

Quartermaster General 990 Remarks

March 24, 2009

SLIDE 1 (OPENING PAGE)

I. GENERAL INTRODUCTION

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- A. Here are some of the things we want to talk about this morning. Pretty aggressive schedule.

II. IRS ISSUES

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- A. Hope to cover the three issues listed -
- B. Last year, we had Dennis Tappella, an IRS agent based in Minnesota and he talked about the 990N as well as non-member revenue, gambling revenue, auxiliaries etc.
 - 1. I don't think we're going to have Dennis in this year, but I hope we can get him in to some meeting in the future.
 - 2. I'm sure many of you are still struggling with the 990N problem.
 - 3. I am absolutely confident that we're going to have a bunch of Posts lose their exempt status in three years because they haven't complied.
 - 4. All we can do is keep hounding people. We'll try to get something out in the Checkpoint or Headquarters Bulletin about it again.

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- C. We also talked a bit about the IRS Exempt Branch work plan, which sort of signals what the IRS current interests are.
 - 1. Clearly, the major focus is going to be on the new 990, and believe me, that is going to be enough, as we'll see.

2. Other than the new 990, their focus seems to be hospitals and universities, where they think a lot of proprietary revenue is going untaxed.
 3. I think we can expect they are going to continue to look at employment tax issues. IRS is concerned about volunteers being paid out of the cash drawer or unreported tip income. Employment taxes are another way to trap people, or catch people, that are using a non-profit to skim compensation.
- D. We also talked briefly about Group Exemptions and probably need to again revisit that discussion.

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1. Under the group exemption provisions, a central organization may apply for a group tax exemption for all subordinate affiliated units so that those units don't have to apply for a separate exemption.
2. To be included in a group exemption, the units must:
 - a. Be affiliated with a central organization.
 - b. Subject to the central organizations "general supervision and control."
 - c. All of the units must be exempt under the same section of the code, i.e. 501(c)(3) or (c)(4) or (c)(19).

So those are the three determining characteristics.

3. They must be affiliated with a central organization. Affiliated is a really vaguely defined word in the law. The law usually defines such organizations as having a common superior. Two corporations owned by the same corporation are said to be affiliated. The IRS has adopted a broader view in the sense they will recognize related organizations that are very similar in structure, purposes and activities.

Clearly, Posts fall into that category. Maybe Districts and County Councils could be included in the group, because they have similar structures, exempt purposes and activities. There could be a dicey question about Ladies Auxiliaries and Mens Auxiliaries.

4. The second test is that the organizations must be subject to the "central organization's general supervision and control." Those are words that terrify me from a liability point of view. So far, no plaintiff's attorney has gotten into that issue in trying to establish liability of a Department or National for a Post's negligence.

Again, however, the IRS has taken kind of a loose approach to this, and the requirement that the subordinate entity follow common By-Laws has been sufficient. Thus, Posts and probably Districts and County Councils are covered. This also may help on the argument that Mens Auxiliaries can be included, because Departments charter them. Control and supervision of Auxiliaries is more tangential, although we have some arguments under Article X.

5. Finally, all the subordinate units have to be exempt under the same provision. Can't have some under (c)(3), some under (c)(4) and some under (c)(19). But they do not have to be under the same section as the central organization. And the same central organization can have group exemptions for several groups, under different sections.
6. As most of you know, once a group exemption is granted, the central organization must file an annual report with the IRS listing all of the subordinate organizations to be covered under the group exemption. That is supposed to include Employer Identification Numbers – EINs. There are several handouts in the materials on Group Exemptions in the A-Q folders.

7. VFW HISTORY

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- a. Sometime back in history, and at least prior to 1972, the VFW made a decision that group exemptions would be procured by Departments for the Posts in their states. I am not sure how or why this decision was made, but if it doesn't predate my birth, it at least predates my puberty.
- b. Prior to 1972, I believe Departments sought and obtained group exemptions for Posts in their Departments under Section 501(c)(4) of the Internal Revenue Code. Section 501(c)(4) applies to Civic Leagues or organizations. Organizations exempt under 501(c)(4) are supposed to be operated exclusively for the promotion of social welfare. They must be operated primarily for the purpose of bringing about civic betterment and social improvement. Social clubs operated for the benefit of members do not qualify. There was a single formal IRS opinion that said veterans' Posts qualified for that status, but did not discuss the operation of bars or canteens.
- c. In 1972, the leaders of the Legion and VFW got legislation passed to amend the Internal Revenue Code to add a new exemption specifically for veterans' organizations. It was different than most exemptions. It is predicated on status of members as veterans and

not what the organization does. Regulations adopted by IRS expansively describe the exempt purposes. It is clearly the preferred tax-exempt status.

Many of our Departments got new group exemption letters under 501(c)(19) at that time. Some did not.

d. Maryland problem **(SLIDE)**

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e. Here is where we think we are right now:

- 43 Departments have a group exemption under (c)(19)
- 8 Departments have a group exemption under (c)(4)
- 4 Departments have no group exemption

The overseas Departments and Posts aren't eligible for exempt status and aren't included. Last year several Departments indicated they were in the process of obtaining a group exemption under 501(c)(19), but I haven't had those changes confirmed to me.

