June 2, 2022

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 the following summarized recommendations. The recommendations are then followed by related specific observations and analysis in support of the recommendations, which are identified later in the letter under the "Specific Comments" section.

1. Announcement 2021-18[1]

   - IRS should provide draft 2022 Form 990-PF instructions as soon as possible, as this will greatly assist foundations that are unclear on the reporting obligations related to their current year management agreements.

2. E-Filing Initiatives

   - IRS should 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,* in order to help practitioners successfully electronically file exempt organization returns. If there is a system-wide issue, it would be helpful to include that information on the IRS' website page "E-file for Charities and Non-Profits"[2] or release it as an alert through the IRS' e-News for Exempt Organizations.

   - The business filings superseding returns function in the MeF system should 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.

[1] 2021-52 I.R.B. 910.
[2] https://www.irs.gov/e-file-providers/e-file-for-charities-and-non-profits

3. Forms 990, 990-PF and 990-T Matrix Comments and Recommendations

- Form 990:

  - Regarding accounting periods - short period instruction on page 5, IRS should clarify in the instructions what the taxpayer should do if they are filing a short-year return due to a change in year-end rather than an initial year or final year return.

  - Regarding Part V, lines 1a and 2a, IRS should simplify the language on lines 1a and 2a of Part V. Re-word this section of the Form to ask how many Forms 1099 or W-2 were filed during the calendar year.

  - Regarding Parts VIII, IX or Part XI instructions, IRS should clarify the treatment of the ERTC in the instructions related to the Form 990. If the ERTC did not use wages originally deducted for unrelated business income tax (Form 990-T) purposes, it seems reasonable that the organization may follow its books and records for the treatment of the income. This is opposed to following the income tax treatment of the ERTC amounts and potentially amending prior year Forms 990.

- Form 990-T:

  - Regarding the deduction for net operating loss (NOL), IRS should 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.

- Form 990-PF:

  - Regarding accounting method instructions, IRS should add to the disclosure that taxable income includes NII and UBI if that is what the IRS intends.

  - Regarding Part VII, line 1 instructions, IRS should provide guidance on the reporting of compensation through a management agreement as soon as possible.

  - Regarding Part IX, line 1, IRS should provide additional guidance related to how cryptocurrency is valued specifically for the NCUA and minimum investment calculation.

  - Regarding grants to individuals, IRS should allow the information related to the name, address and amount paid to individuals to be redacted for public disclosure purposes. The data can be made available to the IRS upon request; however, having it in the public domain is putting individuals at risk.

  - Regarding Part I, line 25 instructions, IRS should clarify the instructions to direct taxpayers to utilize Part XIV, line 3 and enter all the grants paid or approved during the current year. For Part XIV, line 3a – the taxpayer can back out on separate lines the amounts that cannot be taken as a qualifying distribution (thus, tieing back to Part I, column (d) only).

- Regarding detail on brokerage statements, IRS should consider lessening the burdens of reporting within the form instructions.

- Regarding detail of attachments, IRS should consider updating the instructions to only request information that is necessary and listed on an approved attachment (e.g., the requirement to include a detailed depreciation attachment for Line 19, column (a)).

- Regarding Part VI-A, line 3 note in the instructions, IRS should consider changing any language within the instructions that indicate a taxpayer cannot paper file the return.

The AICPA would also like to thank the Internal Revenue Service (IRS) for expanding Part IV of the Form 990-T, *Exempt Organization Business Income Tax Return*, for organizations to track the pre-2018 net operating losses (NOLs) and post-2017 NOLs associated with each business activity for section 512(a)(6)[3] purposes. In addition, the Form 990-PF, *Return of Private Foundation*, and related instructions for Form 990-PF, Part VI-B, line 5a(4), clarify that a foundation should check the box for making grants to non-public charities in the current year and a prior year grant when the expenditure responsibility obligations are still required, due to outstanding expenditures or reports. The recent changes are very helpful to practitioners.

SPECIFIC COMMENTS

1. Announcement 2021-18

Overview

In late 2021, Announcement 2021-18 revoked Announcement 2001-33[4], regarding additional clarification of the Form 990 series treatment of compensation paid to officers, directors or trustees, and in the case of private foundations, the foundation managers paid through a management company. The revocation is effective for returns beginning on or after January 1, 2022.

Recommendation

The AICPA recommends that the IRS provide draft 2022 Form 990-PF instructions as soon as possible, as this will greatly assist foundations that are unclear on the reporting obligations related to their current year management agreements.

[3] All references to "section" or "§" are to the Internal Revenue Code of 1986, as amended, and all references to "Reg. §" and "regulations" are to U.S. Treasury regulations promulgated thereunder, unless otherwise specified.
[4] 2001-17 I.R.B.1137.

