

**Nonprofit Legislative
and Tax Update**
March 12, 2010

Presented by
John Butler, Tax Counsel, CapinCrouse LLP

CAPINCROUSE
LLP
Certified Public Accountants

CAPINCROUSE
LLP
Certified Public Accountants

IRS Dirty Dozen

- IRS' 2009 "Dirty Dozen" Tax Scams
 - Hiding Income Offshore
 - **Abuse of Charitable Organizations and Deductions**
 - Abusive Retirement Plans
 - Disguised Corporate Ownership
 - Misuse of Trusts

CAPINCROUSE
LLP
Certified Public Accountants

CAPINCROUSE
LLP
Certified Public Accountants

IRS 2010 Exempt Organization Plan

Annual Plan (issued 11/2009)

- Cyber Assistant (Form 1023 on-line)
- Gifts in Kind
- Donor Advised Funds
- Group Returns
- Deferred Compensation
- Private Foundations

CAPINCROUSE
LLP
Certified Public Accountants

CAPINCROUSE
LLP
Certified Public Accountants

IRS EO Audits

Year	Percentage
2000	0.89%
2001	0.58%
2002	0.58%
2003	0.58%
2004	0.58%
2005	0.58%
2006	0.88%
2007	0.88%
2008	0.88%
2009	1.24%

CAPINCROUSE
LLP
Certified Public Accountants

CAPINCROUSE
LLP
Certified Public Accountants

IRS & NP Governance

- IRS perspective:
"The Internal Revenue Service believes that a well-governed charity is more likely to obey the tax laws, safeguard charitable assets, and serve charitable interests than one with poor or lax governance."
- Form 990 policy questions
- Check sheet for EO examining agents

<http://www.irs.gov/charities/article/0,,id=216068,00.html>

CAPINCROUSE
LLP
Certified Public Accountants

CAPINCROUSE
LLP
Certified Public Accountants

Form 990 Changes

- New Data To Capture & Report
- Lookin' Good on www.Guidestar.org
 - **Informing the Public**
 - Policies
 - Board Operation
 - CEO, officer compensation & relationships
- IRS "Filing Tips"

<http://www.irs.gov/charities/article/0,,id=208553,00.html>

CAPINCROUSE
LLP
Certified Public Accountants

Form 990-Filing Experience

- Allocations of revenue and expense listed w/ Program Descriptions not reconcile to other amounts
- Incomplete listing of “officers”
- Schedule F, expenses for activities outside US may include in-US expenditures
- Capturing all expenditures for executive on Schedule J
- Schedule J triggering reconsideration of travel, other arrangements for executives

Other Form 990 Filings

Form 990-EZ: Satisfy gross receipts & assets tests

- *2008 tax year:* Gross receipts < \$1,000,000 and Assets < \$2,500,000
- *2009 tax year:* Gross receipts < \$500,000 and Assets < \$1,250,000
- *2010 and later tax years:* Gross receipts < \$200,000 and Assets < \$500,000

Form 990-N: Gross receipts under \$25,000
Filed electronically

Summary of Recommendations

- Introduce your Board to the New Form 990
 - Pages 1, 2, 6-8, Schedules C, D, F, G, I, J, L
 - Compare w/ Similar Organizations
- Examine your Form 990—How easy is it for a reader to find out what you think is important?
- IRS information: <http://www.irs.gov/charities>

403(b) Requirements

- New Plan Document Requirement—practically all plans (effective 1/1/2010)
- New Investment Tracking Requirement—all plans (effective 1/1/2009)
- Increased obligations for plans subject to ERISA (more reporting, and audits for some 403(b) plans)
- Church 403(b) plans still exempt from ERISA and Form 5500
- Church 403(b) plans exempt from non-discrimination requirement

Sidebar: Retirement Plan Importance ...



Retirement Plan Planning

- Churches and other tax exempts can use nearly any retirement plan available to businesses
 - Churches generally subject to same requirements as others
 - Minister housing allowance generally not “compensation”
- IRS Pub. 4484, *Choose a retirement plan for employees of tax exempt and government entities* (October 2005)
- <http://www.retirementplans.irs.gov/>

Executive Compensation

Congress & public concerned about nonprofit executive pay

- Increased Form 990 reporting
- IRS Executive Compensation Initiatives
- Congressional Hearings
- “Perquisites” (see Schedule J: #1, #4, #5-7)

IRS Hospital Study: Executive Summary of Final Report

Compensation

“Amounts reported appear high but also appear supported under current law. For some, there may be a disconnect between what, as members of the public, they might consider reasonable, and what is permitted under the tax law.”