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Those Departments with no group exemptions need to make sure every Post that has a separate exemption files a 990 or 990N. And if there are Posts without an exemption, they are at risk of a huge tax liability. And, if it turns out that the IRS believes there are many non-exempt Posts in a Department, they could initiate some enforcement audits that could be damaging to a number of Posts.

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E. If we have time, I want to come back and talk about four issues we talked about last year to see where people have gone. Those are: Are Posts all getting EINs? What are we doing about Districts and County Councils and EINs? What are we doing about Mens Auxiliaries? What is the status of the Ladies Auxiliary Group Exemption?

1. First, now that all Posts are going to be required to file a 990N, 990, or 990EZ it is critical that your annual letter to IRS listing Posts match up with Posts that actually file. You don't want to list Posts that don't file and you don't want to leave off your list Posts that do file. Either way, you give the IRS something to look at if they cross reference the two.

One fallout from that is all of the Posts will need an EIN.

2. Secondly, we probably have an issue with respect to Districts and County Councils. I'm not sure how you have been handling them in the past and I'm not sure it made any difference, because I doubt very many had gross receipts in excess of \$25,000. But I am curious how some of those Districts, like the "trash bag" Districts in California, were handled.

Now Districts will be required to file a 990N if they are claiming exempt status. And if they aren't exempt, they are arguably subject to taxes. The question is, how do you make them exempt or otherwise avoid the problem?

- Should we try to include them in the Group Exemption? In other words, add them to your list. The initial problem there is that I suspect many of them don't have an EIN. It's also possible IRS would question whether they meet the criteria.
 - One other, more radical, solution may be to just run all of the finances through the Department. In other words, set up separate accounts at the Department for each District and run all of the revenue and expenses through that account. Report all the revenue and expenses on the Department's 990. I know that sounds radical, but it is a viable way to avoid the uncertainty of other methods.
 - Obviously, could just ignore the problem and hope the IRS doesn't discover them. That is probably acceptable for Districts with little or no income, but not for "trash bag" Districts.
3. Another area of concern is Mens Auxiliary. When Mens Auxiliaries were first discussed, I inserted in the draft Manual of Procedure a requirement that any Auxiliary, as a condition of retaining its charter, seek an exemption under 501(c)(19). That provision got eliminated. My guess is that we have a whole bunch of Mens Auxiliaries that don't have a tax exemption and do have gross receipts. Is the IRS going to catch up with them? Probably not, if the income stays low, but that's a guess, not a promise.

Query. Does anybody include Mens Auxiliaries on their annual lists? Could we include them in the group exemption as separate exempt entities? They are affiliated and, by reason of the chartering, the Department has some supervision and control.

A second alternative would be to have all of the revenue and expenses run through the Post's books and reported on the Post's 990.

Again, I think we ignore this issue at our peril.

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4. Finally, there is the issue of the Ladies Auxiliary. Many years ago, in Diana Stout's year, I believe the Ladies instructed the Department Auxiliaries that had not already obtained a Group Exemption to obtain a group exemption from Auxiliaries in the Department. Frankly, I don't know what the status is among Department Auxiliaries.

I also don't have information concerning whether the Group Exemption is under (c)(3), (c)(4) or (c)(19). I believe some of the exemptions may actually be under (c)(3) and many may be under (c)(4).

I also understand, in some Departments, the Auxiliaries are being reported on the annual list, along with Posts.

With most Auxiliaries, this hasn't been an issue in the past because most Auxiliaries didn't generate \$25,000. Now, with the 990N requirement, Auxiliaries are going to have to file or lose their exemption (which, of course, begs the question whether they ever had an exemption).

I am not sure that the requisite control exists under the By-Laws for a group exemption. The Department can't pull the charter of a recalcitrant Auxiliary. However, I wouldn't change the procedure if it's worked all those years.

III. FORM 990

One thing I do want to cover today is the new 990. Some of the issues will require a coordinated response and will require some direction. We don't want folks taking different and inconsistent positions about some of the required disclosures.

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- A. First, as a disclaimer, many of you do not have to file the new form this year and some of you may never have to file the new form.
 1. In 2009, you can file a 990EZ if you gross receipts that were less than \$1,000,000 and total assets (not net assets) were less than \$2.5 million.
 - a. So I suspect most of you can file the 990EZ.
 - b. However note that it is Gross Receipts and Total Assets.
 - i. Gross Receipts includes everything that comes in the door.

