

---

# HFMA Northern California Chapter Healthcare Tax, Regulatory & IRS Form 990 Update

March 13, 2008

---

Presenters:

Scott Donaldson – Partner

Margaret Purcell – Executive Director

Any U.S. tax advice contained herein was not intended or written to be used, and cannot be used, for the purpose of avoiding penalties that may be imposed under the Internal Revenue Code or applicable state or local tax law provisions. These slides are for educational purposes only and are not intended, and should not be relied upon, as accounting or tax advice.

 **ERNST & YOUNG**  
*Quality In Everything We Do*

# Redesigned Draft Form 990

Form **990** **Return of Organization Exempt From Income Tax** OMB No. 1545-0047  
 Under section 501(c), 527, or 4947(a)(1) of the Internal Revenue Code (except black lung benefit trust or private foundation) **2008**  
 Department of the Treasury Internal Revenue Service (77) **Open to Public Inspection**

The organization may have to use a copy of this return to satisfy state reporting requirements.

**A For the 2008 calendar year, or tax year beginning** \_\_\_\_\_, 2008, and ending \_\_\_\_\_, 20

**B** Check if applicable:  
 Address change  
 Name change  
 Initial return  
 Termination  
 Amended return  
 Application pending

**C Name of organization**  
 Doing Business As  
 Number and street (or P.O. box if mail is not delivered to street address) Room/suite  
 City or town, state or country, and ZIP + 4

**D Employer identification number** \_\_\_\_\_

**E Telephone number** \_\_\_\_\_

**F Name and address of Principal Officer:** \_\_\_\_\_

**G Enter gross receipts \$** \_\_\_\_\_

**H(a)** Is this a group return for affiliates?  Yes  No  
**H(b)** Are all affiliates included?  Yes  No  
 If "No," attach a list. (See instructions)

**I Tax-exempt status:**  501(c) ( ) (insert no.)  4947(a)(1) or  527

**J Website:** ▶ \_\_\_\_\_

**K Type of organization:**  Corporation  trust  association  Other ▶ \_\_\_\_\_

**L Year of Formation:** \_\_\_\_\_

**M State of legal domicile:** \_\_\_\_\_

**Part I Summary**

Activities & Governance	<b>1</b> Briefly describe the organization's mission or most significant activities: _____		
	<b>2</b> Check this box <input type="checkbox"/> if the organization discontinued its operations or disposed of more than 25% of its assets.		
	<b>3</b> Enter the number of voting members of the governing body (Part VI, line 1a) . . . . .	<b>3</b>	
	<b>4</b> Enter the number of independent voting members of the governing body (Part VI, line 1b) . . . . .	<b>4</b>	
	<b>5</b> Enter the total number of employees (Part VI, line 2a) . . . . .	<b>5</b>	
	<b>6</b> Enter the total number of volunteers (estimate if necessary) . . . . .	<b>6</b>	
	<b>7a</b> Enter total gross unrelated business revenue from Part VIII, line 12, column (C) . . . . .	<b>7a</b>	
<b>7b</b> Enter net unrelated business taxable income from Form 990-T, line 34 . . . . .	<b>7b</b>		
Revenue	<b>8</b> Contributions and grants (Part VIII, line 1h) . . . . .	Prior Year	Current Year
	<b>9</b> Program service revenue (Part VIII, line 2g) . . . . .		
	<b>10</b> Investment income (Part VIII, lines 3, 4, and 7d) . . . . .		
	<b>11</b> Other revenue (Part VIII, lines 5, 6d, 8c, 9c, and 10c of column (A), and 11e) . . . . .		
	<b>12</b> Total revenue—add lines 8 through 11 (must equal Part VIII, line 12, column (A)) . . . . .		
Expenses	<b>13</b> Grants and similar amounts paid (Part IX, lines 1–3, column (A)) . . . . .		
	<b>14</b> Benefits paid to or for members (Part IX, line 4, column (A)) . . . . .		
	<b>15</b> Salaries, other compensation, employee benefits (Part IX, lines 5–10, column (A)) . . . . .		
	<b>16a</b> Professional fundraising expenses (Part IX, line 11e, column (A)) . . . . .		
	<b>b</b> (Enter amount from Part IX, line 25, column (D)) . . . . .		
	<b>17</b> Other expenses (Part IX, lines 11d, 11f–24f) . . . . .		
	<b>18</b> Total expenses—add lines 13–17 (must equal Part IX, line 25, column (A)) . . . . .		
<b>19</b> Revenue less expenses—line 12 minus line 18 . . . . .			

