

What Can
Your IRS
Form 990 Do
For You?

Presented by:
Andrew Gray, CPA
Kevin Reynolds, CPA

January 27, 2016



Andrew Gray, CPA

- Board Chair, Nonprofits First
- Daszkal Bolton
 - 3 offices: Boca, Jupiter, Sunrise
 - Over 140 people
 - Tax, Audit, Advisory Firm (full-service)
- Tax Lead – Not-for-Profit Practice
- What do I do?
 - Never the same
 - Entrepreneurial
 - Marketing
 - Human resources
 - Management
 - Leadership
- My Goal



Agenda

- IRS Tax Update – identify tax changes during 2015 that directly impact nonprofit organizations
- Review IRS pronouncements, tax court cases, and changes to form instructions that affect the reporting of tax information on Form 990
- Key components of Form 990 to highlight the organization's accomplishments and how to review the Form 990 as a nonprofit executive
- Reconciliation of Form 990 to the audited financials and how the audited financials impact the 990 to include changes in reporting
- Unrelated Business Income Overview
- State Nexus
- Affordable Care Act (ACA) and its impact on nonprofit organizations
- Other discussion / Questions



IRS Exempt Organization Department Happenings

- New IRS EO leadership team
- Knowledge base system
- Examinations
 - Leverage 990 data
 - Issue focused approach
 - Data driven
 - Risk based
- Exemption applications (we'll discuss later)



IRS Exempt Organization Tax Issues/Updates

- PATH Act of 2015
- EO Priority Guidance – Data-Driven
- Form 1098 – Donor Reporting
- International – FBAR Focus
- New Form 990 Due Date



PATH Act of 2015

- IRA Charitable Rollover (made permanent)
 - Allows individuals 70 ½ and older to donate up to \$100,000 from traditional or Roth IRAs to eligible public charities (not included in taxable income)
- Inventory of “apparently wholesome food”
 - Deduction of basis + ½ appreciation (markup)



IRS Priority Guidance

- Exemption (non-exempt purpose activity, private inurement); an exempt purpose but not their exempt purpose
- Protection of Assets (self-dealing, excess benefit, loans to disqualified persons)
 - Correspondence audits
- Tax Gap (employment taxes, UBIT liability)
- International (oversight on funds outside U.S., FBAR requirements)
 - Compliance reviews, Examinations



IRS Data-Driven Decision Making

- Exams moving from project-driven to data-driven
- 150+ data queries from 990 Core and Schedules (i.e. debt-financed property, rental income, but no UBI, low public support percentage, decrease in net assets)
- New approach has resulted in 90% change rate on filed returns
- Form 990-PF and 990-EZ in early 2016



Form 990 IRS Focus Areas & Red Flags

- Complete and accurate return?
- Political campaign activity?
- Private benefit?
- “Life Cycle of a Public Charity”
- IRS’s data-driven approach
- Why is the IRS asking these things?



Donor Reporting (optional)

- In response to donor data court cases (church/donor case)
 - Non-cash contribution receipt ruling by tax court
 - TC Memo 2014-203 (October 2014)
- IRS Publication 1771 requirements
- Form items (SSN)
- IRC section 170(f)(8)(d)
- Opinion: not likely to be utilized



International Issues

- Schedule F – for investments, disbursements
- FBAR Focus - \$10,000 aggregate (calendar year) at any time during the year
- FBAR Due Date – April 15 but extension to October 15
- Schedule F, Part IV – Forms



Form 990 One-Time Extension

- Currently – two three-month extension opportunities
- Form 8868 – one automatic 6 month extension
- Beginning with tax years after 12/31/15
- New form is forthcoming
- Penalties \$100 or \$20 per day still apply



Principles and procedures to highlight your organization

Principles

- Know Your Audience
- Maximize every possible space on your Form 990
- Use the Form 990 to reflect on best practices
- File a timely, complete, and accurate return

Procedures

- Financial and chief executives should review the most recent Form 990 for accuracy and highlights (use checklist provided)
- As appropriate, marketing and development executives should review the Form 990
- Determine if an outside consult would be helpful



Why does it matter?

