Understanding the New IRS Form 990

Estate Planning Council of the Fun Coast

June 17, 2009

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Mileage Rates

• 2009 Standard Mileage Rates - The IRS announced that the 2009 standard mileage rates will decrease from the second half of 2008. Beginning 1/1/09, the standard business mileage rate will be 55 cents per mile, the standard medical or moving mileage rate will be 24 cents per mile, and the standard charitable rate will be 14 cents per mile. By way of comparison, for the first six months of 2008, the rates were 50.5 cents per mile, 19 cents per mile, and 14 cents per mile, respectively, while for the last six months of 2008, the rates were 58.5 cents per mile, 27 cents per mile, and 14 cents per mile.

May File Form 990-EZ

If gross receipts are - <u>If assets are -</u>

2008 tax year (filed in 2009) > \$25,000 and < \$1 million

2009 tax year (filed in 2010) > 2009 tax year < \$1.25 million \$25,000 and < \$500,000

2010 and later > \$50,000 and < \$200,000 2010 and later < \$500k

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Information You Will Need To File the e-Postcard

- Employer identification number (EIN), also known as a Taxpayer Identification Number (TIN)).
- Tax year
- Legal name and mailing address
- Any other names the organization uses
- Name and address of a principal officer
- Web site address if the organization has one
- Confirmation that the organization's annual gross receipts are normally \$25,000 or less

2009 IRS Exempt Organizations Section Work Plan

- Preparing and Helping To File the Form 990
- Form 990-N (e-Postcard)
- Exempt Organizations Voluntary Compliance Program (EOVCP)
- Helping To Prepare Future Non-Profit Leaders
- Charitable Spending Initiative
- Gifts In-Kind
- Governance
- Political Activities Compliance Initiative (PACI)

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IRS Audits

- Daunting list of data to compile
- Compensation
- Unrelated Business Income
- Automatic Excess Benefits
 - Corporate Credit Cards
 - Travel, Club Memberships
 - Cell phones
- Transactions with Related Parties (if any)
- Political Activity

Cell Phones

- Taxpayer must document by adequate records -
 - (1) the amount of such expense or other item,
 - (2) the time and place of the use of the property,
 - (3) the business purpose of the expense, and
 - (4) the business relationship to taxpayer of persons using the property.
- An employer may not exclude from an employee's gross income any
 amount of the value of the listed property provided by the employer to the
 employee unless the employee substantiates the amount of business
 usage (Reg. Sec. 1.274-5T(e)(1)).
- According to the IRS, it is not enough for an employee to simply highlight personal calls on the monthly cell phone bill and say that all the rest are business calls.
- CASH ALLOWANCES INCLUDED IN W-2

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Cell Phone Update

• Substantiating Business Use of Employer Cell Phones: If an employer provides a cell phone to an employee and pays the costs of using the cell phone, the employee receives a fringe benefit. The usage qualifies as a working condition fringe benefit excludable from the employee's income to the extent the employee uses the phone for business purposes, with the cell phone expense deductible by the employer if the substantiation requirements of IRC Sec. 274(d) are met. However, the FMV of the employee's personal usage is includable in the employee's income. This notice requests comments from the public on several proposals (including a minimal personal use method, a safe harbor substantiation method, and a statistical sampling method) to simplify the procedures for employers to substantiate an employee's business use of employer-provided cell phones. Notice 2009-46, 2009-23 IRB.

INDEPENDENT VOTING MEMBER OF THE BOARD

- A voting member of the governing body, if all three of the following circumstances applied at all times during the organization's tax year:
- 1. The member was not compensated as an officer or other employee of the organization or of a related organization
- 2. The member did not receive total compensation or other payments exceeding \$10,000 during the organization's tax year from the organization or from related organizations as an independent contractor, other than reimbursement of expenses under an accountable plan or reasonable compensation for services provided in the capacity as a member of the governing body.
- 3. Neither the member, nor any family member of the member, was involved in a transaction with the organization (whether directly or indirectly through affiliation with another organization) that is required to be reported in Schedule L.