- For instance, if you have a raffle and you have \$50,000 in receipts, and pay out \$25,000 in winnings, you still have \$50,000 in Gross Receipts.
 - ii. And it appears to me that total assets is your assets without regard to liabilities.
- 2. In 2010, the limits fall to \$500,000 in gross receipts and \$1,250,000 in total assets.
- 3. In 2011, the limit is \$200,000 in gross receipts and \$500,000 in total assets.
 - a. I suspect that will catch quite a few of you.
- 4. There is no guarantee that the IRS won't include some of these new governance requirements in the 990EZ, so everybody may ultimately have to deal with them.
- 5. In any event, it would be a good exercise for everybody to follow along. Gives you some idea what we're up against.
- 6. I've included a copy of the Basic 990 form and some of the schedules in your folder and you might want to refer to it.

B. Part I – Page 1

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1. Describe mission or most significant activities.
 - a. Old form referred to “purpose” and not mission.
 - b. Think we need to make reference to tax status (even though it's right there), deductibility of contributions and the statutory purposes, then a “Mission Statement.”
 - c. I've included in your package a draft of some Mission Statement language.
2. Discontinued Operations or disposed of 25% of Assets.
 - a. I hope we don't have to deal with a Department discontinuing operations. We may not be so lucky with a Post. Dispose of 25% means sold, exchanged, disposed of or transferred 25% of net assets (Not total assets).

– Would not include unrealized losses.
(No sale, exchange etc.)

This would be an indication of funny business, but I'm not sure it merits being the second question on the form.

3. Number of Voting Members of the Governing Body.
 - a. Raises the issue of what is the governing body, Council or Convention.
 - b. Think we need to take the position that the Council is the governing body (for Posts, it's the Post Meeting). If we don't take that position, it's almost impossible to answer a lot of other questions.
 - c. So enter the number of members of the Council. I don't know what a Post can enter, but I suspect its Post membership.
 - d. But we probably need something in Schedule O that explains this position. Posts need to explain to its members at a meeting.
4. Independent Members – Only if, throughout the year:
 - a. The member was not a compensated officer.
 - b. The member did not receive compensation greater than \$10,000, other than expenses under an accountable plan or "reasonable" compensation as a board member.
 - c. No personal transactions with the organization.
 - d. This is probably going to eliminate Quartermaster and Adjutant, maybe Commander, but not the rest.
 - e. For National, 10 Officers.

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5. Number of Employees.
 - a. This question is unclear and the instructions don't help. Is it the total number you had during the year or the number you had at year end?
 - b. The real purpose of this question is to make sure employment taxes are paid.

- c. I think the best approach is to report the number you have at year end, but make sure that the number doesn't exceed the number reported on W-3.

6. Number of Volunteers.

- a. Obviously a tough question. Are these volunteers for just Department things or volunteers at the Post doing things for VFW? Put an estimate, identified as an Estimate, based on folks working on Department stuff.
- b. Then, in Schedule O, (Supplement to Part I, Paragraph 6) something along the lines of the following:
 - There are over ___ VFW members in the State of _____, many of whom spent many voluntary hours in service to their nation and community. Last year, Posts in the State of _____, reported ___ volunteer hours of community service. Many were surely unreported. (A copy of this is included in your packet).

7a. Gross Unrelated Business Revenue.

- a. This is a specifically directed question about Unrelated Business Revenue. An effort by the IRS to force disclosure right up front of the extent of Unrelated Business Activities. They are asking for the gross.
- b. This is an accountant question concerning Unrelated Income. Newspaper advertising is probably what you have.
- c. I'm not sure how you handle that arrangement that some states have with the vendor in Wisconsin or Minnesota.

7b. Net Business Taxable Income.

- a. Again, right on the front page, non-profits will have to disclose their non-related business operations revenue.
- b. If you don't have to file a 990-T, enter O.
- c. This is an accountant answer.

8-12. Revenue – This is a summary of stuff that is now accumulated from other schedules, primarily Part VIII, that used to be on the front page of the old 990 and basically still is on the front page of the 990EZ.

a. This is an accountant answer.

13-19. Expenses – This is a more specific breakdown of the expenses. It used to be broken down into expenses in 4 categories: Program Services, Management and General, Fundraising and Payments to Affiliates. Now, that's broken out in Statement VIII and they put – Grants, Benefits to Members, Salaries and Benefits, Professional Fundraising Fees, Total Fundraising Expenses right up front. The 990EZ actually has the same categories, but doesn't have a Part IX which requires a more specific breakdown of these numbers.

a. Again, what we're seeing is the IRS puts salaries and benefits, and fundraising expenses right up front.

b. This is an accounting answer.

20-22. Net Assets or Fund Balances

a. This is sort of the bottom line. A balance sheet summary.

b. The old form and the 990EZ handle this differently, and frankly, gives a clearer picture of actual operations.

8-22. One big difference in the new form, all the way through, is you are required to provide prior year data for comparison.

a. Obviously, that's going to make it easier for people to make comparisons year to year as to how to do it.

b. It probably means that, if you expect to be required to file the new form next year or the following year, you and your accountant need to be thinking about how you capture the information.

