioners successfully electronically file exempt organization returns.

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<sup>1</sup> See, e.g., AICPA letter, "[Comments on Form 990, Return of Organization Exempt from Income Tax, Form 990-T, Exempt Organization Business Income Tax Return, and Form 990-PF, Return of Private Foundation, and Related Instructions](#)," June 2, 2022.

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Additionally, we recommend that in the case of a system-wide E-file outage, the IRS alert the public via the website page “E-file for Charities and Non-Profits”<sup>2</sup> or make an announcement via an alert through the IRS’ e-News for Exempt Organizations.

The AICPA also recommends that the business filing superseding return function in the MeF system be extended to exempt organizations to allow them to file superseding returns after the original-filed return has been filed, but prior to the end of the filing period (with extensions) without amending the applicable series Form 990.

### Analysis

Examples of e-filing issues facing exempt organizations include:

- Short-year filings when the return is not an initial or final year return;<sup>3</sup>
- Newly formed, self-declared exempt organizations and churches with a Form 990 series filing obligation cannot file electronically since they are not in the IRS’ Exempt Organization Business Master File. This issue also expands to Form 990-N (epostcard) filers;
- Private foundations filing short-year forms can have the return rejected due to the pro-ration of the minimum investment return calculation.

The MeF system allows business filers, but not exempt organizations, to file a superseded return after the originally filed return if it is filed within the filing period (the original deadline or, the extended due date). If there is an inadvertent error or a transmittal issue due to e-filing complications, a superseding return can be e-filed prior to the due date without the organization having to check the “amended” return box and following the amended return procedures. We would like the ability to file a superseding Form 990 (before the due date) without it being considered an amended return.

## **2. Matrix with Recommendations for Forms 990, 990-PF, and 990-T**

	<b>Section of the Form or Instructions</b>	<b>Comment</b>	<b>Recommendation</b>
		<b>Form 990</b>	
<b>1</b>	<b>Instructions: D. Accounting Periods and Methods, page 5</b>	The second-to-last sentence in the short period section of the instructions indicates an instance when electronic filing is not allowed. However, the IRS does not permit paper filing for any forms in the 990 series.	Clarify in the instructions the steps a taxpayer should take if they are filing a short-year return due to a change in year-end rather than an initial year or final year return.

<sup>2</sup> <https://www.irs.gov/e-file-providers/e-file-for-charities-and-non-profits>.

<sup>3</sup> This situation could occur when the filer changes its tax year and has to file a short-year return (also known as the “stub” period), resulting in the filing of two tax returns during the same calendar year. In these situations, e-filed returns are often rejected.

	<b>Section of the Form or Instructions</b>	<b>Comment</b>	<b>Recommendation</b>
2	<b>Form: Part V, Lines 1a and 2a</b>	Part V, line 1a and 2a, refer to the number of forms reported on Form 1096 or Form W-3, respectively. Organizations that electronically file Form 1099 or Form W-2 do not have a Form 1096 or Form W-3 for reference. Thus, causing confusion to taxpayers filling out Form 990.	Simplify the language on lines 1a and 2a of Part V. Re-word this section of the form to request the number of Forms 1099 or Forms W-2 filed during the calendar year.
3	<b>Form: Part VII</b>	<p>Section 4960 imposes an excise tax on certain tax-exempt organizations and related organizations that pay \$1 million or more in remuneration to any of their five highest-paid covered employees or any excess parachute payments during a tax year. Remuneration does not include amounts paid to a licensed medical professional (including veterinarian) which is for the performance of medical or veterinary services.</p> <p>The IRS is currently issuing notices to taxpayers in situations where compensation on Part VII of Form 990 is shown as greater than \$1 million for any one individual and a Form 4720 reporting the excise tax under section 4960 is not filed. In many situations, Form 4720 is not filed as a result of the exclusion of payments associated with medical or veterinary services.</p>	<p>Preferred recommendation: Update Form 990, Part VII to include a check box to indicate that payments made to the listed individual are for medical or veterinary services.</p> <p>Alternative: Update the instructions for Form 990, Part VII, to instruct taxpayers to include an asterisk or other indicator in the name or title of the individual to indicate the compensation is associated with payments for medical or veterinary services (e.g., John Doe*, Cardiac Physician; or John Doe, *Cardiac Physician).</p>
4	<b>Instructions: Parts VIII, IX or Part XI</b>	For the receipt of employee retention credit (ERC) that is not subject to unrelated business income (UBI), it is unclear how the amounts should be reported on Form 990. For purposes of generally accepted accounting principles (GAAP), it is our understanding that the amounts will be treated as a grant from a governmental organization.	<p>Clarify the treatment of the ERC in the instructions related to Form 990.</p> <p>If the ERC did not use wages originally deducted for UBI tax (Form 990-T) purposes, allow the exempt organization to follow its books and records for the treatment of the related income. This treatment</p>