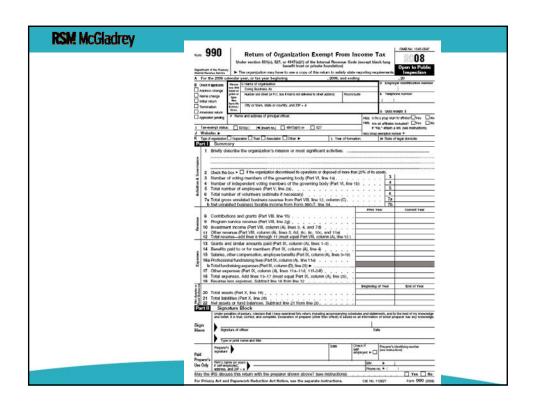
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2008 "Core Form"

- Part I Summary
- Part II Signature Block
- Part III Statement of Program Service Accomplishments
- Part IV Checklist of Required Schedules
- Part V Statement Regarding Other IRS Filings and Tax Compliance
- Part VI Governance, Management, and Disclosure

2008 "Core Form"

- Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors
- Part VIII Statement of Revenues
- Part IX Statement of Functional Expenses
- Part X Balance Sheet
- Part XI Financial Statements and Reporting



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om incoladii ey	Form 690 (2004) Fage 2			
	Part III Statement of Program Service Accomplishments (see instructions)			
	1 Briefly describe the organization's mission:			
	2 Did the organization undertake any significant program services during the year which were not listed on the prior Form soon or spok-E2? If "Yes," describe these are vertices on Schedule O. Did the organization cases conducting, or make significant changes in how it conducts, any program services? If "Yes," describe these changes on Schedule O. Describe the example purpose schedule O. Describe the example purpose schedule Sociation for each of the organization's three biggest program services by expenses, in the program of the second purpose schedule O. Second or the second o			
	4a (Code:) (Expenses \$including grants of \$) (Revenue \$)			
	4b (Code:) (Expenses \$including grants of \$) (Revenue \$)			
	4c (Code:) (Expenses \$ including grents of \$) (Revenue \$)			
	4d Other program services, (Describe in Schedule O.) (Expenses \$ including grants of \$) (Revenue \$)			
	4e Total program service expenses ► \$ (Must equal Part IX, Line 28, column (B).)			
	Porn 990 (2008)			

Part I – Summary

- Snapshot
- Organization's mission
- Governing body, Employees, <u>Volunteers</u>
- UBI gross and net
- Prior Year/Current Year reporting**
- REVENUES
- EXPENSES (Not in "functional" format Part IX)
- Total Assets, Total Liabilities, Net assets/Fund balance

Core Form - Part IV – Checklist of Required Schedules

- 37 yes/no questions
- In Schedule order
- Affirmative answer requires filing of a given Schedule
- Survey of various questions...

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Core form – Part V - Statements Regarding Other IRS Filings and Tax Compliance

- IRS radar screen tax-exempt organizations must comply with all applicable laws that pertain to them, this is the driver for Part V.
- Potential of 30 questions that may be answered.
- There will be NO exempt organization that will be required to answer all questions.
- Lines 1 2 questions about 1099s, W-2G and W-2s.
 Italics on form indicate if the numbers total over 250, electronic filing of the Form 990 may be required.

Core Form - Part VI

- Governance, Management, Disclosure
 - Independent Board Members?
 - Question 10!
 - New Policies -
 - Conflict of Interest Policy
 - Whistleblower Policy
 - Document Retention and Destruction Policy

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Case Study - Excess Benefits

- Former Board Chairperson of Homeless Relief
- Visited HQ 3 years after resigning from the Board
- "What happened to the Rollin' Cafe?"
- "We took it off the streets."
- "I may know someone who would buy it. How much do you want for it?"
- Call Accounting Dept...Fully depreciated

Case Study – Excess Benefits

- FMV = \$55,000
- Sale price = \$5,000 (to son in California)
- Excess benefit = \$50,000
- Step one make the charity whole
- Tier 1 penalty 25%
- Tier 2 penalty 200%
- Foundation Managers 10%??