C. Part II – Signature Block

1. The signature block doesn't change any, but instead of being on page 6, or page 4 on the 990EZ, it's right up front.

D. Part III – Statement of Program Service Accomplishments

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1. Mission.
 - a. The old form and the 990EZ asked for a statement of the organization's purpose. The new form asks for a "description" of the organization's mission.
 - b. I think we use the same mission statement.
2. New Program Services.
 - a. Not likely to have something here, but if you or we do initiate a new program service we would have to disclose it in Schedule O.
 - b. An example might have been when we started MAP/Unmet Needs/OU for active duty military.
3. Cessation of Program Services.
 - a. This is, I guess, aimed at transparency, requiring information on abandoned programs.
 - b. Again, if you do abandon a program, you must disclose it in Schedule O.
4. Describe Exempt Purpose "Achievements" in the three largest program services by expenses.
 - a. This is essentially the same requirement as in the present form but the language is actually looser than the old 990 or the 990EZ. The 990EZ says: Describe what was achieved in carrying out the organization's exempt purpose. In a clear, concise manner, describe the services provided, the number of persons benefited or other relevant information for each program.
 - b. At the National level we have basically ignored the "Achievements" requirement and we're going to have to plump it up with facts. I've included some of the verbiage from our 990, but, in my view, it needs to be rewritten.
 - c. You're kind of on your own, but here is where Vets Service statistics, Community Service reports and some VOD/Patriots Pen statistics will probably come in real handy.

d. This is the “toot your horn” Part, or that’s at least what the IRS says. We probably haven’t taken advantage of this.

e. Maybe our PR Department can put together some templates.

4d. Describe other program services.

4e. Technically, only 501(c)(3)s have to put Revenue and expense numbers with each of their 3 biggest programs.

a. However, you will have to insert total expenses and it will have to tie off against Part IX.

E. Part IV – Checklist of Required Schedules

This new section is a little like the 1040. They ask you a question and if you answer it, yes, you are directed to either a different Part of the main form or to a separate Schedule.

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1. Schedule A – Public Charity Status and Public Support

a. Only applies to 501(c)(3) - or 4947 (non exempt charitable trust).

b. So most Departments won’t have to do a Schedule A in connection with their own operations.

c. But, if your Department has organized a separate 501(c)(3), then you will have to do a Schedule A for that. And they have to fill out this form even if they file a 990EZ.

d. The purpose of Schedule A is to determine whether your 501(c)(3) is entitled to Public Charity Status or is really a Private Foundation subject to potential excise taxes. The Schedule is not an easy one to complete and requires a lot of historical information concerning the identity of donors to verify that there is sufficient Public Support and there is a 5 year look back period, so you will need the data for a five year period.

e. Not really a similar requirement in either the old 990 or the 990EZ.

2. Schedule of Contributors

- a. This schedule is not open to public inspection except for Private Foundations and 527 Political Organizations.
- b. Must complete and file with respect to any contribution from any donor “aggregating” \$5,000 or greater.
- c. Contributor includes an individual, fiduciary, partnership, corporation, association, trust or other exempt organizations. It can also include governmental units.
- d. Contributions include grants, bequests, devises and gifts of money or property. So it includes the National Veterans Service and mail program money from National, or any other money, like MAP money, you receive from National.
- e. This hasn’t changed much from the old form, but you have to keep records. Additionally, this form must be filed with the 990EZ as well.

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3. Schedule C, Part I – Political Campaign and Lobbying Activity

- a. “Direct or Indirect” political campaign activities on behalf of or in opposition to candidates for public office.
- b. The direct and indirect language caught my eye because of the PAC. So long as the PAC files separately, it’s probably ok. But you don’t want to show contributions directly from your Department to PAC in Schedule I.
- c. Typically, if your Department is a 501(c)(19), then you probably won’t have to deal with this Schedule, unless you deal in direct political campaign activity, and that’s a no no.

4. Schedule C, Part II – 501(c)(3) Engaging in Lobbying Activity

- a. This would typically be a No or NA, because it only applies to (c)(3)s.
- b. But, if you have a (c)(3) Foundation, you’re going to have to look at Part II of Schedule C to see if the Foundation has attempted to influence legislation, including influencing public opinion on a legislative matter. The critical issue really is whether there is any identifiable expenditure of money.

- c. If so, you have to fill out Schedule C, Part II. And, again, this form must be filed with the 990EZ as well.
- 5. Schedule C, Part III – 501(c)(4), (c)(5) and (c)(6) Organizations – Notice and Reporting Requirements and Proxy Tax
 - a. This has to do with the notice to members that a portion of dues will go to lobbying and political campaign activity.
 - b. Typically, it won't apply to Departments exempt under (c)(19) and the answer is No or NA.
 - c. For the Departments that are still (c)(4)s, they need to be able to say No and feel comfortable about it because the form is hard and it could be a problem if the number is too high.
 - d. I think there is some solace in that most Departments don't really spend a lot of money on lobbying, it's mostly volunteer time. Need to be careful with how expenditures are identified in vouchers.