- The most important document you prepare
- Public disclosure
- Stakeholders reviewing the 990
- Marketing tool
- Transparency and communication



Form 990 - Structure

- 990 instructions – 100 pages
- Core form of 12 pages
- 15 substantive-topic schedules apply depending upon circumstances (separate instructions for each schedule)
- Schedule O for additional information



"My evil plot to rule the world is simpler than my tax form."



Form 990 – Key Arenas of Reporting

Arena 1: Program Service Accomplishments & Changes in Program Conduct (Part III)

- PSAs – Lines 4a-4d
- Updating IRS and readers on ALL program services conducted

Arena 2: Reporting “Managers” & Compensation (Part VII)

- Philosophy
- Compensation – set measures
- Definitions of Officer and Key Employee are standardized
- Further transparency demands
 - Compensation by related orgs
 - Former TDOKEs and High 5s are reported
 - Schedule J



Form 990 – Key Arenas of Reporting

Arena 3: Governance Inquiries (Part VI & Part XII)

- Section A – Management
- Section B – Policies
- Section C – Disclosure

Arena 4: Unique Circumstances ‘Triggering’ Schedules (Part IV)

- Trigger questions
- Most common schedules
 - Schedule A, B, D, G, L, M



Form 990 – Key Arenas of Reporting

Arena 5: Financial Information

- Part VIII – Revenue
- Part IX – Functional Expenses
- Part X – Balance Sheet
- Part XI - Net Asset Reconciliation
- Form 990 follows method of accounting of books and records except book-tax differences
- GAAP Materiality vs. Tax





Form 990, Schedule D – Reconciling the 990 with the AFS

- Unrealized gains and losses
 - Audit report format
- Donated services or use of facilities
 - Professional service fees
 - In-kind rent
- Event revenues and expenses
 - Audit report format, separation of revenue/expense
- Part IX – Functional Expenses
 - May not always agree



Accounting updates/changes

- FASB proposed changes to NFP financial reporting
 - With/Without donor restrictions
 - Cash flow – direct method
 - More relevant disclosures



5 Must Know Definitions and their impacts

1. Business relationship
 - i.e. Board member and organization
 - Reported on Schedule L
2. Family relationship
 - i.e. Between board members
 - Reported on Schedule O
3. All definitions for status as a TDOKE
 - i.e. voting members of the governing body, chief financial and executive official
 - Reported on Part VII
4. Related organization
 - i.e. organizations with significant control
 - Reported on Schedule R
5. Reportable compensation
 - i.e. W-2 income, retirement benefits, health insurance, etc.
 - Reported on Part VII



Unrelated Business Income – raising awareness

- Congressional hearings
 - Trying to learn more about Unrelated Business Income (UBI)
 - Looking for possible abuse and sources of revenue
- IRS activity
 - Compliance checks
 - IRS examinations
 - Review of organization websites
 - IRS analyzing data from the Form 990-T to identify taxpayers reporting significant gross receipts but very little, or no, taxable income.



Unrelated Business Income – internal considerations and education

- Why engage in UBI?
- Tax policies and procedures
- Contract review
- Sign off by appropriate tax personnel



Unrelated Business Income – identifying UBI

- Review of revenue accounts
- Discussions with finance staff
- Review of websites and publications
- Review of board minutes
- Conducting a mock audit
- Risk assessment



Unrelated Business Income – process of making a UBI determination

- Is it a trade or business?
 - Commercial in nature, similar to for-profit entities?
 - Are there for-profit competitors?
 - Is there a profit motive?
 - If it has a history, has it made a profit?
 - Gift store example
- Is it regularly carried on?
 - Generally similar to comparable commercial activities?
 - Recurring only occasionally or sporadically?
 - i.e. fundraising events



