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**CONTRIBUTIONS AND REVENUES**  
**February 27, 2008**

I. Changes to the Form 990

A. More, more, more – as is true with most of the new Form 990, more detail is required.

B. Contributions.

1. No change to the Schedule B – still is not subject to disclosure to the public.

2. Non-cash contributions in excess of \$25,000 or received contributions of art, historical treasures or other similar type assets, or conservation easements.

a) Must fill out Schedule M.

3. If raised more than \$15,000 from fundraising events, gaming or paid more than \$15,000 to fundraisers.

a) Must fill out Schedule G.

4. Nondeductible contributions must be disclosed (contributions to 501(c)(4), (6) and (7) organizations) and state whether every solicitation included a statement that such contributions were not tax deductible.

5. Must comply with contemporaneous receipt rules.

6. Must comply with Form 8282, 8899, 1098-C filing requirements.

C. Related organizations and unrelated partnerships – Schedule R.

1. All disregarded entities, related tax-exempt entities, and related taxable entities (regardless of whether such entity is a partnership, corporation or trust must be disclosed.

2. Must disclose information regarding transactions with related organizations.



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D. New Schedule D – supplements the financial statements – **SEE NEW FORM 990,**  
**BOTTOM OF PAGE 3**

II. FIN 48

A. The new Form 990 requires the FIN 48 footnote to the organization’s financial be included – but only for the entity that is reporting the liability. In other words, if a multi-entity group has consolidated financial statements, then only the parent entity would need to comply with the FIN 48 disclosure.

1. FIN 48 applies to all tax-exempt organizations whose taxable year begins after 12/15/2006 unless the organization is considered a “nonpublic” enterprise.
2. There is a one year delay for all “nonpublic” enterprises – however a tax-exempt entity that has tax-exempt (including conduit) debt is not considered a “nonpublic” enterprise.

B. What is FIN 48?

1. Provides that all entities using GAAP will need to disclose in the footnotes to their financial statements whether there are any uncertain tax positions that create a material liability or an asset.
2. Applies only to income tax positions.
  - a) Does not apply to intermediate sanctions (excise tax), sales and use taxes, property taxes, or payroll taxes.
  - b) Unclear if it applies to the tax under Section 4940, since it has many characteristics of an income tax but is referred to as an excise tax.



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3. Each entity must properly account for its tax liabilities on its financial statements.
  4. Prior to FIN 48, the provisions of FASB 5 – Accounting for Contingencies and FASB 109 – Accounting for Income Taxes applied to tax-exempt organizations. Arguably, tax-exempt organizations should have been examining tax positions and accounting for any possible liabilities long before FIN 48 was promulgated.

C. How to analyze.

1. Identify the organization’s tax positions.
  - a) For tax-exempt organization, their mere existence is a “tax position”.
    - (1) Must look at whether tax-exempt requirements are met.
    - (2) Lobbying expenses must be insubstantial.
    - (3) Make sure there were no political campaigning activities.
    - (4) Determine that there is no private inurement.
  - b) UBI.
    - (1) Must examine any unrelated trade or business activities.
    - (2) Must determine if expenses have been properly allocated.
  - c) Joint Ventures – must be examined to determine if such an activity is consistent with or in furtherance of the entity’s tax-exempt purposes and, if it produces UBI, that the amount of UBI (together with the gross amount of revenues from all other unrelated trade or business activities) is not so great as to jeopardize the organization’s tax-exempt status.



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2. Determine if it is MORE LIKELY THAN NOT (“MLTN”) that a tax position will or will not be sustained on examination based on its technical merits.

- a) Must assume that there will be an audit.
- b) Must assume that the auditor will identify the issue.
- c) Must assume that the issue is not settled.

3. Measurement.

- a) If the MLTN is not met, then 100% of the tax (plus interest and penalty) associated with that position must be included as a liability on the organization’s financial statements.
- b) If the MLTN is met, then the tax position must be measured, based upon the amount and probabilities of outcomes that could be realized (paid).
- c) Do not need to record anything if the aggregate amount of all uncertain tax positions is immaterial (the same as any other contingent liability under GAAP).

#### D. Disclosure

- 1. Question of how the footnote is worded – the devil is in the detail.
- 2. Must disclose if it is reasonably possible that the total amount of unrecognized tax benefits will significantly increase or decrease over the next twelve months.

#### E. Potential issues/problems raised by FIN 48.

- 1. Any tax-exemption issue might be difficult to measure – particularly determining the “probabilities”.



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- a) Since the IRS historically has not revoked the tax exemption of an organization except under fairly extreme situations, can the organization take the position that the probability of their tax exemption not being upheld is so unlikely that it is de minimis and thus, does not constitute an uncertain tax position? Does this end the analysis?
  - b) Many IRS settlements are not made public, so it may be difficult to assess how a particular issue will be resolved.
2. What type of analysis needs to be conducted?
- a) The accounting firms are still trying to work through the process.
  - b) Is a management representation-type or audit letter sufficient?
  - c) It is possible that this will cause the auditors to increase the scope (and therefore cost) of their audits.
3. Any information given to the auditors (and possibly retained in their files) loses any attorney-client privilege that it might have had, although it might be possible to argue that such information is protected under the work product doctrine (an assertion yet to be fully tested in the courts). Thus, a “road map” could exist for any future IRS audit.
- a) In order to analyze whether a particular tax position is uncertain, the organization may need to look to counsel to provide assistance.
  - b) Current IRS policy is not to ask for the tax accrual workpapers except in limited circumstances.



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- c) However, there is nothing that would prevent the IRS from changing this policy.
4. Information would lose the attorney-client privilege for other purposes (such as a lawsuit).
  5. How will the information be disclosed, assuming that there is a material liability?
    - a) A significant amount of negotiation may be needed in the wording of the footnote.
    - b) Must consider the implications of the “new” disclosure including how such information may affect the organization’s credit/bond rating.