---

# Redesigned Draft Form 990

- Draft Form 990 released by IRS on December 20, 2007
- New form incorporates many recommendations made in public comments on the discussion draft released on July 14, 2007
  - IRS received over 650 emails and letters totaling approximately 3,000 pages of written comments on the draft Form 990
- Organizations will begin using the new form for the 2008 tax year (returns filed in 2009)
- IRS expects to release draft instructions for the new form in early 2008

---

# Redesigned Draft Form 990

- First major revisions since 1979
  - Failed to keep pace with change of law
  - Failed to keep pace with Exempt Sector
    - Size
    - Diversity
    - Complexity
  - Failed to meet IRS's tax compliance interest
- Guiding Principles
  - Enhance Transparency
  - Promote Tax Compliance
  - Minimize burden on the filing organization

# Redesigned Draft Form 990

Transaction Relief for Small Organizations: Beginning with 2008 tax years, an organization may file a Form 990-EZ (rather than a Form 990) if it satisfies both the gross receipts and assets tests set forth below--

May file 990-EZ for:	If gross receipts are:	If assets are:
2008 tax year (filed in 2009)	> \$25,000 and < \$1 million	< \$2.5 million
2009 tax year (filed in 2010)	>\$25,000 and < \$500,000	< \$1.25 million
2010 and later tax years	> \$50,000 and < \$200,000	< \$500,000

---

# Redesigned Draft Form 990

- Basic structure of new Form 990
  - 11-page core form
  - 16 schedules designed for reporting of information only from those organizations that conduct particular activities
  - IRS added a page to certain schedules and a new schedule (Schedule O) in response to public comments requesting more opportunity to provide explanations and narrative responses to the form's questions
- Core Form
  - Part I, *Summary*, provides the organization's identifying information and a snapshot of key financial, governance and operating information, including a summary of mission and activities. A two-year comparison of revenues and expenses is reported for the current and prior year.

---

# Redesigned Draft Form 990

## ■ Core Form

- Part II, *Signature Block*
- Part III, *Statement of Program Service Accomplishments* – includes reporting of new, discontinued or altered program services.
- Part IV, *Checklist of Required Schedules* – comprehensive list of 37 “trigger questions” all in one place to help organizations determine which schedules they need to complete.
- Part V, *Statements Regarding Other IRS Filings and Tax Compliance*
- Part VI, *Governance, Management, and Disclosure* – requires reporting regarding governing body composition, and certain governance and disclosure policies and practices.

# Part VI: Governing Body and Management

## Section A. Governing Body and Management

For each "Yes" response to lines 2-7 below, and for a "No" response to lines 8 or 9b below, describe the circumstances, process, or changes in Schedule O. See instructions.

		Yes	No
<b>1a</b>	Enter the number of voting members of the governing body . . . . .		
<b>1b</b>	Enter the number of voting members that are independent . . . . .		
<b>2</b>	Did any officer, director, trustee, or key employee have a family relationship or a business relationship with any other officer, director, trustee, or key employee? . . . . .		
<b>3</b>	Did the organization delegate control over management duties customarily performed by or under the direct supervision of officers, directors or trustees, or key employees to a management company or other person? . . . . .		
<b>4</b>	Did the organization make any significant changes to its organizational documents since the prior Form 990 was filed? . . . . .		
<b>5</b>	Did the organization become aware during the year of a material diversion of the organization's assets? . . . . .		
<b>6</b>	Does the organization have members or stockholders? . . . . .		
<b>7a</b>	Does the organization have members, stockholders, or other persons who may elect one or more members of the governing body? . . . . .		
<b>7b</b>	Are any decisions of the governing body subject to approval by members, stockholders, or other persons? . . . . .		
<b>8</b>	Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:		
<b>8a</b>	a the governing body? . . . . .		
<b>8b</b>	b each committee with authority to act on behalf of the governing body? . . . . .		
<b>9a</b>	Does the organization have local chapters, branches, or affiliates? . . . . .		
<b>9b</b>	If "Yes," does the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with those of the organization? . . . . .		
<b>10</b>	Was a copy of the Form 990 provided to the organization's governing body before it was filed? All organizations must describe in Schedule O the process, if any, the organization uses to review the Form 990 . . . . .		
<b>11</b>	Is there any officer, director or trustee, or key employee listed in Part VII, Section A, who cannot be reached at the organization's mailing address? If "Yes," provide the names and addresses in Schedule O . . . . .		