Unrelated Business Income – process of making a UBI determination

- Is it unrelated?
 - Substantial causal relationship to the achievement of exempt purposes?
 - Contribute importantly to the accomplishment of the organization's exempt purpose?
 - Depends in each case upon the facts and circumstances
 - Size and extent of the activities involved must be considered
- Does an exception apply?
 - Substantially all work done by volunteers? (85%)
 - Convenience of members, students, patients, officers, or employees
 - Sale of donated merchandise
 - Low cost articles
 - Qualified convention and trade show activities



Unrelated Business Income – process of making a UBI determination

- Does a modification apply?
 - Dividends
 - Interest
 - Annuities
 - Royalties
 - Rent
 - Capital gains and losses
- Additional considerations
 - Debt-financed income
 - S Corporations
 - LLC and partnerships



Unrelated Business Income – documentation

- Basis for activity classification
- Non privileged memos supporting position
- Detailed description of activity and purpose
- Description and basis for expense allocation method
- Document activities that are not on the return



State Nexus – yes, state nexus

- What activity is regulated?
 - Solicitation – asking for a gift or selling goods and services
 - If the organization is soliciting, you may need to be registered in one or more state charity offices. Annual renewals apply.
- State Regulation
 - 45 states plus DC have some sort of statutory scheme to regulate charitable solicitations



State Nexus – state requirements

- Vary from state to state; from copy of 990 to full tax return style filing; audit requirements
- Public disclosure – California case (*Center for Competitive Politics v. Harris* (9th Cir., May 1, 2015))
- California, for example:
 - California Attorney General – Form RRF-1
 - California Franchise Tax Board – Form 199
 - California Secretary of State – Form SI-100
 - Other forms if organization has UBI
- Non-compliance issues/penalties



State Nexus – role of the CPA

- Financially-driven documents to be prepared by CPA
- Some documents are similar to the 990 but may have significant differences
- CPA should defer to legal counsel for registrations



Brief note on private foundations...

- Monitor payout of distributions mid-year
- Donated property maintains the donor's tax cost basis; good planning to time sales that produce high gains
- Tax rate in year one is always 2% - don't sell appreciated stock given to new PF in first year.
- Gain inherent in property distributed to grantees is not taxed. Consider gifting stock to grantee to avoid gain on sale.
- Expense allocations
- Proposal to simplify Private Foundation (PF) tax rate – one rate only



Next steps

- Full-scale review of your Form 990 by key staff and/or board members
- Address technical red flags (see an advisor)
 - Overall 990 accuracy
 - UBI study
 - State nexus
 - Multi-entity structuring



Affordable Care Act: Health Coverage Reporting

Presented by:

Kevin E. Reynolds, CPA, Partner





What's the Purpose?

- Reporting used to enforce PPACA Penalties
- Sledgehammer Penalty - 4980H(a)
 - \$167/month for all employees less 30 (80 for 2015)
- Tack hammer Penalty - 4980H(b)
 - \$250/month for each employee who receives a tax subsidy on the public exchange
- At least 100 EEs: effective 2015
- Between 50-100 EEs: effective 2016
- Proper documentation is your shield

Key: Documentation

- Right answer not enough: have to show your work
- Must be able to document BY MONTH:
 - Which employees are full time (Monthly or lookback)?
 - Which employees/dependents are offered coverage?
 - Which employees/dependents accepted coverage?
 - Which coverages are Minimum Essential Coverage?
 - Which coverages are Minimum Value?
 - Which coverages are Affordable?





Definitions

- Minimum Essential Coverage – an employee welfare benefit plan, which is a program established or maintained by an employer for the purpose of providing medical, surgical or hospital care or benefits. Any group plan that does not cover only excepted benefits (such as dental or vision only) would qualify.
- Minimum Value – Plan covers at least 60% of the total allowed cost of benefits expected to be incurred.
- Affordable – Employee’s cost of coverage for the least expensive plan meeting MV must be less than 9.5% of: W-2 Wages (Box 1); OR Rate of Pay (lowest hourly rate during month X 130); OR Federal Poverty Level (\$11,770 for single person for 2016).