	<b>Section of the Form or Instructions</b>	<b>Comment</b>	<b>Recommendation</b>
			would replace following the income tax treatment of the ERC amounts and potentially amending prior year Forms 990.
5	<b>Form: Schedule H, Part III, Section A</b>	<p>Following the adoption of Accounting Standards Codification (ASC) 954-310 and Accounting Standards Update (ASU) 2014-09 Topic 606, many hospitals primarily recognize implicit price concessions (which is netted with revenue) rather than bad debt expense. As a result, bad debt expense for many organizations has decreased significantly compared to years prior to adoption of these standards.</p> <p>In addition, with the adoption of ASU 2016-13, organizations that record amounts previously referred to as bad debt expense, must use the terminology “credit loss expense.” Therefore, the disclosure of bad debt expense on lines 2 and 3 is no longer necessary for users of Schedule H. Also, GAAP-based audited financial statements frequently do not contain a bad debt expense footnote which makes line 4 inapplicable to many organizations.</p>	<p>Preferred option: Add a new Schedule H, Part III, Section A, line 2 that asks “Has the organization adopted ASC 954-310 and ASU 2014-09 Topic 606? If yes, go to Section B.”</p> <p>Alternative option 1: Update the instructions for Schedule H, Part III, Section A to indicate organizations that adopted ASC 954-310 and ASU 2014-09 Topic 606 should not complete lines 2, 3 and 4. Organizations should include an explanation on Schedule H, Part VI to address the reporting, or lack thereof, in this section.</p> <p>Alternative option 2: Update the instructions to Schedule H, Part III, line 2 to indicate organizations that adopted these standards may include implicit price concessions on line 2 and line 3 as applicable, in addition to any credit loss expense (formerly known as bad debt expense).</p>
6	<b>Form: Schedule H, Part III, Section C</b>	Schedule H, Part III, Section C, lines 9a and 9b, are similarly included in Schedule H, Part V, Section B, lines 17 through 20.	Remove Schedule H, Part III, Section C and retain Schedule H, Part V, lines 17 through 20. These changes

	<b>Section of the Form or Instructions</b>	<b>Comment</b>	<b>Recommendation</b>
			will ensure Schedule H contains disclosures pertaining to collection practices and policies, and address compliance with section 501(r)(6) and Treas. Reg. § 1.501(r)-6 on a facility-by-facility basis.
7	<b>Instructions: Schedule N, Part II</b>	Currently, the instructions for Schedule N require Part II to be completed when net assets decrease by 25% or more. There are often situations where the net assets decrease as part of normal organization activities.	Include the language “a decrease in net assets resulting from the ordinary course of operations” in the instructions as an example of when a taxpayer would not be required to complete Schedule N, part II.
		<b>Form 990-T</b>	
1	<b>Instructions: Deduction for net operating loss</b>	The final regulations on section 512(a)(6) indicate that after offsetting gain resulting from the termination, sale, exchange, or disposition of a separate unrelated trade or business, any net operating loss (NOL) remaining is suspended. However, the suspended NOLs may be used if that previous separate unrelated trade or business is later resumed or if a new unrelated trade or business that is accurately identified using the same NAICS 2-digit code as the previous separate unrelated trade or business is commenced or acquired in a future taxable year.	Include detailed guidance on the treatment of NOLs upon the termination, sale, exchange, or other disposition of a separate unrelated trade or business in the instructions to Form 990-T.
2	<b>Instructions: Conversion of charitable contributions</b>	Section 170(d)(2)(B)(ii) permits the conversion of a charitable contribution to an NOL when an NOL carryforward is utilized. The converted amount equals the charitable contribution that would have been deducted had the NOL carryforward not been utilized. There is no current guidance associated with the order in which pre-2018 and post 2017 NOLs should be utilized in this case.	Include detailed guidance on the coordination of utilizing pre-2018 and post 2017 NOLs when charitable contributions are converted to NOLs, in the instructions to Form 990-T.

