

Attention Nonprofits: the IRS Form 990 Deadline Is Around the Corner, Time to Begin Annual Audit and Review Governance Practices

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With the deadline quickly approaching for most nonprofits to file their annual tax returns with the Internal Revenue Service (IRS), now is the time for tax-exempt organizations to begin their annual audits if they have not already done so. The Form 990 preparation process also is a good time for nonprofits to review their governance policies and practices.

Form 990 Filing. 501(c) organizations and 527 organizations that are not registered with the Federal Election Commission or a state/local campaign finance agency must file an annual informational tax return, known as the Form 990 (or the related Form 990-EZ or Form 990 E-Postcard for smaller organizations), no later than five months and 15 days after the end of their fiscal years. For nonprofits that follow a calendar year, the deadline is May 15, 2013.

Annual Audits. Although the IRS does not require tax-exempt organizations to audit their financial statements, retaining an independent accounting professional to conduct an audit is the best practice. The Form 990 itself requires nonprofits to disclose whether an independent accountant compiled or reviewed the organization's financial statements and whether an independent accountant audited the organization's financial statements. Moreover, under certain circumstances, other federal or state agencies may require financial statement audits (e.g., some state regulators require audits in order to receive a charitable solicitation license). While never having said so explicitly, the IRS's past actions suggest that the agency pays

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closer attention to the tax returns of organizations that do not audit their financial statements. Conducting an audit can take a significant amount of time. Nonprofit organizations desiring to have their financial statements audited should begin the process now (if they have not already done so).

Governance Policies. Through its past conduct, the IRS also has hinted that it pays closer attention to the tax returns of tax-exempt organizations that have not adopted certain governance policies. The Form 990 requires a nonprofit to disclose whether it had adopted and followed a written conflict-of-interest policy, whistleblower policy, and document retention and destruction policy. The Form 990 also asks a nonprofit whether its governing board has reviewed and approved its draft Form 990 and whether the organization has an established process for determining executive compensation.

In its 2013 Work Plan, the IRS Exempt Organization Section explained that its studies strongly link overall tax compliance with adopting and following these governance policies. In 2013, the IRS intends to send questionnaires to a random sample of 501(c)(3) and 501(c)(4) organizations asking about their governance practices to further examine the correlation between implementing best practices and tax compliance.

As a nonprofit prepares for filing its Form 990, it is a good time to examine the governance policies in place. Wiley Rein can assist with drafting new governance policies or modifying existing governance policies or practices to suit an organization's needs.