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- 6. Schedule D, Part I, Supplemental Financial Statements – Did the organization maintain any donor advised funds or accounts where the donors have the right to provide advice on distributions or investments? This is a type of endowment that colleges or hospitals have that allows the donor to continue to “advise” how the money is invested or how it is spent.
 - a. I wouldn't expect any Departments to have any of these.
 - b. I suppose it's possible for at 501(c)(3) foundation to have them. VFW Foundation does not and will not and I'd suggest that be your policy as well.
- 7. Schedule D, Part II, Supplemental Financial Statements – Organizations Receive or Hold Conservation Easements to preserve open space, environment, historical structures
 - a. This is the new gimmick – People give easements to some tax exempt entity and take a deduction. This disclosure is designed to locate bogus tax scams and the non-profit entity being used to facilitate them.
 - b. I doubt that any of you have any of these. It is something you could see a Post getting some time.

8. Schedule D, Part III, Supplemental Financial Statements – Maintain Collections of Works of Art, Historical Treasures or Similar Assets
 - a. The critical word here is “Collection.” If there is no “Collection,” no need to report.
 - b. Ultimately, the problem you want to avoid is putting a value on these things, so it’s best to avoid them or having them for a period of time without unloading them.
9. Schedule D, Part IV – Trustee, Custodian or Intermediary of Funds Owed to Somebody Else
 - a. I wouldn’t think many people would have anything to report here.
 - b. It’s for escrows and things of that nature, but it’s also for custodians providing credit counseling, debt management, and credit repair or debt negotiation.
 - c. I am curious how Departments that self bond small Posts will deal with or report this money. If you report that here, are you exposed to the Insurance Commission or Department?
10. Schedule D, Part V – Endowment Funds
 - a. Definition of Endowment here is controlled by Accounting Rules, so Accountants will have to decide whether it’s to be reported here.
 - b. The Accountants decide this. SFAS 117 defines an Endowment Fund as an established fund of cash, securities, or other assets to provide income for the maintenance of a not-for-profit organization. Endowments funds generally are established by donor-restricted gifts and bequests to provide a permanent endowment, which is to provide a permanent source of income, or a term endowment, which is to provide income for a specified period.
 - c. So, if you have some fund where somebody gave you money and you only use the income, may have to put it here.
11. Schedule D, Part VI – X – This asks whether you had Land, Buildings or Equipment, Investments in other than Publicly Traded Securities (Derivatives, closely held corporations), Program Related Investments (like student loan receivables, notes from other exempt organizations), Other Assets. I think the purpose of these schedules is to force organizations to identify hard to value assets in order to highlight suspect assets and suspect valuations.

- a. And then asks whether you have completed the various other parts of Schedule D related to them. The real impetus in Schedule D is to require you to state how you arrived at valuations.
 - b. Many of you will have to complete Schedule D, Part VI – Investments, Land, Building and Equipment. They don't ask how that's valued. It's cost less depreciation only.
 - c. Other than that I don't think people will generally have this other stuff.
 - d. National may have issues with Vetjobs, some alternative Investments.
12. Schedule D, Part XI-XIII – Did the organization receive an audited financial report?
- a. This is the reconciliation of the audited financials to the 990.

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13. Is the organization a school?
- a. Obviously doesn't apply.
14. (a) Did the organization maintain an office, employees or agents outside the U.S.?
- a. This doesn't apply to any of the stateside Departments and I don't think the overseas Departments will ever get to the level they will have to file a 990.
 - b. This does present a definitional problem for the National Organization and one we'll have to become comfortable with a "No."
14. (b) Schedule F, Part I – Did the organization have aggregate revenues or expenses from activities outside the U.S.?
- a. Typically, this wouldn't apply to state Departments, unless you had \$10,000 in dues money from overseas military personnel.
 - b. Again, the National Organization probably will have to respond affirmatively to this.

15. Schedule F, Part II – Did the organization give more than an aggregate of \$5,000 to organizations or entities located outside the U.S.?
 - a. This would typically be a No answer, but I suppose there could be some MAP thing.
 - b. Likelihood is that National will need to respond to this inquiry.
16. Schedule F, Part III – Did the organization give grants or assistance to individuals located outside the U.S. totaling \$5,000?
 - a. This would typically not apply, but MAP funds or payments to people “located” outside the U.S. would qualify.
 - b. Likelihood is that National will need to respond to this inquiry.

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17. Schedule G, Part I – Did the organization report more than \$15,000 for fundraising services?
 - a. This is money paid to a non-employee independent contractor for fundraising services. I think this includes mail houses, telemarketers and anything else where a vendor is getting paid to raise money or getting a cut of the money raised.
 - b. Schedule G is required for both the 990 and 990EZ. Because it’s likely many departments will have to respond to this, we’ve included a copy of Schedule G.
 - c. Part I of Schedule G asks you to identify the types of fundraising you use.
 - d. It also asks you to identify any fundraiser who was compensated at least \$5,000 and list all state in which you are registered.
18. Schedule G, Part III – Did the organization report more than \$15,000 in revenue from fundraising events?
 - a. This refers to revenue from fundraisers events aggregation of \$15,000, such as dances, door to door sales of merchandise, auctions, casino nights, etc.
 - b. Applicable to 990 and 990EZ.
19. Schedule G, Part III – Did the organization report more than \$15,000 in Gaming Income?

