

## TAX ALERT

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**January 16, 2014**

### **Auld Lang Syne: Form 990 Changes for Tax Years Beginning in 2013**

The beginning of the new calendar year provides us with an opportunity to both wish all of you a happy and healthy new year and to update you on changes to the Core Form of Form 990, as well as changes to Schedule A Public Support Test and Schedule B List of Contributors for tax years beginning in 2013. We will start off by discussing significant changes to the instructions of the Core Form of Form 990, most of which are clarifications in the instructions.

The most significant clarifications involve transactions with disqualified persons. Part IV, Checklist of Required Schedules, Line 25b instructions now clarify the requirement that organizations report prior year's excess benefit transactions with a disqualified person if the organization became aware of the excess benefit transaction during the year being reported on. Also, with respect to disqualified persons, the new instructions for Line 26 of Part IV, Checklist of Required Schedules, clarify the requirements for Schedule L, Part II providing that this schedule must be completed if the organization reported any amounts on Part X, Balance Sheet, Lines 5, 6 or 22. These particular lines of the balance sheet are reserved for loans to and from interested and disqualified persons.

Changes to the instructions for Part VII, Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors, clarifies that compensation to directors for non-director services must be reported in Part VII, Section A, Officers, Directors, Trustees, Key Employees, and Independent Contractors rather than in Section B, Independent Contractors. The instructions also clarify that management company compensation to a disqualified person is generally not reportable in Part VII, Section A. If an organization is relying upon the "safe harbor" rebuttable presumption of reasonableness under the intermediate sanctions rules of Internal Revenue Code Section 4958 and the Treasury Regulations thereunder, the organization must pay attention to these clarifications relating to the reporting of compensation to disqualified persons.

Other interesting clarifications to the Core Form of Form 990 include changes to the instructions of Part VIII, Statement of Revenue, clarifying that discounts on goods and services cannot be reported as contributions and that in computing the costs of goods sold as inventory, the fair market value of donated goods may be used for cost in computing cost of goods sold.

A significant clarification regarding Schedule A Public Support Test and Schedule B List of Contributors is that 509(a)(1) organizations including schools and hospitals, can choose to complete Schedule A, Part II of the public support test. If they complete Schedule A, Part II, they can take advantage of the "Special Rules" on Schedule B and minimize their reporting of individual gifts on Schedule B List of Contributors. If the organization's public support is 33 1/3% or greater, meaning they need to complete any of the following lines: line 13, 16a and 16b on Schedule A, Part II, then they meet the Special Rules for Schedule B. The Special Rules provide that an organization meeting the support test on Schedule A must only disclose donors who contributed the greater of \$5,000 or 2% of the amount on Form 990, Part VII, line 1h. Organizations making the change will need to check line 7, 170(b)(1)(A)(vi) on Schedule A, Part I and must complete Part II of Schedule A. By selecting this line it will not change the organization's public support status. This will show that the organization is publicly supported and may use the "Special Rule" threshold on Schedule B.

These changes are not very dramatic, however, for those organizations that were previously reporting these items differently, there will be a change.

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