

TSTCI

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The Redesigned Form 990:
Overview of Key Reporting Issues &
Application to Taxable Entities

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Greetings from Shelby



Overview

- Purpose of Form 990
- Re-designed 2008 Form 990
 - Governance, Management & Financial Reporting
 - Compensation
 - Transactions with Interested Persons
- Conclusions
- Appendices
 - Appendix A – Penalties for Failure to File Complete Form 990
 - Appendix B - Public Inspection of Form 990

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Purpose of Form 990

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Purpose of Form 990

- To help the IRS and the public determine how and the extent to which a tax-exempt organization accomplishes its exempt purposes
- To determine if an organization's tax-exempt status is being exploited
- To determine if reasonable compensation is being paid to officers, directors & key employees (private inurement)

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Purpose of Form 990

- How does the IRS Insure the Purposes of Form 990 are met?
 - Penalties for preparing and filing an incomplete return.
 - Public Inspection – The process by which the public determines how and the extent to which a tax-exempt organization accomplishes its exempt purposes.

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Re-designed 2008 Form 990

- Effective for tax years ending on or after December 31, 2008
 - The goal of the form is to enhance transparency, to promote compliance and to minimize filing burden.
 - The Form was finalized on December 19, 2007.
 - 11 page core form
 - Up to 15 different schedules may apply
 - The instructions were completed and issued on August 19, 2008.

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- **Q:** What event brought about the changes to Form 990?
- **A:** Widespread non-compliance in the area of compensation and the lack of transparency, primarily by 501(c)(3) organizations – large foundations, hospitals, and universities.

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- **Governance, Management & Financial Reporting**
 - The IRS considers an active, knowledgeable, and independent Board of Directors essential for operating effectively & complying with tax laws.
 - The IRS uses the answers to governance related questions in the exemption application process.
 - For organizations currently tax exempt, the IRS encourages Boards of Directors to adopt policies and processes to insure compliance – transparency and accountability.

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- Governance, Management & Financial Reporting
 - The Cooperative is required to disclose
 - The number of voting members of the Board of Directors
 - The number of voting members of the Board of Directors that is independent with respect to the Cooperative.
 - **Family** and **business** relationships between any officer, director and key employee and any other directors, officers and key employees.

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- Governance, Management & Financial Reporting
 - In order to properly make these disclosures (i.e. independent directors and family/business relationships), the Cooperative is required to make **reasonable efforts** to obtain this information.
 - Require an officer, director or key employee to complete and sign a questionnaire.
 - If the questionnaire provides adequate instructions, explanations, and definitions, the Cooperative may rely upon the signed questionnaire.

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- Governance, Management & Financial Reporting
 - Boards of Directors are encouraged to consider the following governance and management policies:
 - Conflict of Interest,
 - Investments but primarily joint ventures,
 - Document Retention and Destruction,
 - Ethics and Whistleblower, and
 - Executive compensation and the rebuttable presumption

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- Governance, Management & Financial Reporting
 - When modifying or adopting policies and procedures for items recommended by the IRS and requested on Form 990, consider...
 - Size
 - Culture
 - Other
 - One size does not fit all; Policies are important but should be well thought out.

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- Governance, Management & Financial Reporting
 - The Cooperative must disclose to what extent the following items are available to the public:
 - Application for exemption
 - Form 990
 - Governing documents
 - Conflict of interest policy
 - Financial statements
 - Consider posting these items on the Cooperative's website.

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- Compensation of Officers, Directors, Key Employees, Highest Compensated Employees (“HCEs”) and Independent Contractors
 - Part A – Current and former officers, directors, key employees and HCEs
 - Part B – Independent contractors
 - The goal of these disclosures is to determine if the Cooperative and related organizations paid reasonable compensation

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- Compensation for Directors, Etal
 - Compensation is reasonable (including amounts paid by related organizations) if it reflects“...the value that would ordinarily be paid for **like services by like enterprises under like circumstances.**”
 - Apply the “rebuttable presumption” standard.
 - The decision was approved by an authorized body, exclusive of any person with a conflict of interest.
 - The decision was based on reliable data & research.
 - The decision process is documented.

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- Compensation for Directors, Etal
 - An organization is related if one of the following relationships exists:
 - Parent/subsidiary relationship
 - Brother/sister relationship – Both organizations are controlled by the same person or persons (for example, interlocking directorates)
 - > 50% ownership of stock (by voting power or value) of a corporation
 - > 50% interest in a partnership’s capital & profits

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- Compensation of Directors
 - Average Hours per Week Devoted to Position
 - Involve Board members to calculate reasonable estimate
 - Consider the time associated with preparation, travel and actual attendance for the following:
 - Meetings of the Board – Monthly & Special
 - Meetings of the Membership – Annual & District
 - Meetings of industry associations
 - Independent study & research
 - Member issues
 - Other

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- Compensation of Directors
 - Current (served at some point during year)
 - No compensation limit
 - Includes compensation paid by related organization if in excess of \$10,000 or if paid for prior services
 - Represented by Form 1099 MISC, Box 7 “Non-employee Compensation”
 - Box 7 Should include director fees, health insurance premiums, gifts, unsubstantiated travel advances and expenses, and unreimbursed spousal travel costs.

