

TAX LAW ALERT

**CHARITABLE ORGANIZATIONS UPDATES
AND REMINDERS FOR 2009****New Form 990 To Be Filed For Tax Years Ending In 2008:**

The new Form 990 series returns are effective for 2008 tax years (returns filed beginning in 2009). To allow organizations time to adjust to the new forms, the IRS is phasing in the new returns during a three-year transition period. During the transition, an organization's annual filing requirement depends on its financial activity. The charts below indicate the general exempt organization filing requirements for tax years in the transition period.

<i>2008 Tax Year (Filed in 2009 or 2010)</i>	<i>Form to File</i>
Gross receipts normally \leq \$25,000	990-N
Gross receipts $>$ \$25,000 and $<$ \$ 1 million, and Total assets $<$ \$2.5 million	990-EZ or 990
Gross receipts \geq \$1 million, and/or Total assets \geq \$2.5 million	990

<i>2009 Tax Year (Filed in 2010 or 2011)</i>	<i>Form to File</i>
Gross receipts normally \leq \$25,000	990-N
Gross receipts $>$ \$25,000 and $<$ \$500,000, and Total assets $<$ \$1.25 million	990-EZ or 990
Gross receipts \geq \$500,000, and/or Total assets \geq \$1.25 million	990

<i>2010 Tax Year and later (Filed in 2011 and later)</i>	<i>Form to File</i>
Gross receipts normally \leq \$50,000	990-N
Gross receipts $>$ \$50,000 and $<$ \$200,000, and Total assets $<$ \$500,000	990-EZ or 990
Gross receipts \geq \$200,000, and/or Total assets \geq \$500,000	990

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Changes To Advance Ruling Period:

On September 9, 2008, the IRS issued temporary Income Tax Regulations, which eliminate the advance ruling process for a section 501(c)(3) organization. Under the new regulations, a new 501(c)(3) organization will be classified as a publicly supported charity, and not a private foundation, if it can show that it reasonably can be expected to be publicly supported when it applies for tax-exempt status. The new rules apply to organizations with advance rulings expiring on or after June 9, 2008.

The IRS previously notified organizations of the need to file by sending Notice CP 158, enclosing a copy of Form 8734. With the elimination of the advance ruling period, this notice has been revised, and is now being used to notify organizations of the new rules; however, Form 8734 was inadvertently enclosed with the revised notice that was mailed to some organizations. An organization that received a form should not file it, unless its advance ruling period expired before June 9, 2008.

Tax Extenders:

The Tax Extenders and Alternative Minimum Tax Relief Act of 2008, which was enacted on October 3, 2008, extends several expired charitable giving tax breaks. The new law restores the provisions and extends them for two years (through 2009). The extended provisions include:

IRA charitable rollover. This provision allows individuals aged 70 1/2 and older to donate up to \$100,000 from their individual retirement accounts (IRAs) and Roth IRAs to public charities without having to count the distributions as taxable income. This giving incentive is particularly beneficial to those individuals who do not itemize their tax deductions and would not otherwise receive any tax benefit for their charitable contributions.

Enhanced charitable deduction for food inventory. This provision allows businesses to claim an enhanced deduction for the contribution of food inventory.

Enhanced charitable deduction for contributions of book inventory to schools. This provision allows C corporations an enhanced charitable deduction for donations of books to schools, public libraries and literacy programs.

Enhanced charitable deduction for qualified computer contributions. This provision encourages businesses to contribute computer equipment and software to elementary,

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secondary, and post-secondary schools by allowing an enhanced deduction for such contributions.

Basis adjustment to stock of S corporations making charitable contributions of property. Under this provision, if an S corporation makes a contribution to a charity the amount of a shareholder's basis reduction in the S corporation stock will be equal to the shareholder's pro rata share of the adjusted basis of the contributed property (rather than the pro rata share of the fair market value of the contribution, as was the case under prior law).