<b>Form 990-PF</b>		
<b>1</b>	<b>Instructions: Part I, line 25, Part XIV, Lines 3a and 3b related to general instructions</b>	<p>The instructions to Part I, line 25 indicate that either each grant should be listed in Part XIV or a schedule including specific items of information should be attached. However, the instructions regarding the items the schedule should include lists items that are not requested in Part XIV (e.g., details regarding noncash grants). It is not clear if this information is still required to be provided if Part XIV is completed rather than attaching a schedule to Part I, Line 25.</p> <p>Additionally, a foundation may need to report the details of a grant that was made during the year but cannot claim such a grant as a qualifying distribution.</p>
		<p>Clarify whether the additional information requested in the schedule for Part I, line 25 is required when completing Part XIV.</p> <p>Provide additional guidance for how to report the details of a grant made during the year that does not count as a qualifying distribution (e.g., a grant made to a private non-operating foundation).</p>
<b>2</b>	<b>Instructions: Part I, Line 25, Part XIV, Lines 3a and 3b related to grants to individuals</b>	<p>Treas. Reg. § 1.6033-3(a)(2) requires the disclosure by private foundations of the name, address and amount paid to individuals (unless the amount is to an indigent person and does not exceed \$1,000 for the year). This information is reported on Part I, line 25 and Part XIV, line 3. Requiring this information poses a security threat to marginalized individuals.</p> <p>The environment has changed since the regulations were adopted in the 1980s. For example: 1) the \$1,000 amount was not indexed for inflation; and 2) Form 990-PF is available electronically and easily searchable.</p>
		<p>Allow the information related to the name, address and amount paid to individuals to be redacted for public disclosure purposes or not require it to be provided. The data can be made available to the IRS upon request.</p> <p>For additional information, please refer to our comment letter submitted on November 30, 2022.<sup>4</sup></p>
<b>3</b>	<b>Instructions: Part II</b>	<p>Part II requires a detailed list of investments associated with lines 10a, 10b, 10c, and 13. Due to mandatory e-filing, practitioners find these requirements burdensome to comply with as there can be software limitations. Often, the information cannot be attached as a separate schedule but must be input</p>
		<p>Allow investments to be itemized by type rather than requiring each investment to be listed by name.</p> <p>For additional information, please refer to our comment</p>

<sup>4</sup> See AICPA letter, "[Request for Relief of Certain Form 990-PF Requirements](#)," November 30, 2022.

		directly into the software which can create a significant burden for those foundations with a significant number of investments.	letter submitted on November 30, 2022. <sup>5</sup>
4	<b>Instructions: Part VI-A, Line 3</b>	The note related to the line 3 instructions states “ <b>if</b> you are filing electronically...” which is confusing to practitioners since e-filing is mandatory.	Consider changing the language within the instructions that indicate a taxpayer would not be electronically filing the return. Also, clarify whether a copy of the conformed document must be mailed if it has been submitted electronically with the return.
5	<b>Instructions: Part VII, Line 1 and line 3</b>	The instructions to Part VII, lines 1 and 3 do not provide guidance if a management company is reported as a highest paid contractor (line 3) and the fee paid to the management company includes salaries to individuals (line 1), if the amount on line 3 should be reduced by the amounts reported in line 1, or if the reporting should be duplicative.	Provide additional guidance on how to report compensation through a management agreement for purposes of reporting in Part VII, line 1 and line 3.
6	<b>Instructions: Part XII, lines 4b, 4c, and 7</b>	The instructions do not include the specific language required to make elections for line 4b, line, 4c, and line 7 instead prompting the reader to refer to the regulations for the required information.  Additionally, due to the requirement to file the return electronically, it is not clear whether election statements must be physically signed and included with the return as a pdf attachment or if the election will be considered signed if it is included in the electronically filed return.	Provide sample language for required elections and clarify whether such elections are considered to be signed when transmitted with an electronically filed return or if a pdf of a physically signed election statement must be attached to the return.
7	<b>Form: Part XIII</b>	The return does not clearly identify whether the private operating tests are met. It would be helpful to the return preparer and the reader of the form if	Update the form to add checkboxes or a similar mechanism to identify when

<sup>5</sup> See AICPA letter, “[Request for Relief of Certain Form 990-PF Requirements](#),” November 30, 2022.

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		there was a mechanism to require that information.	each test listed on the form has been satisfied.
<b>8</b>	<b>Instructions: Part XIII</b>	The private operating foundation tests are complex, and it is not clear whether each line should be completed or only the lines where the foundation satisfies the applicable test outlined by the data provided.	Clarify the instructions to indicate how to satisfy the income test depending on whether it is based on adjusted net income or minimum investment return.  Also, indicate in the instructions that only the lines that pertain to tests which the foundation is relying on to satisfy the proof of funds tests should be completed.

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Chris Anderson, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (216-344-5268), or [CAAnderson@maloneynovotny.com](mailto:CAAnderson@maloneynovotny.com); or Peter Mills, AICPA Senior Manager, Tax Policy & Advocacy at (202) 434-9272, or [Peter.Mills@aicpa-cima.com](mailto:Peter.Mills@aicpa-cima.com); or me at (830) 372-9692 or [Bvickers@alamo-group.com](mailto:Bvickers@alamo-group.com).

Sincerely,



Blake Vickers, CPA, CGMA  
Chair, AICPA Tax Executive Committee



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cc: Mr. Edward Killen, Commissioner, Tax-Exempt and Government Entities, Internal Revenue Service  
Ms. Rachel Leiser Levy, Associate Chief Counsel, Employee Benefits, Exempt Organizations & Employment Taxes, Internal Revenue Service  
Ms. Lynne Camillo, Deputy Associate Chief Counsel, Employee Benefits, Exempt Organizations, and Employment Taxes, Internal Revenue Service  
Mr. Timothy Berger, Senior Technical Advisor, Tax Exempt / Government Entities Division, Internal Revenue Service  
Mr. John Montague, Acting Senior Technical Advisor, Exempt Organizations Division, Internal Revenue Service