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Case Study – Excess Benefits

Fair Market Value - Truck Kitchen	55,000
Sale price	(5,000)
Excess benefit	\$50,000

Repay charity (with interest)	**54,748
Tier 1 penalty	12,500
Tier 2 penalty	100,000
Total out-of-pocket DQ person	\$167,248

Policies!

- Not only should you have a conflict of interest policy but you must also provide information concerning how regularly you monitor and enforce the policy to ensure compliance
- · Do you have a written whistleblower policy?
- Do you have a written document retention and destruction policy?
- Do you have a gift acceptance policy?
- Do you know who are your "insiders" (includes "key" employees and certain contributors)?

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New Form 990, Part VII



- A. Name and Title
- B. Average hours per week
- C. Position (check all that apply)
- D. Reportable compensation from the organization
- **E.** Reportable compensation from related organizations
- F. Estimated amount of other compensation from organization and related organizations

"Officer"

- New definition of officer now includes
 - top "management official" is the person with:
 - ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization
 - top "financial officer" is the person with:
 - ultimate responsibility for managing the organization's finances

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New Form 990, Part VII (superseded)

- Key employee =
 - Has responsibilities, power or influence over org. as a whole similar to officers, directors, trustees
 - Manages a discrete segment/activity of the organization that represents 5% or more of activities, assets, income, or expenses
 - Has or shares responsibility to control or determine 5% or more of capital expenditures, operating budget, employee compensation
 - In any case, the CEO/Executive Director is a key employee

Key Employee - Definition

- In general, the three part key employee definition will require reporting as a key employee <u>only</u> those employees, other than officers, directors, and trustees, who -
- Had reportable compensation exceeding \$150,000 for the year (the "\$150,000 Test");
- Had or shared organization-wide control or influence similar to that of an officer, director, or trustee, or managed or had authority or control over at least 10 percent of the organization's activities (the "Responsibility Test"); and
- 3. Were within that group of the organization's top 20 highest paid employees for the year who satisfied both the \$150,000 test and the Responsibility Test ("Top 20 Test").

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Employees - Key, Highly Compensated?

- Obtain a list of all employees who were paid over \$100,000 (from W-2, box 5) for the organization AND any related organizations
- 2. Ascertain whether there is "Other Income" for these folks (see instructions to new Part VII)
- 3. Note that for Part VII there is a \$10,000 threshold for most fringe benefits (that does not pertain to Schedule J)
- Build a list of all employees having Total Compensation (not including the amounts under the \$10,000 threshold!) of greater than \$150,000

Employees - Key, Highly Compensated? (continued)

- Consider whether each of them meet the "Responsibility Test" (see above)
- 6. Build a list of employees who meet BOTH \$150,000 Test AND Responsibility Test.
- If that list is more than 20 people, omit number 21 and above (based upon level of compensation) – THESE (Max 20 folks) ARE YOUR KEY EMPLOYEES!
 - (note that because of the \$10,000 threshold for Part VII, compensation reported on Schedule J is likely to be different from that reported on Part VII)

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Functional Expenses: Problem Areas

- No Salaries allocated to Fundraising Expenses
- Fundraising Expenses shown "net" of funds raised
- "Miscellaneous" Expenses > 5%
- Professional Fees line items not completed
- Incorrect allocations (Chronicle of Philanthropy)
 - Reported overhead rates between 13 and 22 percent
 - Actual overhead rates ranged from 17 to 35 percent

Part IX – Statement of Functional Expenses

- Functional Expenses
- Lines 1-3 → Schedule I (> \$5,000)
- Line 11 Fees for services...
- Line 14 Information technology
- Line 15 Royalties
- Line 18 T&E "tattling"
- Line 23 Insurance
- Line 24 Miscellaneous (cannot exceed 5%)

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Core Form - Part IX - Statement of Functional Expenses

- Fundraising Expenses
 - Expenses incurred in soliciting contributions, gifts and grants.
 - Includes all expenses, including allocable overhead costs in publicizing and conducting fundraising campaigns and soliciting bequests and grants from foundations or other organizations or government grants reported on Part VIII, Line 1
 - Includes participation in federated fundraising campaigns, preparing and distributing fundraising manuals, instructions and other materials and conducting fundraising events that generate contributions reportable on Line 1c, or revenue reportable on Part VIII, line 8a.

