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Ten Things to Consider When Filing IRS Form 990

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Introduction:

- Congress first recognized nonprofit organizations as tax-exempt entities over 100 years ago.
- According to IRS estimates, there are over 1.5 million entities currently granted tax exempt status.
- IRS estimates these entities account for approx. \$3 trillion in total assets.
- DO THE MATH: What's the average size?



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Top 5 Largest Public Charities (by approx. Total Assets)

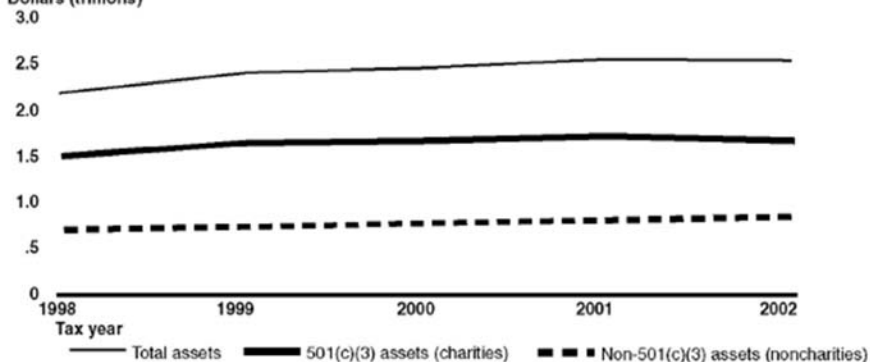
1. Harvard University	\$60 billion
2. Kaiser Foundation Hospitals	\$29 billion
3. Yale University	\$28 billion
4. Stanford University	\$28 billion
5. Princeton University	\$20 billion



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Nonprofit Sector: 501(c)(3) vs. Others

Assets Reported by Section 501(c) Entities in 2004 Constant Dollars, Tax Years 1998-2002
Dollars (trillions)





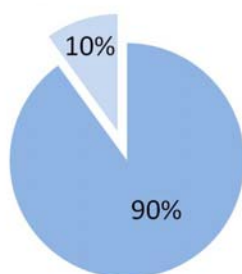
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Nonprofit Sector Related to Other Industries: **"We are 10%."**

Spending in U.S. Economy

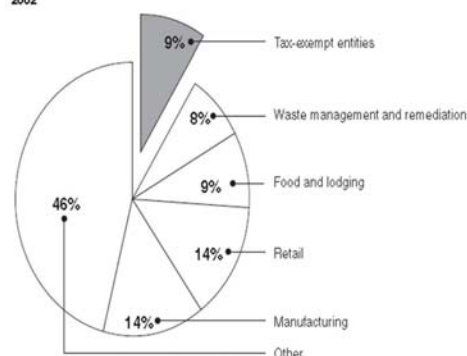
■ Manufacturing, Retail, & Other Sectors

■ Tax Exempt Sector



Source: United States Government Accountability Office

Figure 3: Paid Employees by Economic Sector as Percentage of U.S. Workforce, 2002



Source: U.S. Bureau of the Census, 2002 Economic Census



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IRS Form 990: **"We are Tax Exempt."** **What's the BIG deal?"**

- **DO THE MATH:** A substantial amount of the federal government's tax revenue is lost from the Nonprofit Sector (remember "10%" in previous slide).
- **SO WHAT'S THE BIG DEAL?:** In exchange for the loss of tax revenue, the IRS requires many important details to be disclosed in the organization's annual filing.



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IRS Form 990: A Public Relations Tool

- IRS Form 990 is a public document.
 - Must be available for three years.
 - Must be provided upon request.
 - If request is made in person, must be provided at that time.
 - If request is made in writing, organization must respond in 30 days.
- Transparency may be communicated through this tax form to many various stakeholders (not only IRS).
- This publicly available information establishes a “free market” in which charities can compete for donations.

#1



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IRS Form 990: Filing Requirements

- Who must File?
- What to File?
 - Form 990-N (electronic postcard)
 - Form 990-EZ (short form)
 - Form 990 (long form)
- When to File?
- **ATTENTION:** Failure to file the appropriate annual return may result in tax-exempt status being REVOKED.

#1



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IRS Form 990-N: e-postcard

(ONLY BASIC INFORMATION REQUIRED)

1. Legal name and mailing address
2. Employer identification number (EIN), also known as a Taxpayer Identification Number (TIN).
3. Name and address of a principal officer
4. Web site address if the organization has one
5. Tax year
6. Confirmation that the organization's annual gross receipts are \$50,000 or less

#2



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IRS says Good Governance is Critical

- “Good governance and transparency...help provide assurance that exempt entities operate with integrity...in meeting their missions.” --- statement from IRS
- How can “Good Governance” be regulated?
- The annual filing (post-2008) has many “Yes” or “No” disclosures related to Governance and Management policies. (IRS data-mining)

#2



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IRS Hints of “Best Practices” Policies

- IRS requires several yes/no answers to questions related to the following policies:
 - Written conflict of interest policy
 - Written whistleblower policy
 - Written document retention policy
 - Executive compensation policy
 - Financial audit policy
- Although IRS does not require specific governance policies, I would suggest that transparency provided by answering any combination of these questions unfavorably may result in negative scrutiny (i.e. “red flags” to IRS, inaccurate transparency to donors, etc.)