Online Workshops and Information:

The IRS has a series of Exempt Organization workshops that you may be interested in. The web-based version of the workshops can be found at *StayExempt.org*. In addition to mini-workshops on the redesigned Form 990, the site has courses on a variety of other matters such as maintaining your exempt status, unrelated business income and employment issues. In addition, a wealth of helpful information can be found *www.irs.gov/charities*.

Public Disclosure Requirements:

Just a reminder that a copy of your organization's tax filings, the determination letter and the Form 1023 application must be made available to the public when requested. However, the names and addresses of contributors need not be disclosed, even on request. The organization must provide copies of such returns and the application to individuals who request them. Copies should be provided within 30 days in the case of written requests. You may charge a reasonable copying fee plus actual postage, if any.

Soliciting Contributions in Pennsylvania:

If your organization is soliciting donations in Pennsylvania then you need to be aware of the following:

Registration: Your organization must make an annual charitable registration filing with the Pennsylvania Bureau of Charitable Organizations if it solicits and receives gross contributions (nationwide) in excess of \$25,000 in any one year. Once the registration is filed, it must be renewed each year. Registrations and renewals are due at the same time as your applicable 990. Additional requirements may apply if a professional fundraiser is utilized. You can find additional information, including forms at

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www.dos.state.pa.us/char. If your organization is registered, then on every printed solicitation or written confirmation, receipt and reminder of a contribution, the following statement must be conspicuously printed verbatim:

The official registration and financial information of (insert the legal name of the charity as registered with the department) may be obtained from the Pennsylvania Department of State by calling toll free, within Pennsylvania, 1 (800) 732-0999. Registration does not imply endorsement.

If active solicitation is occurring in states other than Pennsylvania, the laws of those states should be examined for any solicitation registration requirements. You can find additional information, including forms at www.multistatefiling.org

Required Disclosures: The following information should be disclosed in any solicitation materials:

- (1) The organization's legal name and address as it appears on the Articles of Incorporation, and, if different, the legal name and address of the charitable organization on whose behalf the solicitation is being conducted. Any use of a project or program name in a solicitation must be immediately followed by a disclosure of the legal name of the charitable organization.
- (2) The name and address or telephone number of a representative to whom inquiries could be addressed.
- (3) A full and fair description of the charitable purpose or purposes for which the solicitation is being made, and a source from which written information is available.

Substantiating Contributions:

The IRS has strict rules that apply to the type of information contributors must maintain in order to substantiate their contributions to your organization. While it is the best practice to send an acknowledgement letter or receipt for each contribution received at the time it is received, at a minimum you should provide the following to your contributors:

- For all cash contributions of \$250 or more, a written receipt or acknowledgment showing the organization's name, the date and amount of the contribution. The receipt

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- requirement does not apply to contributors who make several contributions during the year, where each contribution is under \$250 but total more than \$250 for the year.
- For a contribution of property other than money, you should provide a written receipt showing the organization's name, the date and location of the contribution, and a detailed description (but not the value) of the property contributed, unless circumstances make providing a receipt impracticable.

In addition, each receipt or acknowledgment should state whether the donee provided any goods or services in consideration for the contribution, and a good faith estimate of the value of any such goods or services.

Pennsylvania Annual Report and Change of Registered Address:

On or before April 30 of each year where there has been a change in corporate officers during the preceding calendar year, an Annual Report form should be filed with the Pennsylvania Department of State.

In addition, if your organization has changed its location, you may need to update your registered office with the Secretary of State.

These and other corporate forms may be found at: www.dos.state.pa.us/corps.

*This Update is intended to keep readers current on matters affecting charitable organizations and is not intended to be legal advice. If you have any questions, please call **Jennifer L. Rawson** at 412.566.678, **Roberta Jacob-Meadway** 215.851.8522, **Clifford A. Pastel** 412.566.618, **Gregory H. Teufel** 412.566.597, **Michael J. Herzog** 412.566.6130 or any other attorney with whom you have been working.*