- a. Gaming includes raffles, video bingo.
- b. Gross Revenue, not Net.
- c. Applicable to 990 and 990EZ.

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- 20. Hospitals
- 21. Schedule I, Parts I & II – Grants and Assistance to Governments and organizations in the U.S.
 - a. Direct Grants or donations of \$5,000 and you'll have to fill this out – we do.
- 22. Schedule I, Parts I & III – Grants and Assistance to Individuals in U.S.
 - a. Payments to an individual totaling more than \$5,000.
 - b. MAP and Unmet Needs would fall in this category.
- 23. Schedule J – Compensation
 - a. If you have a former officer, Council member, key employee or highly compensated employee, or an individual with more than \$150,000 in compensation, then you'll have to fill out a Schedule J, in addition to the Disclosures in Part VII.
- 24. Schedule K – Tax Exempt Bonds.
 - a. Wouldn't think this would be an issue.

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- 25. Schedule L - 501(c)(3) and 501(c)(4). Schedule L generally tries to get at disclosure of those relationships that smell of possible conflict of interest or over compensation.
 - a. This pertains to so-called excess benefit transactions with a disqualified person. These are essentially transactions with people that are related by blood or in business relationships with corporations, its officers or key employees. (Read the blurb.)

- b. If you are a Department that is still a 501(c)(4), you need to review the excess benefit instruction to Schedule L to see if you have anything remotely qualifying. It really is aimed at the “family” not for profits.
- 26. Schedule L, Part II – Loans to current or former officers, directors, trustees, key employees, highly compensated employees or disqualified persons
 - a. Applicable to all entities.
 - b. Don’t make loans.
- 27. Schedule L, Part III – Grants to officers, directors, trustees, key employees, or “substantial” contributors or to a person related to them
 - a. Applicable to all entities.
 - b. Don’t give money to these folks.
 - c. Schedule L is applicable to the 990 and, I believe, the 990EZ filer.
- 28. Schedule L, Part IV – This is where you have to disclose business relationships with other members of the Council, family member relationships, etc.
 - a. You need to require everybody to execute an acknowledgement with respect to these relationships.
 - b. We have a form in your folder which we suggest you use to require Council members to disclose. The form serves two purposes. Papers your file and it gives the Council people a better sense that they really do have a responsibility.

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- 29. Schedule M – Non Cash Contributions – Gifts in Kind greater than \$25,000
 - a. The inquiry is whether the organization received gifts in kind and then asks about the number of each type of contribution and, most importantly, how they were valued.
 - b. There is a whole laundry list of things they are looking at – Clothing, Books, Cars, Stock, Real Estate, Food Inventory, Drugs and Medical Supplies and the ubiquitous “other” category.
 - c. This is going to require some record keeping.

- 30. Schedule M – Contributions of Art, Historical Treasures or other similar assets or Qualified Conservation Easements
 - a. This only apparently requires a Yes answer if the property is required to be kept for three years and not used for an exempt purpose.
- 31. Schedule N, Part I – Did the organization liquidate, terminate or cease operations?
 - a. Not likely to have to deal with this one.
- 32. Schedule N, Part II – Did the organization sell, exchange, dispose of or transfer 25% of its net assets?
 - a. Disposing of net assets – would not include unrealized losses.
- 33. Schedule R, Part I – Did the organization own 100% of an entity disregarded as separate from the organization?
- 34. Schedule R, Part II, III, IV, and V – Was the organization related to any tax exempt or taxable entity?
- 35. Schedule R, Part V – Is any related organization a controlled entity?
- 36. _____
- 37. _____

The rules concerning related organizations are too complicated to deal with here.

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F. PART V – STATEMENTS REGARDING OTHER IRS FILINGS AND TAX COMPLIANCE

These are basically all new questions and a real trap for the unwary. It includes a series of questions about compliance with other tax laws. If you answer yes, and the IRS finds out you haven't, in fact, complied, the IRS can have you charged with perjury for filing a false return. If you answer no, you're probably giving the IRS a clean shot at you for that violation.

1. These questions ask about compliance with non employment reporting and withholding rules, like 1099s, 1098s and W2Gs. Also asks about compliance with back up withholding rules for vendors and for gaming prize winners.
 - a. Burden is on you to know the backup withholding and gaming rules.
2. Basically asks, if you had any employees, did you comply with “all” required federal employment tax returns?
 - a. Burden is on you to know “all” of the federal employment tax return rules.

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3. Inquires about whether you had gross unrelated business income of more than \$1,000 and, if so, whether you filed a 990T and, if not, you are required to explain that in Schedule O.
 - a. Need to be comfortable you don't have to file a 990T for some income.
4. This question inquires about foreign county accounts.
5. This question inquires as to whether the “organization was or is a party to a prohibited tax shelter transaction” and whether you filed a disclosure statement with the IRS.
 - a. This is the classic example of what I described above. When did you stop beating your wife?