Analysis

There is no longer a need for the clarification provided in Announcement 2001-33 related to Form 990, as the Form 990 instructions have evolved and expanded a great deal in the past 20 years. However, the Form 990-PF instructions have not experienced the same expansion. For instance, the additional compensation disclosures related to management companies for Form 990 purposes only apply to "related management companies." Thus, it seems reasonable that a similar standard will be included in the Form 990-PF instructions or, since there is no Schedule R reporting for the Form 990-PF, it may be more reasonable to only include the reporting for management companies that are considered disqualified persons pursuant to section 4946.

In addition, the instructions do not provide guidance if the management company is reported as a highest paid contractor (Form 990-PF, Part VII, line 3) and the fee paid to the management company includes salaries to individuals (on Form 990-PF, Part VII, 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.

Finally, if the management company provides services to multiple entities, officers, directors, and trustees, and the foundation managers' compensation is not readily available or allocable to the reporting foundation, it is unclear how the foundation should comply with reporting on Form 990-PF in the absence of Announcement 2001-33. Determining the specific compensation of a reportable person is particularly difficult when the management agreement fees are based on assets under management, transfer pricing, grants processed per year on behalf of the foundation or any methodology that is not tied to compensation or a percentage of time spent on behalf of the reporting foundation.

2. E-Filing Initiatives

Overview

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

Recommendations

The AICPA recommends 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,* in order to help practitioners successfully electronically file exempt organization returns. If there is a system-wide issue, it would be helpful to include that information on the IRS' website page "E-file for Charities and Non-Profits"[5] or release it as an alert through the IRS' e-News for Exempt Organizations.

The AICPA also recommends that the business filings superseding returns function in the MeF system be extended to exempt organizations to allow them to file superseding returns after the

[5] https://www.irs.gov/e-file-providers/e-file-for-charities-and-non-profits

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 some of the issues facing exempt organizations include:

- Short-year filings when the return is not an initial or final year return;
- Newly formed, self-declared exempt organizations and churches that have a Form 990 series filing obligation, but due to the fact they are not currently in the IRS' Exempt Organization Business Master File, the return cannot be electronically filed. This issue also expands to Form 990-N (epostcard) filers;
- Private foundations trying to file short-year forms and the return is rejected due to the pro-ration of the minimum investment return calculation;
- Private foundations filing a Form 990-PF during the 60-month termination period to convert to a public charity status, who sought an advanced ruling request to forgo paying the net investment income (NII) tax during that time. The Form 872-B, *Consent to Extend the Time to Assess Miscellaneous Excise Taxes*, to extend the statute of limitations, is not able to be transmitted with the filing, and the return is rejected if the foundation properly shows there is no NII due on the return.

The MeF system allows business filers, but not exempt organizations, to file a superseded return after the originally filed return as long as it is filed within the filing period (the original deadline or, if extended, the extended due date). The benefit is if there is an inadvertent error or a transmittal issue due to e-filing complications, the return can be e-filed again prior to the due date without the organization having to check the "amended" return box and following the amended return procedures.

3. Forms 990, 990-PF and 990-T Matrix Comments and Recommendations

Overview

This letter includes abbreviated matrices as the comments and recommendations are meant to match up with Forms 990, 990-T, and 990-PF or the corresponding instructions. The content provided this year is not as detailed as in years past, as we are providing recommendations on areas that can make the largest impact on our members and the exempt organizations they serve. Please refer to our prior year matrices for the expansive list of recommendations.[6] We acknowledge that several of our recommendations from prior years have been incorporated into the Forms and Instructions. We truly appreciate the time and attention you have given our comments in the past.

[6] See AICPA Letter, "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,"(June 7, 2021).

Specific Comments and Recommendations

	Section of the Form	Comment	Recommendation
		Form 990	
1	**Accounting periods - short period instruction on page 5**	The second-to-last sentence indicates an instance when electronic filing is not allowed; however, the IRS has stated paper filing is not allowed either.	Clarify in the instructions what the taxpayer should do if they are filing a short-year return due to a change in year-end rather than an initial year or final year return.
2	**Part V, lines 1a and 2a**	Part V, line 1a and 2a, refer to the number of forms reported on a Form 1096 or Form W-3, respectively. Organizations that electronically file their Forms 1099 or W-2 do not have a Form 1096 or Form W-3 for reference. Thus, this has created confusion to taxpayers filling out the Form 990.	Simplify the language on lines 1a and 2a of Part V. Re-word this section of the Form to ask how many Forms 1099 or W-2 were filed during the calendar year.
3	**Parts VIII, IX or Part XI instructions**	For the receipt of employee retention tax credit (ERTC) that is not subject to unrelated business income (UBI), it is unclear how the amounts should be reported on the Form 990. For GAAP purposes, it is our understanding that the amounts will be treated as a grant from a governmental organization.	Clarify the treatment of the ERTC in the instructions related to the Form 990. If the ERTC did not use wages originally deducted for unrelated business income tax (Form 990-T) purposes, it seems reasonable that the organization may follow its books and records for the treatment of the income. This is opposed to following the income tax treatment of the ERTC amounts and potentially amending prior year Forms 990.
		Form 990-T	
1	**Deduction for net operating loss**	The final regulations on section 512(a)(6) indicate that after offsetting any gain resulting from the termination, sale, exchange, or disposition of a separate unrelated trade or business, any NOL remaining is suspended. However, the suspended NOLs may be used if that previous separate unrelated trade or business is later resumed	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.