Core Form - Part IX - Statement of Functional Expenses

- Specific line item instructions -
- Line 17 Travel Costs
 - Include all travel costs, meals and lodging on this line, including these costs associated with attending conferences, conventions and meetings.
- Line 18 Payments of travel or entertainment expenses for any federal, state or local public officials
 - If aggregate expenses for particular official exceed \$1,000
 - May use any reasonable allocation method

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Core Form: Part X - Balance Sheet

- The following are highlights of information reporting that is different than on the old form:
 - Land, buildings and equipment used in operations and used for investment purposes are combined and reported together.
 - Added line 13, Investments-program related, to separate it from other assets.
 - Added line 14, Intangible assets.
 - Added line 21, Escrow account liability.
 - Added line 23 and 24 for secured and unsecured liabilities.
 - Added Program related investments line.

Core Form: Part XI – Financial Statements and Reporting (new)

- This is a new area of information reporting. "Yes/No" format.
- Used to disclose the organization's method of accounting and other information regarding the compiled, reviewed or audited financial statements.

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2008 Form 990 - Schedules

- Schedule A Public Charity Status
- Schedule B Contributors (unchanged)
- Schedule C Political & Lobbying Activity
- Schedule D Supplemental Financial Statements
- Schedule E Schools
- Schedule F Foreign Activities
- Schedule G Fundraising & Gaming
- Schedule H Hospitals

2008 Form 990 - Schedules

- Schedule I Grants
- Schedule J Compensation
- Schedule K Tax Exempt Bonds
- Schedule L Transactions with Interested Persons
- Schedule M Noncash Contributions
- Schedule N Termination/Significant Disposition
- Schedule O Supplemental Information to Form 990
- Schedule R Related Organizations/Unrelated Partners

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Schedule A – Public Charity Status

- To be completed by ALL 501(c)(3) organizations
- Only Public Charity Status and Public Support
- Renumbered Part I
- Part II, III = 5 years
- Part II, III = no longer "cash basis required"!!
 - RESTATEMENT!
- Part IV = "blank page"
 - To be used if 10% "facts and circumstances" narrative desired

Schedule C – Lobbying

Purpose of the Schedule

 To furnish additional information on political campaign or lobbying activities, as those terms are defined below for the various Parts of this Schedule.

Who Must File

 Any organization that answered "Yes" on Form 990, Part IV, Checklist of Required Schedules, lines 3, 4 or 5 must complete and attach Schedule C to Form 990, and complete the applicable Parts relating to those lines. Any organization that answered "Yes" on Form 990-EZ, Part VI, lines 46 or 47, must complete and attach Schedule C to Form 990-EZ, and complete the applicable Parts relating to those lines.

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Schedule D – Supplemental Financial Statements

- Used to report donor advised funds, conservation easements, certain art and museum collections, escrow accounts and custodial arrangements, endowment funds, and supplemental information.
- Seven trigger questions in part IV, Core Form, requires Sch D
- Part I DAF information (some abuse here)
- Part II Conservation Easements (lots of abuse here)
- Part III Collections of Art, Historical Treasures or Similar Assets
- Part IV Trust, Escrow and Custodial Arrangements

Schedule D – Supplemental Financial Statements

- Part V Endowment Funds
- Part VI Investment in Land, Buildings and Equipment
 - Totals only presentation for Land, Building, Leaseholds, Equipment and an "other" total
- Part VII Investments Other Securities
 - 5% test for closely helds and for marketable if 5% of a type or class is held
 - Must list each
- Part VIII Investments Program Related

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Schedule D – Supplemental Financial Statements

- Part IX Other Assets
- Part X Other Liabilities (FIN 48 footnote disclosure)
- Schedule D page 4 (good change, all in one spot)

Donor Advised Funds

A fund or account:

- 1. That is separately identified by reference to contributions of a donor or donors;
- 2. That is owned and controlled by a sponsoring organization; and
- 3. For which the donor or donor advisor has or reasonably expects to have advisory privileges in the distribution or investment of amounts held in the donor advised funds or accounts because of the donor's status as a donor.

