

# **Request for Comments Regarding the Instructions for Form 990, Return of Organization Exempt From Income Tax, Form 990-EZ, Short Form Return of Organization Exempt From Income Tax, and Form 990-PF, Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation.**

## **Announcement 2001-33**

### **INTRODUCTION**

The Internal Revenue Service (IRS) requests comments on the nature and extent of information about certain compensation arrangements that tax-exempt organizations should report on their annual information returns. The IRS seeks comments on whether Forms 990, 990-EZ, and 990-PF should continue to require tax-exempt organizations to report payments for contracted management services as if the organization had directly paid the individuals providing the services.

### **BACKGROUND**

Part IV of Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, and Part V of Form 990, *Return of Organization Exempt From Income Tax*, require reporting organizations to list the names and addresses for contact of officers, directors, trustees and key employees. Line 1 of Part VIII of Form 990-PF, *Return of Private Foundation or Section 4947(a)(1) Nonexempt Charitable Trust Treated as a Private Foundation*, requires foundations to list the same information for officers, directors, trustees, or foundation managers. Organizations are also required to report the title of each listed individual and the hours the individual spends per week performing the duties of the position.

The forms also require information on compensation packages for individuals listed as officers, directors, trustees or key employees/foundation managers. The forms ask for amounts paid to each individual as compensation, contributions made to employee benefit plans and other deferred compensation, and payments made to expense accounts and for other allowances.

Since 1999, the instructions to the forms have stated, "If you pay any other person, such as a management services company, for the services provided by any of your officers, directors, trustees, or key employees [or foundation managers for private foundations], report the compensation and other items as if you had paid them directly."

The Internal Revenue Service has received a number of comments on these instructions. These comments have either criticized the instructions or expressed concern that the Service might reduce their effectiveness.

Some comments have expressed concern that the reporting requirements are too burdensome on tax-exempt organizations, requiring the organization to obtain detailed information from third-party contractors to accurately complete the form.

Other comments expressed concern that the requirements invade the privacy of individuals who are not employees of the reporting organization. These comments concede, however, that the Service must protect against individuals who incorporate to avoid reporting.

Comments in support of the current reporting requirements expressed concern that allowing tax-exempt organizations to report only the gross amounts they pay for management would deprive the public sources of critical information about the reporting organization.

### **PUBLIC COMMENTS**

This Announcement seeks further public comments on these instructions. Comments should address such issues as:

1. Whether contracting with third parties who provide the reporting organization with allocations for completing the form is consistent with current practices?
2. How can the instructions be revised to simplify reporting, yet protect against abuse by an individual officer, director, trustee, key employee, or private foundation manager who incorporates to avoid reporting?

The period for comments will be 90 days from the date this Announcement is published in the Internal Revenue Bulletin.

Comments should be sent to the following address:

Internal Revenue Service  
1111 Constitution Ave., N.W.  
Washington, DC 20224

Attn: David W. Jones,  
1750 Penn. Ave., NW  
T:EO:RA, Room 3T3

Comments may also be sent electronically via the Internet to \*TE/GE-EO-1@irs.gov.

### **REASONABLE CAUSE UNDER SECTION 6652**

Until the Service notifies organizations otherwise, by an Announcement published in the Bulletin, organizations that pay other persons, such as management services companies, for the services of officers, directors, trustees, or key employees/foundation managers, will be deemed to have reasonable cause for purposes of the penalty under Section 6652(a)(1)(a)(ii) of the Internal Revenue Code for the failure to provide the information required by the relevant portions of Parts IV, V or VIII of the forms, if:

1. Where the form asks for the name of officers, directors, trustees, or key employees/foundation managers, the reporting organization enters the name of the person (e.g., management services company) that performs those services under contracts and services that it performs:
2. Where the form asks for the address of officers, directors, trustees or key employees/foundation managers, the reporting organization enters the address where the IRS can contact such person (management services company);
3. Where the form asks for compensation paid to officers, directors, trustees or key employees/foundation managers, the reporting organization enters the amount paid to the person (management services company) for the services listed in response to inquiry 1, above.

### **DRAFTING INFORMATION**

The principal author of this announcement is David W. Jones of the Exempt Organizations Technical Division. For further information regarding this announcement contact David W. Jones at (202) 283-8907 (not a toll-free call).