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- Compensation of Directors
 - Former –
 - Director within the prior 5 year filing period
 - Reportable compensation of more than \$10,000, includes amounts paid by related organization
 - Represented by Form 1099 MISC, Box 7 “Non-employee Compensation”
 - Example – Health insurance premiums paid on behalf of the retired director

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- Compensation of Officers
 - Officers are charged with day to day operations
 - Chief administrative official - CEO/GM
 - Chief financial official
 - Applicable state law
 - Designations in organizing documents and Board resolutions
 - Current (served at some point during year)
 - No compensation limit
 - Includes compensation paid by related organizations with same limits applied to director compensation.
 - Represented by Form W-2, Box 5

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- Part VII Continued –Officers
 - Former –
 - Officer within the prior 5 year filing period
 - Reportable compensation of more than \$100,000 including amounts paid by a related organization
 - Represented by Form W-2, Box 5
 - Examples – Severance pay, deferred compensation

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- Compensation of Directors and Officers –
Other Compensation
 - Column F requires a total for other, non-taxable compensation
 - Includes the following (no minimum):
 - Employee and Employer contributions to defined contribution plans
 - Tax deferred contributions to non-qualified deferred compensation plan
 - Increase in actuarial value of a defined benefit plan
 - Value of health benefits including premium, flexible spending accounts, dental, etc.

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- Compensation – Highest Paid Independent Contractors
 - Reportable compensation of more than \$100,000
 - Form 1099 MISC, Box 7 or
 - Amounts paid pursuant to agreements
 - Individuals and organizations
 - Includes, but not limited to, the following:
 - Consultants
 - Construction contractors (exclusive of materials)

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- Transactions with Interested Persons –
Loans
 - All current and former officers, directors, trustees, key employees and top 5 employees compensated more than \$100,000
 - Outstanding loan balances at the end of the year
 - Excludes loans made in the ordinary course of business

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- Transactions with Interested Persons –
Business Transactions
 - Direct transactions with current or former officer, director, trustee or key employee
 - Indirect transactions with current or former officer, director, trustee or key employee
 - Individual transaction in excess of \$10,000

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Conclusions

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Conclusions

- In summary, the re-designed Form 990 will require:
 - An assessment of how the organization is governed and how compensation is set.
 - The Cooperative to document certain processes and to disclose business relationships with interested persons.
 - These same principles apply to taxable telephone cooperatives from the perspective of members and legislators.

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Questions & Comments? Contact Information

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Appendices

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Appendix A
Penalties for Failure to File a
Complete Form 990

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Penalties for Failure to File a
Complete Form 990

- Internal Revenue Code (“IRC”) Section 6652(c)(1) imposes a penalty upon the organization for failure:
 - To file Form 990 or
 - To include any information required to be reported on Form 990.
- The Internal Revenue Code considers the failure to correctly complete Form 990 the same as the failure to file.

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Penalties for Failure to File a Complete Form 990

- For organizations with gross receipts of \$1,000,000 or less, the penalty is \$20 per day for a maximum penalty equal to the lesser of \$10,000 or 5% of gross receipts for the year.
- For organizations with gross receipts of more than \$1,000,000, the penalty is \$100 per day for a maximum penalty of \$50,000.
- These penalties are assessed on a “per return” basis.

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Penalties for Failure to File a Complete Form 990

- Per IRC Section 6652(c)(1), if a failure to file (including accurately preparing the return), the following process will occur:
 - The IRS will issue a demand notice detailing the deficiencies and a timeline for providing the requested information.
 - The person failing to comply with the demand notice is subject to the following penalty:
 - \$10 for each day after expiration of the time specified in the demand notice
 - \$5,000 maximum penalty per return

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Penalties for Failure to File a Complete Form 990

- Pursuant to IRC Section 7203, any person who willfully fails to file a return or supply required information is:
 - Guilty of a misdemeanor and
 - Upon conviction, shall be fined not more than \$25,000 (\$100,000 in the case of a corporation) and/or
 - Imprisoned for not more than 1 year plus
 - Costs of prosecution

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Penalties for Failure to File a Complete Form 990

- Pursuant to IRC Section 7206, any person who willfully signs a tax return not known to be materially true and correct and/or assists in preparing a tax return not known to be true and correct is subject to the following:
 - Guilty of a felony and
 - Upon conviction, shall be fined not more than \$100,000 (\$500,000 in the case of a corporation) and/or
 - Imprisoned for not more than 3 year plus
 - Costs of prosecution

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Penalties for Failure to File a Complete Form 990

- Pursuant to IRC Section 7207, any person who willfully files a fraudulent tax return or furnishes any other information known to be fraudulent or false shall be:
 - Fined not more than \$10,000 (\$50,000 in the case of a corporation) and/or
 - Imprisoned for not more than 1 year

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Public Inspection of Form 990

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Public Inspection of Form 990

- Process by which the public determines how an organization has accomplished its exempt purposes
- Required by law
- Applicable to:
 - Application for Exemption
 - Form 990 (including all attachments) for the latest three years (the later of due date or when actually filed)

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Public Inspection of Form 990

- Summary of Rules:
 - The Cooperative should keep a complete copy of the Form 990 at the headquarters and at each district office.
 - The Cooperative is required to provide a complete copy of the Form 990 to any one requesting a copy.
 - If the request is verbal, the Cooperative may require the person making the request to visit the HQ or any district office to view the Form 990.

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Public Inspection of Form 990

- Summary of Rules
 - If the request is in writing, the Cooperative has 30 days to provide a copy to the requesting party and may charge a reasonable fee not more than the amounts prescribed by the Freedom of Information Act plus actual postage.
 - No action is required if a complete copy of Form 990 is made widely available to the public, such as on the Cooperative's website (viewed, downloaded or printed).

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Public Inspection of Form 990

- PENALTIES for failure to comply
 - Annual return - \$20 per day (per return) up to \$10,000 limit.
 - Exemption application - \$20 per day / no limit
 - Penalties apply to the person (or persons) responsible for the failure to comply.
 - The \$20 per day disclosure will not be assessed if reasonable cause can be shown for the failure.
 - If the failure is caused by a willful act, an additional penalty of \$5,000 can apply.

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