# Part VI - Policies

## Section B. Policies

	Yes	No
<b>12a</b> Does the organization have a written conflict of interest policy? <i>If "Yes":</i> . . . . .		
<b>b</b> Are officers, directors or trustees, and key employees required to disclose annually interests that could give rise to conflicts? . . . . .		
<b>c</b> Does the organization regularly and consistently monitor and enforce compliance with the policy? <i>If "Yes," describe in Schedule O how this is done</i> . . . . .		
<b>13</b> Does the organization have a written whistleblower policy? . . . . .		
<b>14</b> Does the organization have a written document retention and destruction policy? . . . . .		
<b>15</b> Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision:		
<b>a</b> The organization's CEO, Executive Director, or top management official? . . . . .		
<b>b</b> Other officers or key employees of the organization? . . . . .		
Describe the process in Schedule O.		
<b>16a</b> Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? . . . . .		
<b>b</b> If "Yes," has the organization adopted a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable Federal tax law, and taken steps to safeguard the organization's exempt status with respect to such arrangements? . . . . .		

---

# Redesigned Draft Form 990

## ■ Core Form

- ❑ Part VII, *Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors*
- ❑ Part VIII, *Statement of Revenues*
- ❑ Part IX, *Statement of Functional Expenses*
- ❑ Part X, *Balance Sheet*
- ❑ Part XI, *Financial Statements and Reporting* – requires reporting of certain information regarding financial statement compilations, reviews, or audits.

---

# Redesigned Draft Form 990

- 16 Supplemental Schedules (Hospitals can expect to file at least 8 schedules including the following in **bold**)
  - **Schedule A – Public Charity Status and Public Support**
  - **Schedule B – Contributions Received**
  - Schedule C – Political and Lobbying Activities
  - **Schedule D – Supplemental Financial Statements**
  - Schedule E – Schools
  - Schedule F – Foreign Activities
  - Schedule G – Fundraising and Gaming Activities
  - **Schedule H – Hospitals**
  - Schedule I – Grants

---

# Redesigned Draft Form 990

- Supplemental Schedules (cont'd)
  - **Schedule J – Supplemental Compensation Information**
  - **Schedule K – Tax-Exempt Bonds**
  - **Schedule L – Transactions with Interested Persons**
  - Schedule M – Noncash Contributions
  - Schedule N – Termination and Significant Disposition of Assets
  - **Schedule R – Related Organizations and Unrelated Partnerships**
  - Schedule O – Supplemental Information

---

# Schedule D – Supplemental Financial Information

- Disclosures required:
  - Donor advised funds
  - Conservation easements
  - Collection of art and historical treasures
  - Endowments
  - Investments
    - Land, buildings and equipment
    - Alternative investments
    - Program related investments
  - Reconciliation of financial statements with Form 990
  - Fin 48 footnote on uncertain tax positions

---

# Schedule H - Hospitals

- Completed by organizations that operate a hospital.
- Overview
  - Part I – Charity Care and Certain Other Community Benefits at Cost
  - Part II – Community Building Activities
  - Part III – Bad Debt, Medicare & Collection Practices
  - Part IV – Management Companies and Joint Ventures
  - Part V – Facility Information: requires a listing of all hospitals and other medical care facilities operated by the organization, as well as certain identifying information (e.g., status as a critical care hospital or a teaching hospital).
  - Part VI – Supplemental Information
- Transition Relief
  - Part V will be required to be completed by all organizations beginning with 2008 tax year.
  - All other parts will be optional for 2008.
  - All parts of Schedule H will be required beginning with 2009 tax years.