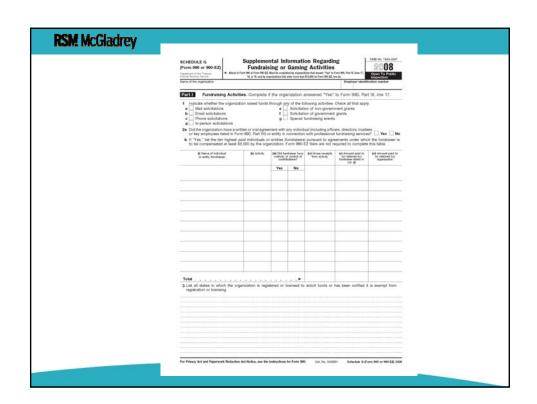
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Schedule F - Regions

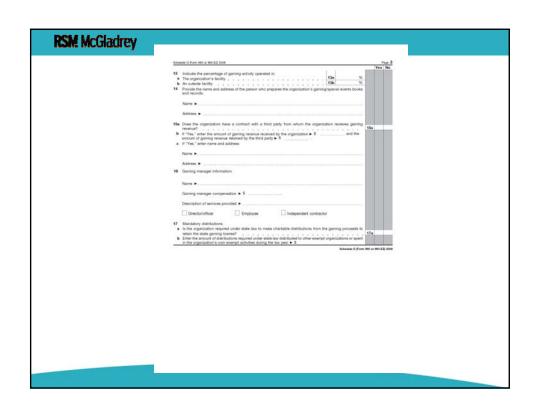
- Central America and the Caribbean
- East Asia and the Pacific
- Europe (including Iceland and Greenland)
- Middle East and North Africa
- North America (except U.S.A.)
- Russia and the Newly Independent States
- South America
- South Asia
- Sub-Sahara Africa

Schedule G - Fundraising or Gaming Activities

- Part I
 - Mail, Email, Phone, In-person solicitations
 - Non-government, Government grants
 - Special fundraising events
- "Professional Fundraising Services"
- Ten highest paid individuals/entities
- Fundraising Events (summary)
- Gaming (summary)
 - Intrusive questions about "gaming" managers



Part II Fundraising Events, C more than \$15,000 on I	omplete if the organi orm 990-EZ, line 6a.	zation answered "Yes": List events with gross	receipts greater than:	ine 18, or reported \$8,000.
	(a) Event #1	(\$4 Erest KZ	(6) Other Events	(46) Total Electo (Add sol (44) through
	avent tipe:	priest type:	(Md nurber)	10.10
1 Gross recepts				
2 Less Chantable contributions				
3 Gross revenue (line 1 minus line 2)				
4 Cash prizes , , , , .		-		
5 Non-cash prizes	-			
6 Rent/facility costs				
7 Other direct expenses				
Direct expense summary. Ac	id lines 4 through 7 in	column (d)		()
 Net income summary: Comb 	sine lines 3 and 8 in or	olumn (d)		
Part III Gaming, Complete if than \$15,000 on Form				
2	(4) Birgo	B) Full labe fretard languiprogramme langui	(b) Other gaming	(iii) Total gaming (hib) col. (iii) Terough col. (iii)
1 Gross revenue				
2 Clesh prizes				
3 Non-cash prizes , , ,				
4 Rent/facility costs , ,				
5 Other direct expenses ,	□ Yes 9	6 Ven 96	□ Yes %	
6 Volunteer labor	Yes 1	Yes %	Yes %	
7 Direct expense summary. A	of Snes 2 through 6 is	column (d)		()
Net garning income summer				
				Yes No
 Enter the state(s) in which the sais the organization licensed to 	organization operates operate garring activity	garring activities ties in each of these stat	197	90
b If "No," Explain:				
	100	No Dance		10a
90a Were any of the organization's b. If "Yes," Explain:	garring scenare revol	xea, suspended or termi	rated during the tax y	lary 100
 11 Does the organization operate 12 Is the organization a grantor, b 	parring activities with	nonmembers?	a contrambo or other	11
formed to administer charitable	gaming?			12
			Schedule G	(Form 900 or 900-62) 2008



Schedule I - Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.