Reporting Overview

	Section 6055	Section 6056
Applies to:	Providers of minimum essential coverage (MEC)	Applicable large employers (ALEs)
Requires reporting entities to:	<ul style="list-style-type: none">• File information with the IRS• Provide statements to covered individuals	<ul style="list-style-type: none">• File information with the IRS• Provide statements to full-time employees
Purpose is to help:	<ul style="list-style-type: none">• IRS administer the individual mandate and determine eligibility for subsidies• Individuals show compliance with the individual mandate	<ul style="list-style-type: none">• IRS administer the employer shared responsibility rules

Self-funded plan sponsors that are ALEs must report under both sections, but will use a combined reporting method

What to File?

Employer and Plan Type	Type of Reporting	Who Reports	IRS Transmittal	IRS Return	Employee Statement
Large employer with fully insured group health plan	6055	Insurance Carrier	1094-B	1095-B	1095-B
	6056	Employer	1094-C	1095-C, Parts I and II	1095-C
Large employer with self-insured group health plan	Combined 6055/6056	Employer	1094-C	1095-C	1095-C
Multiemployer plans	6055	Plan Sponsor	1094-B	1095-B	1095-B
Small employer with fully insured group health plan	6055	Insurance Carrier	1094-B	1095-B	1095-B
Small employer with self-insured group health plan	6055	Employer	1094-B	1095-B	1095-B



When to File

Rules effective for 2015 coverage

- 2015 coverage information will be reported in 2016

IRS Returns

- Annual Deadline: Feb. 28
(March 31, if filed electronically)
- **For 2015: May 31, 2016**
(June 30, if filed electronically)

Individual Statements

- Annual Deadline: Jan. 31
- **For 2015: March 31, 2016**



Electronic Reporting

IRS Returns

- REQUIRED for reporting entities that file 250 or more individual statements per calendar year
- OPTIONAL for other reporting entities

Individual Statements

- Paper statements by mail to last known address
- Statements MAY be furnished electronically if consent requirements are met



Penalties



- For Information Returns or Individual Statements
 - Failure to timely file or include all required information
 - Including incorrect information on the statement



Penalty Amounts

Penalty Type	Per Violation	Annual Maximum	Annual Max for Small Employers*
General	\$250	\$3 million	\$1 million
Corrected within 30 days	\$50	\$500,000	\$175,000
Corrected after 30 days and before Aug. 1	\$100	\$1.5 million	\$500,000
Intentional Disregard	\$500+	None	N/A

**For purposes of the penalty maximum, a small employer is one that has average annual gross receipts of up to \$5 million for the most recent three taxable years*



Short-term Penalty Relief

Penalties will not be imposed on reporting entities that can show good faith efforts to comply

Relief Available

- Incorrect/incomplete information reported in 2016 related to 2015 coverage
- Failure due to reasonable cause (IRS discretion)

Relief NOT Available

- No good faith effort to comply
- Failure to timely file information return or furnish statement



Form 1094-C (IRS Cover Sheet)



Form 1094-C Part II

Part II: ALE Member Information

- Indicate authoritative transmittal
- Total number of Forms 1095-C filed by/on behalf of member
- Indicate member of Aggregated ALE Group. If yes, complete Part IV (names and EINs of other ALE members)
- Certify eligibility for alternative methods of reporting/4980H transition relief

Part II ALE Member Information	
19 Is this the authoritative transmittal for this ALE Member? If "Yes," check the box and continue. If "No," see instructions	<input type="checkbox"/>
20 Total number of Forms 1095-C filed by and/or on behalf of ALE Member	<input type="text"/>
21 Is ALE Member a member of an Aggregated ALE Group? If "No," do not complete Part IV.	<input type="checkbox"/> Yes <input type="checkbox"/> No
22 Certifications of Eligibility (select all that apply):	
<input type="checkbox"/> A. Qualifying Offer Method	<input type="checkbox"/> B. Qualifying Offer Method Transition Relief
<input type="checkbox"/> C. Section 4980H Transition Relief	<input type="checkbox"/> D. 98% Offer Method



