

Should We File a FORM 990?

Most nonprofits must file a Form 990 “information return” with the IRS. But some groups are not required to:

- ✓ Churches, denominations, and their “auxiliaries”
- ✓ Religious orders and groups which, while not a “regular” church, have successfully filed as a church with the IRS
- ✓ Organizations that are covered by a group exemption
- ✓ Charitable organizations that have not applied to the IRS for a tax exemption

ISSUES

This raises two issues:

- ✓ Should an organization that is not required to file a Form 990 nevertheless voluntarily do so?
- ✓ Should an organization that can file as a church, and thus avoid filing a Form 990, necessarily choose to be a church?

TYPES OF FORMS 990

There are three primary types of 990s:

- ✓ Form 990-N (the e-Postcard, for organizations with annual gross receipts under \$50,000¹)
- ✓ Form 990 EZ (for organizations with annual gross receipts less than \$200,000 and total assets less than \$500,000 at year end)
- ✓ Form 990 (the regular form, filed by most nonprofit organizations)

In addition, there are specialized 990s for private foundations and unrelated business income.

ADVANTAGES OF FILING A FORM 990

- ✓ It makes the organization appear legitimate and competitive among other grant seekers
- ✓ Donors—particularly institutional ones—and analysts are used to reviewing them
- ✓ Guidestar, using Form 990, provides significant publicity and access to organizational information
- ✓ The organization is seen to conform to standard nonprofit practices
- ✓ The discipline of completing the Form and having the board review it are valuable exercises

Functioning within the philanthropic mainstream is desirable in an age of greater scrutiny because it raises fewer questions and creates less off-mission distractions.

RISKS IN FILING A FORM 990

Two risks are often raised in connection with filing a Form 990: it discloses the salaries of the highest paid employees, and it provides information to the government that they do not need to know. Each of these is associated with a fear. Leadership is often concerned that knowledge of the senior executives salaries’ will raise concerns or objections with employees or donors. There is also concern that the IRS, or some other government entity, will use the information disclosed on Form 990 to investigate, harass, or mitigate the achievement of the organizational mission.

DISCLOSURE OF SALARIES

While it is common to not disclose a senior executive’s salary in the for-profit world (except in publicly traded companies), top salaries have long been made available to the public in the nonprofit arena. This is a part of the “price” of being tax exempt—a prudent measure to help ensure that money is spent on the exempt purpose and not on self enrichment. It is such an established practice that engaging in “tricks” to get around it appears foolish.

Organizations should have no fear of disclosing reasonable salaries that have been established by a sound process that is directed by the board and/or senior management. That process should include research of

¹ Increased from \$25,000 for tax years ending on or after December 30, 2010.

comparables—among similar nonprofits and for-profits—and use of salary surveys. Board minutes should reflect the process and the decision in setting the senior executive’s salary, and possible that of other highly compensated executives. An employee should abstain from participating in decision making regarding his/her compensation.

As more information is disclosed about nonprofit executive salaries, the public will become more familiar with the range of normal salaries. Failing to disclose them perpetuates the problems of misunderstanding, false expectations, and fear.

GOVERNMENT INTRUSION

The use of a Form 990 to initiate a government investigation is extremely rare. To anticipate such action is highly speculative. Senator Grassley’s recent investigation of six “televangelists” illustrates that avoiding filing a Form 990 to prevent government intervention in the affairs of the organization is not a necessary strategy. First, his investigation was initiated because the IRS *had not* investigated the organizations, and further, non-filing did not ultimately prevent the Senator from demanding extensive amounts of information. The frequency of cases where the Form 990 has led to government intrusion of a religious organization is minuscule—it is not justified to think that one’s organization is the one that the IRS will pursue if one files a Form 990.

BEING AN IRS CHURCH

The IRS has extensive guidelines—“facts and circumstances” tests—to determine if an organization is a church. These have been designed to ensure that organizations that qualify as a church with the IRS are in fact what most of us think of as a church or a denomination of churches. That is, not all religious organizations can be churches. Essentially, a church is a subset of faith-based organizations that performs sacerdotal functions.

The primary advantages that organizations see in being classified as a church are:

- ✓ The organization is exempt from filing a Form 990
- ✓ The first amendment to the U.S. Constitution affords some protection to churches, and thus keeps the government at a distance

DISADVANTAGES OF BEING A “CHURCH”

Some organizations that do not look and function like a regular church have successfully filed with the IRS for church status². However, there are disadvantages to doing so.

- ✓ Major donors and foundations, including Christian ones, are generally reluctant to fund a church
- ✓ Church organizations do not file a Form 990 and thus do not participate in the government-sponsored publicity of Form 990s (especially through Guidestar)
- ✓ Such organizations can appear as peculiar or misfits to researchers and analysts
- ✓ The IRS clearly intends the church classification to be applied to regular churches and denominations as historically understood; skirting this plain provision can raise distracting questions of purpose and integrity

RECOMMENDATIONS

For organizations that are not a regular church or denomination, we recommend that the board consider:

- ✓ Converting to a non-church, if it has obtained tax exempt status as a church with the IRS
- ✓ Voluntarily filing Form 990, or
- ✓ If it maintains church status, present a public statement that is transparent and reasonable as to why the organization is a church

Some organizations that are not a “regular church” do nevertheless rightly qualify as one and have carefully considered the options. Others, however, would have difficulty justifying their status were their full operations disclosed. Integrity, not fear, should drive this decision.

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² This is done on Schedule A of Form 1023, or through a private letter ruling.