---

# Schedule J – Supplemental Compensation Information

- **Schedule J Reporting Triggers-**
  - Reporting amounts paid to Listed Persons who are former officers, directors, trustees, key employees or highest compensated employees;
  - Having Listed Persons with reportable compensation (Form W-2 or Form 1099) or other compensation greater than \$150,000 from the filing organization and “related” organizations; or
  - Having Listed Persons who received or accrued compensation from any unrelated organization for services rendered to the filing organization.
  
- **Overview**
  - Part I contains questions regarding compensation.
  - Part II requires detailed reporting of compensation paid by the filing organization and related organizations of officers, directors, key employees, and highest compensated employees.

---

# Schedule L – Transactions with Interested Persons

- Interested Persons
  - Current or former officer, director, trustee, key employee, highly compensated employee, other disqualified person, or substantial contributor
  - May include family members of those listed above
- Overview
  - Part I asks about excess benefit transactions (i.e., Intermediate Sanctions);
  - Part II asks about loans to and from interested persons;
  - Part III asks about grants or assistance benefiting interested persons;
  - Part IV asks about business transactions with interested persons;

---

# Schedule R – Related Organizations and Unrelated Partnerships

- Overview
  - Part I asks for identification of disregarded entities.
  - Part II asks for identification of related tax-exempt organizations.
  - Part III asks for identification of related organizations taxable as partnerships.
  - Part IV asks for identification of related organizations taxable as corporations or trusts.
  - Part V asks for detail on transactions between the filing organization and related organizations.
  - Part VI asks for identification of unrelated partnership through which the filing organization conducted more than 5% of its activities (measured by total assets or gross revenues).

---

# Disclosure of Business and Family Relationships

- Are any officers, directors, trustees, or key employees listed in Form 990, Part V-A, or highest compensated employees listed in Schedule A, Part I, or highest compensated professionals and other independent contractors listed in Schedule A, Part II-A or B, related to each other through family or business relationships?
  - Family relationships include an individual's spouse, ancestors, children, grandchildren, great-grandchildren, siblings, and the spouses of children, grandchildren, great-grandchildren, and siblings.
  - Business relationships are employment and contractual relationships, and common ownership of a business where any officers, directors or trustees, individually or together, possess more than a 35% ownership interest in common.
  - Note that these family/business relationships do not necessarily involve the organization.
  - Line 75b on 2006 and 2007 Form 990 and Part VI of 2008 Form 990

# Overview of FIN 48

<b>Scope</b>	<ul style="list-style-type: none"><li>• FIN 48 applies to all income tax positions including those recorded as a result of business combinations</li></ul>
<b>Unit of Account</b>	<ul style="list-style-type: none"><li>• Appropriate Unit of Account for a tax position is a matter of judgment</li></ul>
<b>Two-Step Process</b>	<ul style="list-style-type: none"><li>• The application of FIN 48 requires a 2-step process that separates recognition from measurement</li></ul>
<b>Recognition</b>	<ul style="list-style-type: none"><li>• A tax benefit is recognized when it is “more likely than not” to be sustained based on the technical merits of the position</li></ul>
<b>Measurement</b>	<ul style="list-style-type: none"><li>• For those positions that meet the recognition threshold, record the largest amount of tax benefit that is greater than 50% likely of being realized (cumulative probability concept)</li></ul>
<b>Subsequent Recognition</b>	<ul style="list-style-type: none"><li>• Occurs when ANY are met;<ul style="list-style-type: none"><li>• The “more likely than not” threshold is met by the reporting date</li><li>• The tax matter is effectively settled through examination, negotiation or litigation</li><li>• The statute of limitation expires</li></ul></li></ul>