- Domestic activities are reported on this Schedule.
- Grants and other assistance.
- "Within the U.S."
- Organizations in the U.S.
- Individuals in the U.S.
- \$5,000 per recipient for organizations and entities.
- Over \$5,000 in the aggregate for individuals. But not specific, if over the threshold, then it appears \$1 grants need to be disclosed separately if total is over the threshold.

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Schedule J - Compensation Information
Opening questions about those in Part VII, Section A

- Check the boxes if you provide -
- Did you follow a **written policy** for the above items? If not, you need to explain why. (yes/no).
- Did you require substantiation prior to reimbursing for or allowing the above items for ODT and CEO/ED? (yes/no).

New Form 990, Schedule J, Part I

- First class travel or charter travel?

- Travel for companions?
- Tax indemnification and gross-up payments?
- Discretionary spending account?
- Housing allowance or residence for personal use?
- Payments for business use of personal residence?
- Health or social club dues or initiation fees?
- Personal services? (e.g. maid, chauffeur, chef)
- WRITTEN POLICY AND SUBSTANTIATION!!

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Schedule J - Compensation Information More questions about compensation practices

- Check the boxes to indicate how the compensation for the CEO/Executive Director was established
 - compensation committee, independent consultant,
 - other Form 990s, written contract, salary survey,
 - approval by the board or compensation committee
- For those listed in Part VII
 - Did you provide severance payments or change of control payments?
 - Did you provide a nonqualified retirement plan or an equitybased compensation arrangement?

Schedule J - Compensation Information Compensation amounts

- Provides additional information for certain persons listed in Part VII of the core form
 - Name of person involved
 - Breakdown of W-2 or 1099-MISC compensation
 - Base, bonus, and other compensation
 - Deferred compensation,
 - Nontaxable benefits,
 - Line total for this row, and (in cases of double counting)
 - Compensation reported in a prior Form 990
- Use row (ii) to report amounts from related organizations

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Schedule K – Tax Exempt Bonds

- Bonds issued after December 31, 2002 with an outstanding principal amount of greater than \$100,000; or
- Bonds issued prior to 2003 if they have been refunded with the proceeds of tax-exempt bonds issued after December 31, 2002.
- 2008 filing year only basic disclosures describing the date, issue price and purpose of the issue is required
- · [Part I]
- 2009 filing year more comprehensive disclosures
- [2008 optional]

Schedule L – Transactions with Interested Persons

- Part I, Excess Benefit Transactions (no threshold for reporting).
- Part II, Loans to and from Interested Persons (only if outstanding balance at year end).
 - Exceptions to Part II reporting
- Part III, Grants or Assistance Benefitting Interested Persons
- Part IV Business Transactions with Interested Persons (thresholds apply for reporting).
 - What business transactions?
 - Reasonable effort standard.
 - Examples (Family employees, Law Firm)

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Schedule M - Noncash Contributions

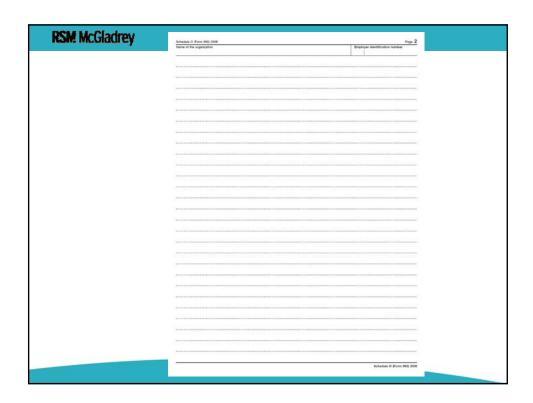
- \$25,000 in cumulative Noncash Contributions
- Types of Property 28 lines/types
 - Number of Contributions
 - Revenues reported (Form 990, Part VIII, Line 1g)
 - Method of determining revenues (minimal space)
- · Gift acceptance policy?
- Supplemental information