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6. Did the organization solicit contributions that were not tax deductible and did you tell the donor that the contributions were not tax deductible?
 - a. Typically, the deductibility of contributions is dependent on Section 170 of the Code and not all 501(c) organizations are eligible for tax deductible contributions. If you are not one of those organizations and you solicit contributions, the IRS says you need to expressly tell them they're not deductible.
7. The questions in Section 7 all deal with the rules on organizations that can receive deductible contributions.

- a. / b. If goods or services are offered in exchange for a donation of \$75 or more, you are required to tell the donor that, and the IRS asks if you do that.
 - c. Asks about Form 8282 which is a Donee Information Return which requires disclosure of information about certain donated property disposed of within 3 years of donation.
 - i. Basically, IRS is looking for deduction scams where somebody takes a big deduction for a donation of property and the organization sells it for a lot less or sells it back to the donor a few years later.
 - e. / f. These two questions address “Personal Benefit Contracts,” which are things like life insurance, annuities or endowments that benefit the transferor/donor or some member of the family rather than the organization.
 - g. This question addresses gifts of qualified intellectual property (patents, copyrights, trademarks, trade secrets, software or similar property). Again, the Form 8899 is looking for valuations.
 - h. Gifts of cars, boats, etc. If so, did you file the 1098-C? The IRS doesn’t like these contributions because of inflated deductions.
8. / 9. Questions 8 applies to (c)(3)s and supporting organizations use of donor advised funds.
- a. Note, there are two different places where they ask about donor advised funds.
10. Not applicable – 501(c)(7) Social Clubs.
11. Not applicable – 501(c) – Cooperatives.
12. Not applicable – Charitable Trusts.

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G. Part VI – Governance, Management & Disclosure

This is all of the new Governance Disclosures that the IRS has taken it upon itself to require. As I think I may have mentioned last year, there is nothing in the Internal Revenue Code that requires any of these disclosures. In fact, the IRS says right at the top of the form that the information is not required by the Code.

The problem is, you still need to be able to answer all the questions with a “Yes” or “No.” All of the questions address the purported concerns of state regulators, watchdog groups and donors concerning the proper operation and business ethics of the organization. Answering a wrong answer should be a red flag that, either the organization is being shabbily run or it is terribly unsophisticated.

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1. Section A, Governing Body and Management

- a. / b. As indicated earlier, IRS is interested in disclosure of whether there really is an independent board or just a few, compensated people are running the show.
- c. As indicated with respect to Part I of the form, questions 3 and 4, we need to take the position that the Council is the governing body and then explain the impact of the Convention in a blurb in Schedule O. There is some draft verbiage for Schedule O in your folder.
- d. As was suggested earlier, the test for “independence” of a Council member is:
 - i. Not a compensated officer.
 - ii. Receives compensation less than \$10,000 a year other than expenses under an “accountable plan” or as “reasonable” compensation as a Board member.
 - iii. Has had no personal transactions with the organization.
- e. Obviously, you want to end up with the majority of the Board being independent.

2. This question inquires about family or business relationships between and among officers, Council and key employees.

- a. What the IRS is looking for is symbiotic or self serving relationships. You want to answer No.
- b. In order to answer this question, you need to have some backup.
- c. In your folder, you’ll find a form that we suggest you have everybody sign, every year, so you can answer this question.

- d. It also serves the useful purpose of putting people on notice that these things can be a problem.

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3. Delegation of Control to a Management Company.
 - a. Again, IRS is looking for relationships that can be abusive.
 - b. Want to answer “No” and I would think this is an accurate response for all of us.
4. Significant Changes to Organizational Documents.
 - a. According to the Instructions, the organizational documents would be the National Charter, Department Articles of Incorporation, National By-Laws and Department By-Laws.
 - b. Significant changes would be:
 - changes in the exempt purpose,
 - composition or authority of governing body,
 - composition and authority of officers,
 - role of members in governance,
 - changes in the quorum requirements,
 - changes in key policies, like how compensation is determined, conflicts, etc.
 - c. Typically, not going to have them very often. When you do, something has to be written into Schedule O.
5. Awareness of Material Diversion of Assets.
 - a. Not one you want to answer Yes to.
6. Members or Stockholders.
 - a. The answer, obviously is Yes.
7. a) Does the organization have members or stockholders?

- c. Obviously, Yes.
7. b) Are any discussions of the governing body subject to approval by members or other persons?
- a. Technically, I'm not sure they are. The Convention doesn't really review or approve Council decisions, but it can, by resolution, change them.
 - b. However, I think we'd want to say Yes, and in Schedule O, make a statement about the delegates at the Convention may, by resolution, make decisions and establish policies.
 - c. In your folder, there is a possible blurb for Schedule O.

