## Form 990 Tax Exempt Return:  Changes for 2013 and Special Areas of Focus

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### Form 990 2013 Changes

The biggest changes the Form 990 faced in 2013 stemmed primarily from clarification of instructions.  The IRS expanded on instructions including but not limited to the following:

- Which attachments to include when an organization changes its name or address
- Which attachments to include for filings involving termination, dissolution, merger or revocation
- When to elect that the organization is aware they are engaged in an excess benefit transaction
- What compensation paid to an officer or director by a management company should be reported
- Clarification of whether an organization is considered to be engaged in an excess benefit transaction with a disqualified person
- Short period return filing requirements
- Additional program-related investments reporting on Schedule D
- Many updates to Schedule F relating to foreign interests

Due to many of these instruction updates, it is advisable when completing more complicated and ambiguous parts of the Form 990 to refer to the IRS instructions for further clarification.

### Excess Benefit Transactions

Excess benefit transactions has been an area in particular which has been popularly discussed. Disqualified persons or management can be subject to excise taxes if they are considered to be engaged in an excess benefit transaction.  These taxes can be subsided if the organization can meet three requirements which would result in a rebuttable presumption that the excess compensation is fair and not excessive (only applies to 501(c)(3) and (4) organizations).  While many may believe that there is a standard number or percentage to reach fair compensation, it tends to be a more fluid number.  When determining compensation of board members and disqualified individuals, it is a wise rule to consider the following three rebuttable presumption requirements:

1. The compensation must be approved by an authorized body
2. There must be relative and appropriate supporting comparable regional data
3. There must be documentation of the deliberation and decision

These three requirements will be determined satisfactory by the IRS on Schedule O of the Form 990 relating to the questions on Part VI, Line 15 regarding compensation.  This area is supposedly under high scrutiny by IRS during audits.  It is important to revisit your procedures if you are a charity or advocacy organization.

### Foreign Bank Account Filing Requirements

New in 2013, electronic filing of foreign bank accounts with the Financial Crimes Enforcement Network (FinCEN) is now required.  Additionally, organizations with U.S. persons who have financial interest or signature authority over a foreign account are now required to file a separate return.  An organization or individual is required to file when the interest in the aggregate value of all foreign accounts exceeds \$10,000.  The deadline for filing is June 30th for the previous calendar year with no extensions.

**Tax Reform Affecting Tax Exempt Organizations**

A very comprehensive tax reform proposal was released on February 26, 2014.  Although the passage is very slim, some bits and pieces may pass as part of future bills.  Some of the highlights which would affect tax-exempt organizations include:

- Excises taxes on executive compensation over \$1 million
- Elimination of the *rebuttable presumption*
- Royalties from licensing of names/logos would be taxable
- Net Operating Losses "silos" would be limited each individual activity when offsetting taxable revenue

The IRS considers these areas as low hanging fruit to collect additional taxes.  It is important for tax exempt organizations to stay up to date on these areas so they can budget and plan going forward.