Part I Types of Property		➤ Attack to Fune 990		Open To Public Inspection
Part I Types of Property			Emple	per ideolification number
	1		7	
	Check if	Number of contributions	Revenue reported on. Form 990, Part VIII, line 1g	(4) Method of determining revenues
1 Art-Works of art	19.50		PORTS MAIL PORT VIOL NOW TO	TOTAL COLUMN TO THE PARTY OF TH
2 Art—Historical treasures				
3 Art—Fractional interests				
4 Books and publications 5 Clothing and household	_			
goods				
6 Cars and other vehicles	_			
7 Boats and plones				
Securities—Publicly traded				
10 Securities-Closely held stock ,	-			
55 Securities—Partnership, LLC, or trust interests				
12 Securities—Macellaneous ,				
13 Qualified conservation				
contribution (historic structures) ,				
14 Qualified conservation				
contribution (other)	-			
15 Final estate—Flesidential 16 Final estate—Commercial				
17 Real estate-Other	_			
18 Colectities	-			
19 Food inventory	-			
20 Drugs and medical supplies . 21 Taxidemy				
22 Historical artifacts				
23 Scientific specimens	-			
24 Archeological artifacts , , . 25 Other > ()				
26 Other > ()				
27 Other > () 28 Other > ()	-			
29 Number of Forms 8283 receive	at builtie o	manimum during the tor	upor for contributions for	
which the organization comple	ted Form 8	283. Part IV. Donee Acknow	wiedgement	29
20a During the year, did the organize it must hold for at least these years of several purposes for bill "Yea", decorate the arranger contributions? 20a Does the organization have contributions? 20a Does the organization have or contributions? 30a Does the organization have or contributions? 31b If "Yea", describe in Plant II. 30 If the arganization id-not report describe in Plant II.	cation receives from the entire in Part in Part in gift acceives third pe	we by contribution any ping the date of the initial contrib olding period? If optance policy that requi- rise or related organization	petry reported in Part I, line outson, and which is not neg res the review of any no ms to solicit, process, or se	Yes No s 1-28 that used to be 20s standard 31 if noncesh 22s
For Privacy Aut and Paperwork Reduction :	Act Notion, an	the Instructions for Famil 1960.	Oat. No. 812273	Substitute M. (Form. 990) 2009
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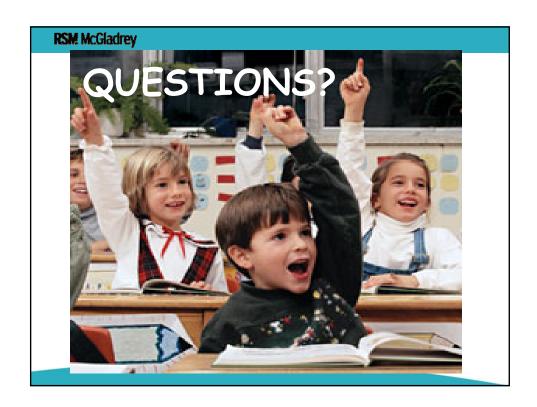
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What You Should Be Doing NOW

- Make sure you have all of the prescribed <u>POLICIES</u>
- Board approved <u>MISSION STATEMENT</u>
- Do a Form 990 <u>EXECUTIVE REVIEW</u>
- Construct / Re-construct your Annual <u>BOARD</u> <u>QUESTIONNAIRE</u>
- Run an internal <u>COMPENSATION</u> Survey
- dave.moja@rsmi.com 321-751-6200



THANKS!

For your time and attention.

Dave Moja, Tax Director

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