# Overview of FIN 48 *(continued)*

<b>Subsequent Derecognition or Change in Measurement</b>	<ul style="list-style-type: none"><li>• Derecognize a previously recognized tax position in the first period that it is no longer “more likely than not”</li><li>• Change in measurement should also be reflected in the period that such change occurs</li></ul>
<b>Change in Judgment</b>	<ul style="list-style-type: none"><li>• New information vs. new evaluation</li><li>• Interim reporting considerations<ul style="list-style-type: none"><li>• Discrete item, or</li><li>• Taken into account over the remaining periods in the year</li></ul></li></ul>
<b>Interest and Penalties</b>	<ul style="list-style-type: none"><li>• Interest is a period cost</li><li>• Accrue statutory penalties when a tax position does not exceed the minimum statutory threshold required to avoid penalties</li></ul>
<b>Classification</b>	<ul style="list-style-type: none"><li>• Classify difference between tax benefit reflected in tax return and amount recorded in the financial statements as either<ul style="list-style-type: none"><li>• A reduction of a DTA</li><li>• A current or non-current liability</li></ul></li><li>• Only liability that should be classified as a DTL is one arising from a taxable temporary difference that meets the recognition threshold</li></ul>

# Overview of FIN 48 *(continued)*

<b>Disclosures</b>	<ul style="list-style-type: none"><li>• Tabular rollforward</li><li>• Positions where it is reasonably possible the total amount of unrecognized tax benefit will significantly increase or decrease within 12 months of the reporting date</li><li>• Interim disclosures for SEC registrants</li></ul>
<b>Transition</b>	<ul style="list-style-type: none"><li>• Cumulative effect is reported as an adjustment to the opening balance of retained earnings (or other appropriate components of equity or net assets in the Balance Sheet)</li><li>• Adjustments related to tax positions resulting from business combinations are not included in the Cumulative Effect Adjustment</li></ul>
<b>Effective Date</b>	<ul style="list-style-type: none"><li>• Fiscal years beginning after December 15, 2006</li></ul>

---

# Tax-Exempt Bond Compliance

- IRS Enforcement
- Bond Insurance Companies
- 990 Schedule K
- Private Use: developing the process

---

# Current IRS Environment

- Labor Day: 208 Questionnaires
- Active Audits
- Increased IRS Audit Staff
- Frequent regulatory updates (PLRs and draft regulations)
- Shift in focus of responsibility

---

# IRS Enforcement

- First tax-exempt bond audits found consistent issues:
  - ❑ Excess cost of issuance
  - ❑ Arbitrage rebate non-compliance
  - ❑ TEFRA Notice process violations
  - ❑ Poor documentation/ record retention
  - ❑ Hedge fund/GIC non-compliance
  
- ❑ RESULTS: New IRS focus and draft regulations

---

# Bond Insurance Companies

- Impact of downgrades of credit for AMBAC, MBIA, FGIC
- What does this mean when you want to
  - Exchange floating rate for fixed rate debt
  - Complete a partial refunding
  - Consider your institution credit rating

---

# 990 Schedule K: December draft

- Good News:
  - ❑ Eliminated reporting for bonds issued before 2003,
  - ❑ Eliminated reporting of third-party compensation,
  - ❑ Revised reporting of use of proceeds and private business use,
  - ❑ Eliminated the need to provide an inventory of contracts.

---

## 990 Schedule K Transition Relief

- Schedule K effective for 2008 Tax Year.
- *ONLY* Part I required for 2008.
- Parts II, III, and IV will be *optional* for 2008 (but fully effective for 2009).
- **Note:** No reporting for Bonds issued *before* 2003.

---

# Redesigned Form 990: Schedule K

- Private Use Section (III)\*\*:
  - Asks if you to answer yes or no regarding contracts that cause private use (by issue).
  - Asks you to correlate UBI and private use by bond issue.
  - Asks for a private use total, rather than a “third party” total use for each issue.

\*\* optional for 2008, required for 2009

---

# Redesigned Form 990: New Reporting

- Part IV (Arbitrage)\*\* requires:
  - Reporting of all Variable Rate issues.
  - Self-reporting of unspent bond proceeds beyond temporary periods.
  - Details regarding Hedge transactions
  - Details regarding GICs

\*\* optional for 2008, required for 2009

---

# Monitoring Process: Record Retention



---

## Records that IRS wants issuers to retain

- Evidence of all sources of payment or security for bonds
- Evidence of expenditure of bond proceeds
- Investment records for bond proceeds
- Uses of tax-exempt financed asset
- Annual floor plans
- Remember the Record Retention Rules!!!