Form 1094-C Part III

Part III: ALE Member Information - Monthly

- MEC Offer Indicator (Yes/No)
- Full-time Employee Count for ALE Member
- Total Employee Count for ALE Member
- Aggregated Group Indicator
- Section 4980H Transition Relief Indicator (50-99 Relief – Code A, 100 or More Relief – Code B)

Part III ALE Member Information – Monthly							
		(a) Minimum Essential Coverage Offer Indicator		(b) Full-Time Employee Count for ALE Member	(c) Total Employee Count for ALE Member	(d) Aggregated Group Indicator	(e) Section 4980H Transition Relief Indicator
		Yes	No				
23	All 12 Months	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
24	Jan	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
25	Feb	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	
26	Mar	<input type="checkbox"/>	<input type="checkbox"/>			<input type="checkbox"/>	



Form 1095-C (Individual Statement)



Form 1095-C: Part I

Employer will complete one Form 1095-C for each full-time employee*

Employee	Applicable Large Employer Member (Employer)
<ul style="list-style-type: none"> Name SSN Address 	<ul style="list-style-type: none"> Name EIN Address Contact phone number

Form 1095-C Department of the Treasury Internal Revenue Service		Employer-Provided Health Insurance Offer and Coverage ► Information about Form 1095-C and its separate instructions is at www.irs.gov/f1095c .		<input type="checkbox"/> VOID <input type="checkbox"/> CORRECTED	600115 OMB No. 1545-2251 2014
Part I Employee			Applicable Large Employer Member (Employer)		
1 Name of employee	2 Social security number (SSN)	7 Name of employer	8 Employer identification number (EIN)		
3 Street address (including apartment no.)		9 Street address (including room or suite no.)	10 Contact telephone number		
4 City or town	5 State or province	6 Country and ZIP or foreign postal code	11 City or town	12 State or province	13 Country and ZIP or foreign postal code



Form 1095-C: Part II Employee Offer and Coverage

Line 14: Offer of Coverage

- Enter a code indicating information regarding offer of coverage

Part II Employee Offer and Coverage													
14 Offer of Coverage (enter required code)	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec

CODE	EXPLANATION
1A	Qualifying Offer
1B	MEC providing MV offered to employee only
1C	MEC providing MV offered to employee and at least MEC offered to dependent(s) (not spouse)
1D	MEC providing MV offered to employee and at least MEC offered to spouse (not dependent(s))
1E	MEC providing MV offered to employee and at least MEC offered to dependent(s) and spouse
1F	MEC NOT providing MV offered

CODE	EXPLANATION
1G	Offer of coverage to employee who: <ul style="list-style-type: none"> • Was not a full-time employee for any month of the calendar year and • Who enrolled in self-insured coverage for one or more months of the calendar year
1H	No offer of coverage (employee not offered any health coverage or employee offered coverage that is not MEC)
1I	Qualifying Offer Transition Relief for 2015



Form 1095-C: Part II

Line 15—Affordability of coverage: enter cost of employee share of lowest-cost monthly premium for self-only minimum value coverage

Line 16—Section 4980H safe harbors: enter code indicating why penalty won't apply

Part II Employee Offer and Coverage													
	All 12 Months	Jan	Feb	Mar	Apr	May	June	July	Aug	Sept	Oct	Nov	Dec
14 Offer of Coverage (enter required code)													
15 Employee Share of Lowest Cost Monthly Premium, for Self-Only Minimum Value Coverage	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$	\$
16 Applicable Section 4980H Safe Harbor (enter code, if applicable)													



CODE	EXPLANATION
2A	Employee not employed during the month
2B	Employee not a full-time employee
2C	Employee enrolled in coverage offered
2D	Employee in a 4980H(b) Limited Non-Assessment Period
2E	Multiemployer interim rule relief