#3



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“Insider Transactions”

- Do you have many Business Transactions with “insiders”?
 - Board members,
 - Key employees,
 - The family of board members and key employees,
 - etc.
- If payment amounts are over IRS-imposed thresholds, these “insider” transactions must be disclosed in the annual filing (i.e. be transparent).
- A threshold of \$10,000 is a general “rule-of-thumb” requirement, but consult the IRS instructions for specific details. The actual threshold can be much more specific depending on circumstances.

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“Insider Transactions” May Impair Independence

- Board members receiving financial benefit may not be independent.
- IRS believes an independent board is protection against abusive behavior of nonprofits.
- While not a strict requirement for exemption, a lack of independent board could result in increased negative scrutiny from IRS and donors.
- A “best practices approach” could be to adopt your own written independent board policy.

#4



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Conflict of Interest Policy

- Do you follow a written Conflict of Interest Policy?
 - This question is asked in detail on the initial tax-exempt application (next slide).
 - The question is repeated again on the annual filing each year (two slides).
- A sample of a written conflict of interest policy provided by the IRS is provided in your materials from this session (IRS Form 1023 instructions, Appendix A).

#4



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Conflict of Interest Policy on Initial Tax-Exempt Application

Form 1023 (Rev. 12-2013) (00) Name:

EIN: -


Page 4

Part V Compensation and Other Financial Arrangements With Your Officers, Directors, Trustees, Employees, and Independent Contractors (Continued)

 **5a** Have you adopted a conflict of interest policy consistent with the sample conflict of interest policy in Appendix A to the instructions? If "Yes," provide a copy of the policy and explain how the policy has been adopted, such as by resolution of your governing board. If "No," answer lines 5b and 5c. ☐ Yes ☐ No

b What procedures will you follow to assure that persons who have a conflict of interest will not have influence over you for setting their own compensation?

c What procedures will you follow to assure that persons who have a conflict of interest will not have influence over you regarding business deals with themselves?

Note: A conflict of interest policy is recommended though it is not required to obtain exemption. Hospitals, see Schedule C, Section I, line 14. 

#4



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Conflict of Interest Policy on Annual Filing

Form 990 (2013)

Page 6

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI ☐

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

-  **12a** Did the organization have a written conflict of interest policy? If "No," go to line 13
- b** Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?
- c** Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done

12a	
12b	
12c	

#5



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Accepting Donations

- Are donations to YOUR organization tax-deductible by the donor?
- What about donations made partly as donation and partly for goods or services?
 - “Quid Pro Quo”
 - Value > \$75; notify donor of goods or services received.
 - Example: Purchasing \$100 ticket to charity event and receiving a gift as a “door prize” at the event.
 - Nonprofit must notify donor the value of “door prize”.
 - If not, penalty of \$10 per contribution (max. \$5,000 per event)

#5



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Accepting “Large” Donations

- Disclosure of Largest Donors
 - At a bare minimum, disclosure of donors > \$5,000.
 - In determining the total amount, separate and independent gifts of less than \$1,000 can be disregarded.
 - Threshold can increase to 2% of total revenues for some larger nonprofits.
- These disclosures reported on Schedule B.

#5



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Accepting Noncash Donations

- Do you accept donated property?
 - Example: Donor provides charity with a used car.
 - Donated property is disclosed in the annual filing.
 - Organization should not provide fair market value.
 - Donor is responsible for determining the fair market value, any appraisal requirement is requirement of donor (not charity).
- Do you accept donated services?
 - Example: CPA provides bookkeeping services for charity.
 - Example: Donated use of a facility ("free rent").
 - Do not disclose donations of services or the donated use of facilities in the annual filing.

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Public Charity vs. Private Foundation

- The distinction between public charity and private foundation is critical.
 - Public Charity = funded primarily by general public.
 - Private Foundation = funded by single-source such as individual, family, or corporation.
- Public charity status is by far the more advantageous category for many reasons.

#6



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IRS Grants Status as “Public Charity”

- By default, every charity begins life-cycle as Private Foundation.
- IRS must grant the charity exemption as Public Charity (see your copy of IRS Determination Letter).
- The charity must maintain classification as Public Charity year-to-year by “passing” Public Support Test (Schedule A – next slide).

#6



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SCHEDULE A
(Form 990 or 990-EZ)

Department of the Treasury
Internal Revenue Service

Public Charity Status and Public Support

Complete if the organization is a section 501(c)(3) organization or a section 4947(a)(1) nonexempt charitable trust.

▶ Attach to Form 990 or Form 990-EZ.

▶ Information about Schedule A (Form 990 or 990-EZ) and its instructions is at www.irs.gov/form990.

