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# disclosure of charitable remainder trusts on form 990

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*MSK Client Alert*

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*by David Wheeler Newman*

IRS Form 990, the information return filed by tax-exempt organizations, got a major overhaul in 2008. One feature of the overhaul is detailed information that must be provided on a series of schedules to be attached to the core Form 990. Schedule R requires reporting of information regarding entities that are related in some way to the nonprofit organization filing the Form 990. This schedule requires a reporting charity to identify charitable remainder trusts that are related to the reporting organization. Since the criteria for which CRTs must be included are vague, charities typically include all CRTs in which they have an irrevocable remainder interest and of which they have been made aware by the donor or trustee of the CRT. Information that must be reported on Schedule R includes the name and address of the CRT, its taxpayer identification number, and the value of the charity's actuarial interest in the assets of the CRT.

This requirement to provide detailed CRT reporting on Schedule R of Form 990 causes understandable consternation to charities desiring to protect the privacy of their donors, since it is inconsistent with another schedule to the same Form 990. Schedule B requires the reporting of detailed information regarding contributions received by a charitable organization. In the interests of donor privacy, the instructions to Schedule B specifically provide that the names and other identifying information of donors do not need to be made available for public inspection with the rest of the Form 990. There is no similar privacy protection for CRTs listed on Schedule R. This discrepancy creates the disturbing possibility that a donor establishing a CRT for the benefit of a charity might have her identity protected from public disclosure under the instructions for Schedule B, while having her name made public on Schedule R if the name of the trust happens to be the "Jane Doe Charitable Remainder Trust."

In response to a request by the IRS for input on the new Form 990, a number of commentators have pointed out this odd discrepancy and have requested similar privacy protection for CRTs listed on Schedule R. It now appears that the

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IRS is acting to prevent this unintended result. At the recent IRS Western Conference on Tax Exempt Organizations, one of the presenters was Steve Clark, who heads the IRS Form 990 program. Mr. Clark reported that the instructions to the 2011 form will clarify that CRTs may be identified by type or with some other system designed to disclose all of the other information required for Schedule R other than CRT names that might jeopardize a donor's privacy.

To comply with the reporting requirements of Schedule R to IRS Form 990, it is suggested that an identifier could be assigned to each CRT in which the charity has an irrevocable remainder interest. The identifier should disclose the type of trust, e.g., annuity trust, standard unitrust, etc. For example, a trust might be described as "CRT #3 -- 6% CRAT" or "CRT #9 -- 7% NICRUT."

Schedule R disclosures should not include CRTs in which the donor has reserved the right to change charities. What about trusts for which the charity does not serve as Trustee? All that is required is for the charity to use its reasonable best efforts. If a charity has not been informed of its interest in a CRT, it obviously cannot be included on Schedule R. In a situation in which the charity has received a copy of the trust, but is unaware of the value of trust assets, the trust itself could be identified on Schedule R, but with the value of trust assets indicated as unknown.

The good news from this development is that charities may comply with their filing obligations for Schedule R to Form 990 by disclosing information relating to CRTs without disclosing the name or other identifying information of the CRT that might jeopardize donor privacy.

Please contact any member of our charitable sector practice group if you have any questions concerning the foregoing.