CODE	EXPLANATION
2F	4980H affordability Form W-2 safe harbor
2G	4980H affordability federal poverty line safe harbor
2H	4980H affordability rate of pay safe harbor
2I	Non-calendar year transition relief applies

NOTE: Code 2C should be used for any month in which the employee enrolled in the coverage, regardless of whether any other code could also apply



Nonprofits and the ACA: Other Considerations



Penalty Structure

Plan Offered by Employer	Annual Penalty Impact
No eligible plan	\$2,000 x (all full-time employees minus <u>30</u> ; minus <u>80</u> for 2015 only)
Eligible Plan And at least one FT employee enrolls for exchange subsidy	Lesser of: \$3,000 x number of employees certified for tax credit or CSR OR \$2,000 x (all full-time employees minus <u>30</u> ; minus <u>80</u> for 2015 only)
Eligible Plan Provides “minimum value: and is affordable to all FT employees	No penalty



What is a Full Time Employee?

- Working average 30 or more hour per week OR 130 hours per month
- Full-time equivalent calculation
 - Hours worked in month divided by 120
- Seasonable Employees?
 - Need to average 30 hours a week over a year-long period

Consult with benefit advisor to confirm calculation



FTE Example

- 40 Full-Time Employees
- 25 Part-Time Employees who each work 25 hours/week (100 hrs/month)
 - $25 \times 100 = 2,500$ hours divided by 120 = 20.8 FTEs
- Total 60 FTEs



Fewer than 50 FTEs

- Purchase health insurance coverage for its employees through the Small Business Health Options Program (SHOP)



Fewer than 25 FTEs

- Small Business Health Care Tax Credit
- All of the following must apply:
 - You have fewer than 25 full-time equivalent (FTE) employees
 - Your average employee salary is about \$50,000 per year or less
 - You pay at least 50% of your full-time employees' premium costs
 - You offer coverage to your full-time employees through the SHOP Marketplace
- Credit is worth up to 35% of your contribution toward your employees' premium costs
- Credit limited to amount of payroll taxes withheld



RESOURCES

- FTE Calculator: <https://www.healthcare.gov/shop-calculators-fte/>
- SHOP Marketplace: <https://www.healthcare.gov/small-businesses/employers/>
- Small Business Health Care Tax Credit: <https://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-Questions-and-Answers:-Who-Gets-the-Tax-Credit>
- The Health Insurance Marketplace Small Employer Contact Center phone number is: 1-800-706-7893 and 1-800-706-7915 (TTY). The hours of operation are Friday 9am-7pm Eastern.



Questions?



Contact Information:

Andrew Gray, CPA
Supervisor – Tax
Daszkal Bolton LLP
agray@dbllp.com
561-886-5220

Kevin Reynolds, CPA
Partner
Daszkal Bolton LLP
kreynolds@dbllp.com
561-953-1443



Conquer new ground.SM

At Daszkal Bolton, we stand with our clients to deliver thoughtful solutions. We think creatively and make your goals our priority because you deserve more than accounting. You deserve relationships you can trust.

With Daszkal Bolton by your side, you have the added strength to conquer new ground.

Call us today to learn more or visit us at dbllp.com.

Boca Raton - 2401 NW Boca Raton Blvd, Boca Raton, Florida 33431-6632 | 561.367.1040

Fort Lauderdale - 490 Sawgrass Corporate Parkway, Suite 200, Sunrise, Florida 33325-6252 | 954.974.3544

Jupiter - 4455 Military Trail, Suite 201, Jupiter, Florida 33458-4828 | 561.622.8920

Daszkal Bolton is a member of AGN International, an affiliation of accounting and business advisory firms who collaborate and share resources in more than 80 countries. Through 200 AGN International member firms, Daszkal Bolton is able to assist clients in meeting their needs throughout the United States and around the world.

The Daszkal Bolton brand and *Conquer new ground* are the property of Daszkal Bolton LLP. With three offices and approximately 120 employees, Daszkal Bolton is a leading accounting and advisory services firm in South Florida.

© 2015. All rights reserved.