



DEPARTMENT OF JUSTICE
CIVIL ENFORCEMENT DIVISION

May 17, 2004

Common errors & omissions made by professional tax preparers on Form 990

Dear Tax Preparer:

We need your assistance. The Attorney General has common law and statutory authority over all charitable corporations and trusts operating or soliciting in the State of Oregon. It is in this oversight capacity that the Department of Justice, Charitable Activities Section is contacting you as a potential preparer of tax returns filed by these charitable organizations. We routinely review the tax returns of charitable organizations registered with our office as they must submit a copy as part of their annual filing requirement. Recently we have noticed many of the Form 990 returns prepared by professionals include material errors and omissions.

With the advent of the Internet tax returns of charitable organizations have become much more accessible on website's such as www.guidestar.org where someone need only enter in the name or EIN of a §501(c)(3) organization in order to view a copy of their Form 990. Many individuals and granting entities consider the information reported on an organization's tax return when making a decision on whether to make a contribution or grant. Therefore having a properly completed tax return is critical so that informed decisions are made.

Another reason for the importance of an accurate tax return is so an organization does not make a false or misleading representation during its solicitation of contributions. An example of a false or misleading representation is overstating the percentage of a donation that goes toward charitable activities. This can occur if specific expenses reported on a Form 990 are cited during the solicitation and those expenses are not properly allocated across the functional categories of program services, management & general, and fundraising. Making false or misleading representations in the course of any solicitation of contributions may result in civil penalties being assessed against the organization even if those false or misleading representations were made in reliance on allocations furnished by the organization's tax preparer.

On the following pages we have listed the 5 most common errors and omissions our office sees on Form 990 tax returns. We ask that you review this list and ensure those tax returns you prepare are completed accurately.

Common Errors & Omissions of Form 990

1. Underreporting of gross contributions and related fundraising expenditures

Many organizations solicit contributions themselves or engage outside professional fundraising firms to solicit on their behalf. Instead of reporting the gross contributions collected in the charity's name, many Form 990 tax returns incorrectly report only the net contributions. Organizations are required to report gross contributions on *Part I, Line 1a – 'Direct Public Support'*, regardless of whether the contributions are collected by the charity itself or its professional fundraiser. The related fundraising expense incurred by the organization and/or fees paid to its professional fundraiser are to be reported on *Part II, Column (D) – 'Fundraising Expense'*.

2. SOP 98-2 as it relates to fees paid to professional fundraising firms

If an organization allocates joint costs for a combined educational and fundraising solicitation for book purposes in accordance with *AICPA Statement of Position 98-2 'Accounting for Costs of Activities of Not-for-Profit Organizations and State and Local Government Entities That Include Fund Raising'*, it must also make the same allocation on its tax return. Many organizations fail to properly allocate joint costs amongst the program service, management & general, and fundraising expense columns on page 2 of the Form 990. A common mistake is not allocating to fundraising expense 100% of fees paid to a professional fundraiser when those fees are calculated as a percentage of contributions raised.

3. Reporting of bingo and raffle activity

Many tax exempt organizations utilize bingo and raffle gaming as a means of raising funds for their charitable programs. Regulation of nonprofit gaming is the responsibility of the Department of Justice and we require those organizations exceeding certain minimum levels to obtain a license. Many organizations fail to properly report their bingo and raffle activity correctly on their Form 990 under *Part I, Line 9 – 'Special Events'*. The gross revenue from gaming activities is to be reported on Line 9a without reduction for cash or noncash prizes, cost of goods sold, and compensation. The related expenses of conducting the bingo or raffle event must be reported on Line 9b. The corresponding net profit raised is then to be reported on Line 9c.

4. Failure to report lobbying activity

While §501(c)(3) public charities may engage in some limited lobbying (i.e. attempting to influence legislation), they may not engage in any political activities (i.e. supporting or opposing any candidate for public office). Any lobbying activity must be at an insubstantial level or else the organization's tax exemption status will be endangered. Many organizations fail to properly report all their lobbying activity on *Schedule A, Part VI-A/Part VI-B*. Which part of the schedule is to be completed depends on whether the Form 5768 election has been made. Due to the importance of completing this section accurately, please review with your clients what lobbying was performed during the year. This activity should then be reported in sufficient detail to describe all the organization's lobbying performed by its directors, employees and volunteers even if certain of those activities did not involve the expenditure of funds. This may require the preparation of a detail schedule. If the organization had no lobbying activity then questions should be answered as 'No' or '\$0' instead of as 'N/A'.

5. Failure to answer questions and attach schedules

There is a general failure to answer all questions completely and to attach all required supporting schedules. We ask that you follow the instructions to ensure an accurate tax return is filed.

The Department of Justice acknowledges that many nonprofit tax returns are prepared by professionals at reduced or nominal fee levels. We appreciate this generosity as it allows organizations to then expend more of their limited resources on charitable purposes.

Due to the growing importance of organizations having a properly completed Form 990, the Department of Justice has increased our oversight in this area. This means that when our office reviews a tax return that contains material errors and omissions we will be contacting the organization and its professional preparer and asking that an amended Form 990 be submitted to both our office and the Internal Revenue Service that corrects all deficiencies. If we see that an individual CPA or other licensed tax preparer continually prepares tax returns that contain material errors and omissions, then we will consider whether notification of the appropriate licensing agency, such as the Board of Accountancy or Board of Tax Practitioners, is justified so they may consider whether their licensing performance standards are being met.

Should you have any questions on how to complete a particular section of the Form 990 or Schedule A, please feel free to contact our office. You may also find assistance by contacting the tax exempt section of the IRS at (877)829-5500. Thank you for your efforts in assisting charities to accurately report their programs on their tax returns as this helps the Department of Justice in its regulation while at the same time allows the public to make informed decisions.

Sincerely,

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