OMB No. 1545-0047

2013

**Open to Public
Inspection**

---cut---

Section A. Public Support

Calendar year (or fiscal year beginning in) ▶	(a) 2009	(b) 2010	(c) 2011	(d) 2012	(e) 2013	(f) Total
---cut---						


---cut---

Section B. Total Support

Calendar year (or fiscal year beginning in) ▶	(a) 2009	(b) 2010	(c) 2011	(d) 2012	(e) 2013	(f) Total
---cut---						

---cut---

Section C. Computation of Public Support Percentage

14	Public support percentage for 2013 (line 6, column (f) divided by line 11, column (f))	14	%
15	Public support percentage from 2012 Schedule A, Part II, line 14	15	%
16a	33 1/3% support test—2013. If the organization did not check the box on line 13, and line 14 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization  <input type="checkbox"/>		
b	33 1/3% support test—2012. If the organization did not check a box on line 13 or 16a, and line 15 is 33 1/3% or more, check this box and stop here. The organization qualifies as a publicly supported organization <input type="checkbox"/>		

#6



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Private Foundation Disadvantages **(Public Charity Advantages)**

- Private foundations must meet required minimum distributions (RMD).
- Private foundations must pay excise tax on investment income
- If test is failed, then Private Foundation...
 - Contributions from one donor, or a very small group of donors.
 - Subject to excise tax on investment income.

#7



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Fundraising Events

- Virtually all nonprofits participate in some form of fundraising activity, and for some it may be their #1 source of financial support.
- Accurate bookkeeping will be imperative.
 - More than \$15,000 of gross revenue from fundraising events; additional disclosure required.
 - Each event with gross revenue greater than \$5,000; additional disclosure required.
- Remember to clearly report expenses associated with carrying on each fundraising event.

#8



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“Hot Button Issue” #1

UBI: Unrelated Business Income

- Introduced into law in 1950 as response to complaints of unfair competition.
- Three Criteria:
 - Trade or Business Requirement: The income must be from a trade or business
 - Regularly Carried on Requirement: The conduct of such trade or business must be regularly carried on.
 - Not-Related Requirement: Activity is not substantially related to exempt purpose.
- In my introduction I provided examples of audit examinations from 34 college and universities resulting in \$90 million of taxable revenues....these were the results of UBI compliance.

#8



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“Hot Button Issue” #1

UBI: Unrelated Business Income

- Example 1: On Black Friday each year, “Save the Prairie Dogs” sells coffee and donuts to early morning shoppers to raise money for their mission. “Save the Prairie Dogs” is a nonprofit whose mission is to keep prairie dogs from becoming an endangered species.
- Example 2: Every morning, “Save the Prairie Dogs” sells coffee at the entrance of the local shopping mall.
- Example 3: Every morning, “Save the Prairie Dogs” sells t-shirts at the entrance of the local shopping mall. The t-shirts have prairie dog photos and population statistics to raise awareness of the potential endangerment of prairie dogs.

#9



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“Hot Button Issue” #2

Executive Compensation

- Did you know CEO and other executive compensation is disclosed in annual filing, and therefore public information?
- Many groups are constantly data-mining this information. These statistics and topics are commonly trending on social media.
- **ALERT**: The upcoming publication Springfield Nonprofit Impact Study will include a snapshot of every tax exempt in Springfield city limits – including Executive Compensation information (see Dan Prater for details). Great resource!! Expected publishing in February.

#10



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Health Insurance Credit

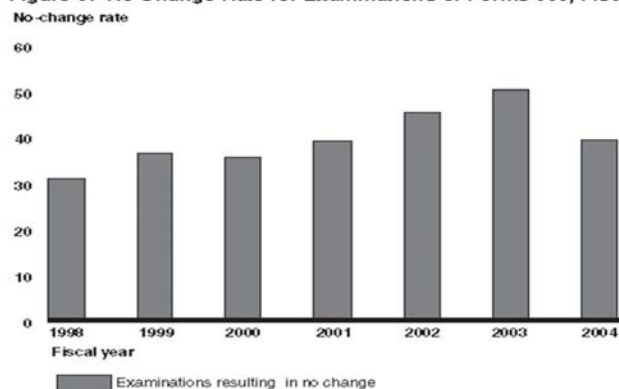
- For tax years 2010 through 2013 tax-exempt employers qualify for maximum health insurance credit up to 25% of premiums paid.
- For tax years beginning in 2014 or later, the maximum credit will increase to 35%.
- Tax-exempt employers must claim the credit with their annual filing of IRS Form 990.
- **IMPORTANT**: Tax-exempts not required to file, such as churches, still qualify for the credit and **MUST** file Form 990 to claim the credit.



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“Getting It Right”

Figure 6: No-Change Rate for Examinations of Forms 990, Fiscal Years 1998-2004



Source: Tabulation of data from IRS's Audit Information Management System, 1998-2004.



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Closing Thoughts

IRS Form 990 is more than tax compliance; it is subject to public inspection and therefore a matter of transparency.

Users like IRS and donors may extract key information about your organization from this form. Be careful you are communicating the right message.



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END OF SESSION



STAY TUNED

Q&A PANEL TO FOLLOW