



# HEALTH CARE ALERT

December 31, 2008

## **The Redesigned IRS Form 990 Is Effective for the 2008 Tax Year**

The Internal Revenue Service has redesigned IRS Form 990, *Return of Organization Exempt from Income Tax*, effective for the 2008 tax year. Acceding to the IRS, the Form 990 was redesigned to “enhance transparency” in order to provide the IRS and the public with a realistic picture of the filing organization, to promote compliance by accurately reflecting the organization’s operations and to minimize the burden on filing organizations. The Form 990 is extremely important from a compliance and enforcement perspective. The redesigned Form 990 requires organizations to provide detailed information about their activities, particularly in areas in which the IRS has perceived the potential for fraudulent and abusive practices. That information is available both to the IRS and to the public.

### **Format of the Redesigned Form 990**

The core form of the redesigned Form 990, which must be completed by all organizations required to file, consists of eleven parts, including information regarding the organization’s mission and activities, the organization’s new, ongoing and discontinued exempt purpose achievements and related revenue and expenses, information regarding the organization’s governing body and management, compensation paid to officers, directors, trustees, key employees, and highest compensated employees, financial statements of the organization, and information regarding the organization’s accounting methods. The Form 990 also includes 16 Schedules that must be completed by those organizations that satisfy the applicable requirements for each Schedule.

### **Areas of Major Change**

The areas of major change in reporting requirements include information regarding the filing organization’s governing body, including the number of members, what process, if any, the organization has implemented for the governing body to review the Form 990 before it is filed, whether the organization has a conflict of interest policy and a whistleblower policy, and whether, and if so how, the organization makes its financial statements available to the public. Other areas of major change in reporting requirements include information regarding compensation of officers, directors, trustees, key employees, and highest compensated employees of the filing organization and determination of the organization’s public charity status and public support.



## **Schedules to Form 990**

Schedules to the redesigned Form 990 that may apply to hospitals and other health care organizations include the following: Schedule A, regarding information relevant to an organization's status as a public charity; Schedule H, to be completed by organizations that operate one or more facilities licensed or registered as a hospital under state law; Schedule J, regarding detailed compensation for certain officers, directors, trustees, key employees, and highest compensated employees, including information regarding bonuses, severance benefits, nonqualified deferred compensation, supplemental nonqualified retirement plans, equity-based compensation (including phantom/shadow stock in related entities), revenue-based compensation, and non-taxable benefits; Schedule K, to be completed by organizations with outstanding tax-exempt bond liabilities; Schedule L, regarding relationships or transactions with interested persons, including excess benefit transactions, loans, grants or other financial assistance; and Schedule R, regarding the organization's relationships with other exempt and taxable organizations.

Organizations that operate a facility providing hospital or medical care must complete Schedule H. Information to be reported on this Schedule includes the following: how the organization meets the community benefit standard for exemption; billing and collection practices; a description of the organization's charity care policy, if one has been adopted; whether the organization prepared an annual community benefit report; bad debt expenses; information regarding management companies and joint ventures; and how the organization's facilities further its exempt purposes.

Schedule R also requests information related to joint ventures. Those filing organizations that are required to complete this Schedule must submit information regarding the following: assets; income; control; ownership; character of income as related, unrelated or investment; grants and loans; shared facilities, services and employees; and other transfers and reimbursements. Schedule R also asks whether the filing organization conducted all or a substantial part of its exempt activities through a joint venture, and whether it participated in any joint venture that was managed by the for-profit venturer or an affiliate. In certain circumstances the filing organization also must identify the name and primary activity of the venture, ownership percentage, and type of entity.

## **Educating Your Organization**

An exempt organization's Form 990 serves as the principal source of information concerning the organization's governing body, programs and activities and is readily available to the public, including state attorneys general, legislative bodies, regulatory agencies, and the news media. Thus, organizations required to file the Form 990 must ensure that their governing bodies and management are educated about the scope and extent of the new Form 990, including any applicable Schedules the organization must file, and should carefully evaluate existing and pending joint ventures in light of the new reporting standards.



## **Additional Information**

This Health Care Client Alert is a publication of Kutak Rock LLP and is intended to notify our clients and friends of current events and provide general information about health care issues. This publication is not intended, and should not be used, as legal advice, and does not create an attorney-client relationship.

For more information regarding the redesigned Form 990 or how your organization should proceed in completing it, or if you have questions regarding this Alert, please feel free to contact any of the following, or your regular Kutak Rock LLP contact or any member of our Health Care Practice group:

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