

The New FORM 990

The redesigned form's impact on the private club

By Patrick J. Halloran, CPA and Garrett Higgins, CPA

Generally speaking, membership-owned private clubs are required to annually file Federal Form 990, titled "Return of Organization Exempt from Income Tax." Form 990 is an information return, and not an income tax return and has been recently redesigned by the Internal Revenue Service (IRS). The form incorporates various comments and recommendations submitted by exempt organizations and their tax advisors, state regulatory boards as well as law firms and public accounting firms. Because the complex new form is designed to enhance transparency, promote tax compliance and flag issues for the IRS, filing it is expected to promote greater public disclosure.

The new Form 990 instructions confirm that social and recreational clubs must provide information on as many as 20 policies that it may have in place or disclose to the IRS, and thus, ultimately, the public.

Today, it is essential that club executives and their tax return preparers work together to establish and maintain fiscal responsibility and ensure that Form 990 "tells the right story." A club's Form 990 must be technically complete and accurate, as well as transparent and useful to its board, members and even the public.

Why Was The Form Changed?

The revised Form 990 was re-designed to:

Enhance Transparency. The IRS is using its statutory authority to require an extensive reporting of intimate information about a club's activities, operations and transactions with disqualified persons and insiders. The old form failed to keep pace with changes in the tax law, failed to meet IRS compliance interests and failed to meet the needs of the state regulatory authorities. The new form is designed like an SEC-like disclosure document that requests a large amount of narrative information about the club's activities, operations and transactions with insiders and disqualified persons.

Promote Tax Compliance. The new 990 promotes a uniform and complete reporting of the information requested. The form closely tracks a club's operations and use of its exempt assets to ensure tax compliance with its exempt status.



The form requests detailed information in areas perceived to have the highest potential for abuse. (compensation, related party transactions, private inurement, excess benefit transactions and unrelated business income etc.)

Minimize Burden of the Reporting Organization. The IRS contends that the redesigned structure and flow of the questions together with the detailed instructions and the use of formatted schedules will reduce the filing burden of most clubs. They also; however acknowledge that it will create additional recordkeeping and preparation burdens for clubs with complicated compensation arrangements, related entity structures and activities that raise compliance concerns.

Redesigned Form 990

The new form consists of a core form that must be completed by all clubs in its entirety, and 16 supplemental schedules that are required to be completed depending on the transactions and activities conducted by the club.

The core form is 11 pages with 11 sections, highlighting the club's mission, and compliance with other IRS filing requirements, as well as the club's internal management and governance policies. The schedules are designed to provide detailed information about specific types of club activities.

New Form 990, Core Form

Parts I and II — Summary Page and Signature Block.

Summarizes the club's current and prior year's financial information, exempt purpose and most significant activities, unrelated business income revenue, its board's independence and staffing as well as the major income and expense categories, assets and liabilities.

Part III — Statement of Program Service Accomplishments. This section highlights the club's mission.

Part IV — Checklist of Required Schedules. This section is designed to provide the IRS with a snapshot of the club's activities and consists of Yes/No questions that guide the club as to which schedules need to be completed with the core form.

Patrick J. Halloran, CPA is a director of the private club division and Garrett Higgins, CPA is a senior tax manager of O'Connor Davies Munns & Dobbins LLP, a Certified Public Accounting firm that provides accounting and tax services to over 1,200 not-for-profit organizations in the Northeast.

Part V — Statements Regarding Other IRS Filings and Tax Compliance. The questions in this section are designed to assess the club's tax compliance with other potential IRS filing requirements such as employment tax returns, independent contractors and unrelated business income tax.

Note: Question 10 requires the Club provide the amount of initiation fees and capital contributions received during the year as well as the amount of gross receipts from the public use of the Club's facilities.

Part VI — Corporate Governance, Management and Disclosure. This section contains questions about certain governance, management and public disclosure policies that are not required but encouraged by the IRS. The IRS has developed a series of questions designed to emphasize corporate "best practices" they consider necessary to tax compliance and to safeguard the club's assets. Some policies that are addressed and need to be explained in detail on the return are:

- Board's independence, voting rights and elections;
- Board's review of Form 990 prior to filing;
- Conflicts of interest policy and compliance / monitoring process ;
- Audit committee;
- Process for establishing executive compensation, including the approval and reimbursement of travel, housing, clubs and discretionary accounts;
- Whistleblower policies;
- Document retention policies; and
- Public availability of exemption application and Forms 990.

Part VII — Executive Compensation. This section requires the club to list the "reportable compensation" of all current and former officers, directors, trustees, key employees, highest compensated employees, and independent contractors, as well as the estimated amount of all other compensation from the club. and The new Form 990 defines reportable compensation as Box 5 of form W-2 (Medicare wages) and must be reported on a calendar year basis

regardless of the club's fiscal year end. Additional detailed information is also required to be provided on Schedule J for certain executives.

Part VIII — Statement of Revenue. This section is relatively unchanged.

Part IX — Statement of Functional Expenses. This section remains similar to the old form, but adds certain separate expense categories such as: management services, investment management fees, information technology and advertising. The most notable changes when completing this section are that other expenses may not exceed 5 percent of total expenses and compensation of officers, directors, trustees and key employees should be based on the club's fiscal year and does not necessarily need to agree with Part VII.

Parts X and XI — Balance Sheet & Financial Statements and Reporting. This section now requires certain information to be detailed on Schedule D instead of the club providing its own statement to attach to the return. This will ensure the IRS is provided with all of the information required in the instructions of the return. This part also inquires about the club's accounting method used to prepare the 990, as well as whether or not the club receives an independent audit, review or compilation.

Additional Schedules

The following schedules will most likely need to be completed by clubs:

Schedule D — Supplemental Financial Statements. This schedule contains a compilation of various financial statement attachments that provide a structure for all clubs to report the required information for certain line items of the balance sheet, as well as a reconciliation of net assets and revenue / expenses with financial statements.

Schedule J — Compensation Information. This schedule is to be used by clubs to report detailed compensation information for certain officers, directors, individual trustees, key employees and highest compensated employees, as well as information on the compensation policies and procedures used by the club to establish the executive compensation amounts and reimbursement of

an executive's expenses. Information required to be reported on this form includes compensation information for executives paid more than \$150,000. Compensation details will include base compensation, bonus/incentives, other current compensation, deferred compensation and nontaxable benefits.

Schedule L — Transactions with Interested Persons. This schedule is to be used by clubs that conduct certain financial transactions or arrangements with "interested persons." Interest persons include officers, directors, trustees, key employees, certain other disqualified persons and highly compensated employees. The club must describe the amount and purpose of such transactions, as well confirm if they are documented in writing and have board approval.

Schedule O — Supplemental Information to Form 990. This schedule should be used to positively reflect the club and its policies. Clubs should complete this schedule to embellish on and clarify all questions in their returns that require descriptive information. clubs should elaborate on their good governance, management and executive compensation policies, as well as their constant monitoring and enforcement of such policies.

Schedule R — Related Organizations and Unrelated Partnerships. This schedule organizes all information about certain transactions with related taxable and tax-exempt organizations.

The new form 990 was significantly redesigned to provide everyone from the IRS, media, federal and state regulators to the general public with extensive information about various exempt organizations and their operations. It is important that clubs understand the extensive amount of information requested, as well as the reasons it's being asked for. It is also equally important to justify the answers provided on the return and to determine in advance whether the responses will draw unwanted attention and scrutiny. Ultimately clubs should take steps to review the new form and all the information required so they can provide adequate responses that reflect positively on the club. ■