	Section of the Form	Comment	Recommendation
		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.	
		Form 990-PF	
1	**Accounting method instructions**	The instructions for the accounting methods were updated to include that a foundation only has to file a Form 3115 if a taxpayer has not taken income or a deduction in determining "taxable income."	Add to the disclosure that taxable income includes NII and UBI if that is what the IRS intends.
2	**Part VII, line 1 instructions**	Announcement 2021-18 revoked Announcement 2001-33 and therefore, the references in the 2021 Form 990-PF instructions will need to be updated for the 2022 return.	Provide guidance on the reporting of compensation through a management agreement as soon as possible. Please see our comments at the beginning of this letter regarding the importance of this matter.
3	**Part IX, line 1**	Foundations are beginning to own or invest in cryptocurrencies; as such, it is unclear how those currencies should be valued for purposes of the noncharitable use asset calculation (NCUA), especially since the IRS has deemed cryptocurrency to not be the equivalent to securities or cash.[7]	Provide additional guidance related to how cryptocurrency is valued specifically for the NCUA and minimum investment calculation.
4	**Grants to individuals**	Part I, line 25 and Part XV, line 3 require the disclosure 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).	Allow the information related to the name, address and amount paid to individuals to be redacted for public disclosure purposes. The data can be made available to the IRS upon request; however,

[7] https://www.irs.gov/individuals/international-taxpayers/frequently-asked-questions-on-virtual-currency-transactions

	Section of the Form	Comment	Recommendation
		While Reg. § 1.6033-3(a)(2) requires this information to be disclosed by private foundations, the environment is very different than in the 1980s when the regulation was adopted, outlined as follows: 1) the $1,000 amount was not indexed for inflation, and 2) the Form 990-PF is now made available electronically and easily searchable. As such, this poses a security threat to marginalized individuals.	having it in the public domain is putting individuals at risk.
5	**Part I, line 25 instructions**	The instructions indicate schedules should be attached if Part XIV is not utilized. Also, column (a) is on the taxpayer's method of accounting, which may not be on an accrual basis. With e-filing protocols, part of these instructions may not be able to be fulfilled.	Clarify the instructions to direct taxpayers to utilize Part XIV, line 3 and enter all the grants paid or approved during the current year. For Part XIV, line 3a – the taxpayer can back out on separate lines the amounts that cannot be taken as a qualifying distribution (thus, tieing back to Part I, column (d) only).
6	**Detail on brokerage statements**	Part II requires a detailed list of investments associated with lines 10a, 10b, 10c, 11, 13, 14, and 15. Due to mandatory e-filing, practitioners find these requirements extremely burdensome to comply with as there can be software limitations. Often, the information cannot be attached as a separate schedule but rather inputted into the software. Again, practitioners and organizations would be willing to comply with these requirements upon request by the IRS.	Consider lessening the burdens of reporting within the form instructions.
7	**Detail of attachments**	There are several places in the instructions where it indicates	Consider updating the instructions to only request information that is

	Section of the Form	Comment	Recommendation
		attachments should be included. However, with e-filing restrictions, that may not be practical or even possible.	necessary and listed on an approved attachment (e.g., the requirement to include a detailed depreciation attachment for Line 19, column (a)).
8	**Part VI-A, line 3 note in the instructions**	The note in the Line 3 instructions has confused practitioners since it is worded "**if** you are filing electronically…"	Consider changing any language within the instructions that indicate a taxpayer cannot paper file the return.

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The AICPA is the world's largest member association representing the accounting profession, with more than 431,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state, and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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 CAnderson@maloneynovotny.com; or Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9247, or elizabeth.young@aicpa-cima.com; or me at (601) 326-7119, or janlewis@haddoxreid.com.

Sincerely,

Jan Lewis
Chair, AICPA Tax Executive Committee

cc: Ms. Sunita Lough, 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
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