---

# Uses of bond financed assets

- What do you need to monitor to protect your organization?
  - Leases
  - Management/Service Contracts
  - Sponsored Research
  - Unrelated Business Activity
  - Partnerships/Joint Ventures

---

# Management or Service Contracts

- Test is based on facts and circumstances
- Test applies by bond issue; correlation of contract to asset is essential
- Test applies to a contractor providing services involving all, a portion of, or any function of, a facility
- Revenue Procedure 97-13 provides safe harbors

---

# Research Arrangements

## Revenue Procedure 2007-47

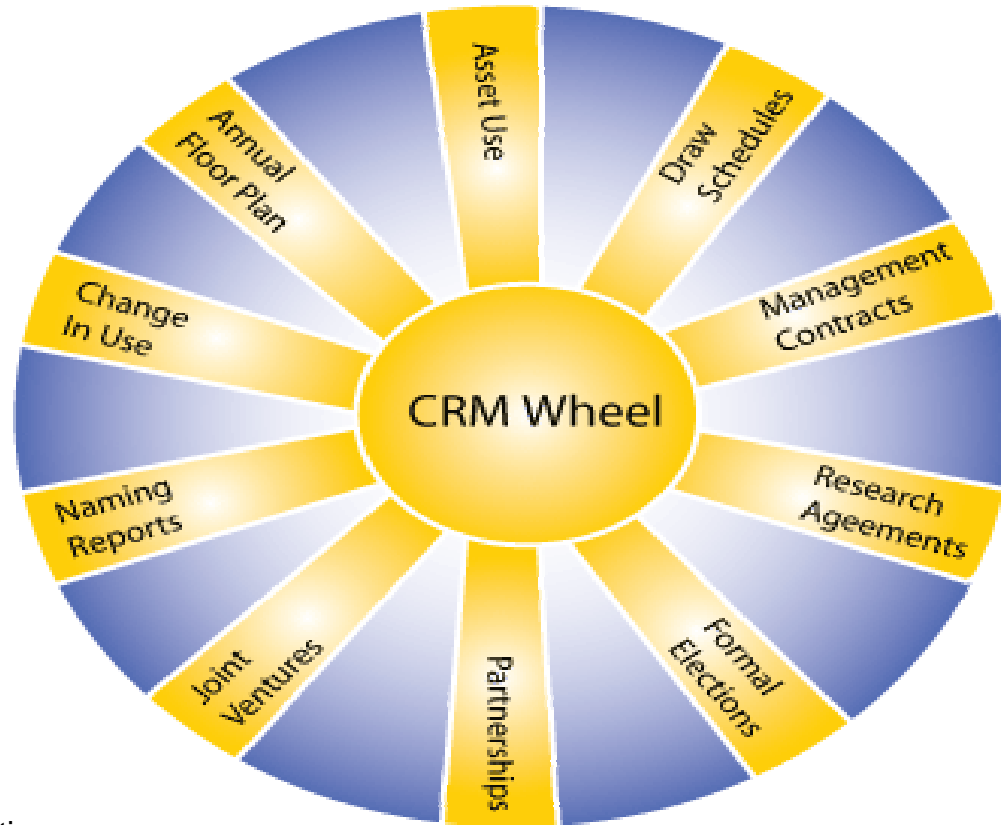
- Safe harbors for corporate sponsored and cooperative research agreements
- Applies to “Basic Research” only
- Key issue: Does entity funding the research get particular benefits from the research
- Documented policy to prove Bayh-Dole compliance essential.

---

# Other Sources to Document

- Leases of bond-financed assets
- Incidental services
- Undocumented Arrangements
- Joint Ventures/ Partnerships
- Naming Rights
- Changes in Use of assets

# Monitoring Process



**C**ompliance

**R**ecord Retention

**M**onitoring

---

# Increased Issuer Expectations

- IRS wants issuers to be better educated
- IRS wants evidence of policies and procedures
- IRS wants issuers to pro-actively compute private use, and come forward when the post-issuance compliance rules apply.

---

# QUESTIONS

Scott Donaldson

Partner

National Exempt Organizations Tax Services

(602) 322-3062

Margaret Purcell

Executive Director

National Exempt Organizations Tax Services

(904) 358-4576