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8. Did the organization "contemporaneously document the meeting held or written actions by the governing body and each committee with authority to act on behalf of the governing body?"
- a. Obviously want to answer Yes.
 - b. Contemporaneously doesn't mean a court reporter, or taped. The Instructions say by the next meeting or 60 days later, whichever is first. Documentation will generally mean written minutes.
9. a) Does the organization have local chapters, branches or affiliates?
- a. Tricky question, because of the liability issues. The word "have" is the really tricky part.
 - b. I don't think you can get around not answering Yes to this, but ultimately it can and will be used against us in litigation.
 - c. I will try to come up with a blurb of some sort for Schedule O.
9. b) If Yes, to (a), does the organization have written policies or procedures governing their "activities" to ensure their operations are consistent with those of the organization?
- a. This is a really tricky question, again with respect to liability, particularly for bars.
 - b. Is the operation of a bar an activity consistent with the operation of the organization?

- i. If not, why do Posts have them (one of our corporate purposes is comradeship)?
 - ii. If it is, why don't we have policies and rules?
 - iii. Either way, why didn't you stop the bar or enforce rules to keep the bar from causing damage?
 - c. Answer is By-Laws – So you can say Yes to both questions and if someone says what policies, the answer is policy is in the By-Laws, and the policy in the By-Laws is that Posts are on their own with respect to bars.
- 10. Copy of the 990 to Directors before it was filed.
 - a. For timing reasons, it is typically difficult to have the Council review the 990 before it is filed.
 - b. I expect to have to answer No to this and describe in Schedule O the process the organization uses to review the 990. Copy in your folder.
- 11. Officers that can't be reached at the organization's mailing address.
 - a. You want to answer this No, otherwise you are going to have to divulge mailing addresses.
 - b. But you need to make sure that mail addressed to them gets to the right place.

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Section B – Policies

- 12. a) Does the organization have a conflict of interest policy?
 - a. You need to be able to answer this question Yes.
- 12. b) Are officers, Councilmen and key employees required to annually disclose interests that could give rise to conflicts?
 - a. Need to be able to respond Yes.
 - b. In your folder you'll find a Code of Ethics for Officers, Council of Administration, Members and Employees, which includes disclosures about conflicts.

- c. Also included is an acknowledgement that should be signed by everybody annually.
- 13. Written Whistleblower Policy.
 - a. Need to answer Yes.
 - b. There is a draft whistleblower policy in your folders.
- 14. Does the organization have a document retention and destruction policy?
 - a. Need to answer Yes.
 - b. There is a half assed one in the Quartermaster Manual.
 - c. We're working on another one.
- 15. Did the process for determining compensation of the CEO, ED or top management official and other officers and employees include review and approval by "independent persons," comparability data and substantiation of deliberation and decision?
 - a. This is very difficult to respond to.
 - b. To answer Yes, there needs to be specific approval of salaries by the Council, approved by the independent members, comparability data and documentation of decisions involving compensation.
 - c. I think the Council is going to have to specifically approve the salaries by separate motion.
 - d. And the process is going to have to be described in Schedule O.
- 16. Joint Venture Participation.
 - a. Shouldn't be an issue.

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Section C – Disclosure

- 17. List states in which this form is required to be filed.
 - a. Generally, that means the states in which you file charitable registrations.

- b. For most states, that's just their state.
- 18. Requires you to disclose how you make the 990 available for public inspection.
 - a. Typically, we only make ours available by request.
 - b. I think it actually gets picked up on Guide Star.
- 19. Describe in Schedule O whether, and how, governing documents, conflicts policy and financial statements are made available to the general public.
 - a. This appears to be a mandatory command. We have to put something in Schedule O concerning our policy toward making those documents available to the general public. I don't know yet how I'm going to handle this.
- 20. Name, address and phone numbers of the person who possesses books and,
 - a. Stands by to get a lot of phone calls requesting financial statements and 990s.

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H. Part VII – Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees and Independent Contractors

I'm not going to spend much time on this. Suffice to say it's going to be a lot easier for you than it will be for me. The fact is the information isn't too much different than the current form or the 990EZ, although there appears to be more columns.

- 1. Section A
 - a. You will have to list all of the current officers and Council members, regardless of the amount of compensation.
 - i. There is a schedule in the Instructions that tells you what goes in the boxes.
 - b. Total number who received more than \$100,000.
 - i. Not likely to be a big number for you folks.

- c. If you have a former officer listed on line 1a (the schedule) you have to do Schedule J.
 - i. This will be a pain for us, but shouldn't be a problem for you.
- d. Compensation of anybody who receives more than \$150,000, need to do a Schedule J.
- e. If anybody listed in schedule received compensation from another organization for services rendered to the organization, also need to do a Schedule J.

2. Section B – Independent Contractors

- a. Highest five independent contractors receiving more than \$100,000.
 - i. This includes professional fundraisers.

I. Part VIII – Statement of Revenue

This doesn't ask for much different information than the present 990, but it's laid out differently. It is more detailed than the 990EZ.

J. Part IX – Statement of Functional Expenses

Again this isn't much different than the present form, although there is a greater emphasis on compensation. There is no similar statement in the 990EZ.