Rebuttable Presumption Safe-Harbor

- **Put IRS on Defensive**
- Disinterested board or subcommittee approves
- Approval before payment
- Rely on Appropriate Data
 - An organization with under \$1 million in gross receipts may rely on compensation data from only five organizations.
- Concurrent record of decision and information

Executive Compensation

Recommendations

- Heads-up: this is a lively issue
- Know your constituencies’ perspectives
- Use “Rebuttable Presumption Process”

Non-Cash Gifts

- IRS “Dirty Dozen” of tax abuses
- Valuation Abuse “**Fixes**”:
 - Form 8283 (organization signs if \$5,000 +)
 - Form 8282 (submitted if dispose of gift for which Form 8283 signed w/in 3 years of gift)
 - Qualified appraisal requirements strengthened
 - Special rules for vehicles, intellectual property, tangible personal property, household goods

Foreign Business/Financial Transactions

- Ownership interest in foreign business entity
- IRS Audit Guide to help agents audit withholding/reporting **payments to non-resident aliens**
- Several **illegal** tax schemes use combinations of **exempt organizations** and **foreign entities**
- IRS emphasizing FBAR (Form TD F 90-22.1)

FBAR (Form TD F 90-22.1)

- Due June 30 for accounts held in prior year
- Applies to both “Owner” and “Signatory”
- \$10,000-on-a-day Threshold (aggregate)
- Substantial penalty for not filing
- Mutual Funds in foreign countries
- Agents holding accounts

Foreign Missions & Missionaries

- U.S. Social Security and missionary foreign employment under treaties (www.socialsecurity.gov/international)
- Exemption from Form 990
 - Foreign mission society (Reg. § 1.6033-2(g)(1)(iv))
 - Church
 - Religious Order
- IRS article on Foreign Earned Income Exclusion:
<http://www.irs.gov/businesses/article/0,,id=182017,00.html>

Informal Mission Agencies

Directly sent missionaries & S-T missions

- Employment Taxation & Reporting
 - US Citizen or Non-Resident Alien
 - Special tax issues
- Deputized Fund Raising
- Supervision & support

Political Activities

- Political Activities Compliance Initiative (PACI)
 - No report yet from 2008 Election
 - Past reports 7-15 months after election
- IRS website information:
<http://www.irs.gov/charities/charitable/article/0,,id=179750,00.html>
- Pulpit Initiative 2008—IRS Response
 - Closed one investigation due to procedural problem

On-Line Ministry

- Trademark, Names, Intellectual Property
- Sales
 - Sales Tax
 - Location of Buyer!
 - Contacts (*nexus*)
 - Income Tax
- Sponsorships (UBI?):
 - acknowledge ≠ endorse/promote sales
- Fundraising Regulation
 - Location of Prospective Donor

Independent Contractors

- Independent Contractors in 2009
 - June: IRS Initiative=>More enforcement
 - August: GAO Report=>Tax gap
 - September: CRS Report=>Tax gap
- February, 2010: IRS begins Employment Tax National Research Project
- **March, 2010:** Are you sure your “independent contractors” really are?

Health Plan Issues

- Medicare/CHIP Model Notice Available
 - Due 1st day of plan year after 2/4/10, and then annually
 - Applies to employers with employees in Indiana (and other states)
 - DOL website: <http://www.dol.gov/ebsa/>
- Policy for & Notice of privacy breach in health plans (took effect 2/22/10)
- Mental Health Parity regulations-plan years beginning 7/1/10 or after

Miscellaneous

- Proposed Regulations on Type III Supporting Organizations (Final Regulations probably in 2010)
- Cell Phones
 - Accountable Plan rules apply & usually useless
 - Agreement on need to change (IRS & Congress)
 - Not happened yet-IRS thinks it requires law change
 - **Tax & Gross-up Salary**

Miscellaneous

- Definition of “church”
 - Foundation of Human Understanding*
 - 14 points used
 - Associational elements emphasized
- Estate Tax
- Extenders
- *Johnny Rosser* & ‘corporate’ contributions
- Health Coverage Reform Bill

Thank You!

Please contact me if you have any questions
or if we may help in any way

John Butler, *Tax Counsel*, CapinCrouse LLP

jbutler@capincrouse.com

317-885-2620, ext. 1150