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IRS Releases FAQ on Governance Section of Exempt Organizations' Annual Return.

The IRS has released a list of frequently asked questions on Part VI of the exempt organization return, which focuses on who is responsible for governing the organization, noting in part that the IRS will use the information to assess noncompliance and the risk of noncompliance for individual organizations and across the broader exempt sector.

Form 990, Part VI — Governance, Management, and Disclosure

Frequently Asked Questions

1. Are all organizations required to complete Part VI and answer all of its questions regarding an organization's governance structure, policies and practices?

Yes, all organizations that file Form 990 are required to answer all of the questions in Part VI. However, refer to Appendix E of the instructions to the Form 990 for instructions regarding how to complete Part VI in the case of a group return.

2. Are all the policies and practices described in Part VI required by the Internal Revenue Code? If not, what happens if an organization reports that it does not have such policies in place?

In general, the policies and practices described in Part VI are not required by the Internal Revenue Code. However, organizations are required by the Code to make publicly available some of the items described in Question 18 of Part VI. This includes the Forms 990 of all organizations for their three most recent tax years; the Form 1023 or 1024 of all organizations that filed such forms on or after July 15, 1987, or had a copy on such date; and the Forms 990-T of a section 501(c) (3) organization for its three most recent tax years, if such forms were filed after August 17, 2006. The IRS will use the information reported in Part VI, along with other information reported on the form, to assess noncompliance and the risk of noncompliance with federal tax law for individual organizations and across the broader exempt sector.

3. If an organization adopted a policy or practice after the close of its tax year but before it filed the Form 990 for such year, may it report that it had such policy or practice in place for purposes of answering Part VI?

In most instances, the instructions to the Part VI questions state the specific time or period to be used to answer a particular question. For example, Question 12a asks whether as of the end of the organizations tax year it had a written conflict of interest policy. An organization that did not have a written conflict of interest policy in place on such date must answer no. If that same organization adopted a written policy after the close of the tax year but before it filed its return, it may describe doing so in Schedule O. If the instructions to a particular question do not provide a specific time or period to be used to answer the question, the organization may take into account practices undertaken after the close of the tax year in its response to that question (e.g., Question 12b regarding whether certain persons are required to disclose potential conflicts). Question 10

regarding whether the organization provided a copy of the Form 990 to its governing body before filing the form, and the process (if any) used by the organization to review the form, necessarily involves activity conducted after the close of the tax year.

4. Can our organization answer yes to a question about having a policy if a committee of the board, rather than the board itself, adopted the policy, and was authorized to do so?

Yes. The organization may answer Yes to any question in Section B of Part VI, Form 990, that asks whether the organization has a particular policy if the organization's governing body (or a committee of the board, if the board delegated authority to that committee to adopt the policy) adopted the policy by the end of its tax year.

5. Part VI asks for information regarding an organization's members, if any, and any local chapters, branches or affiliates. Why is the IRS concerned about an organization's members and local units?

Much of Part VI focuses on who is responsible for governing the organization. In most organizations this includes a governing body, such as a board of directors, or trustees. Many organizations, however, also have members, who may be vested with certain governance or financial rights with regard to the organization. Part VI, Questions 6 and 7, ask whether an organization has members, and if so what their governance rights are, in order to provide a more complete and accurate picture about where governance authority is vested and about the organization's legal structure. Part VI, Question 9 asks about local chapters, branches and affiliates to obtain information about whether and how the organization exercises supervision and control over its chapters, branches, and affiliates to ensure that their activities are consistent with those of the organization. This question is designed to obtain information about the extent to which the filing organization's policies and practices extend to all of its parts or to affiliated entities.

6. Is an organization required by federal tax law to provide a copy of Form 990 to its board or governing body, or have its board or governing body review the form, before it is filed with the IRS?

No. Nonetheless, it is required to answer Question 10 regarding these matters.

7. Question 1b asks for the number of independent voting members of the governing body. May an organization use its own definition of independence to answer this question?

No, the organization must use the three-part definition contained in the instructions to this question to determine whether a particular voting member of its governing body is independent for purposes of Form 990 reporting. Note that this definition will vary from other meanings of the term independent that may apply to the organization, such as for state law or internal conflict of interest policy purposes.

8. How hard do we have to look for the information requested in Questions 1 and 2 of Form 990, Part VI regarding independent directors and business and family relationships among Board members, officers, and key employees? What if we are unable to obtain and report all the reportable information?

As described in the instructions, the organization need not engage in more than a reasonable effort to obtain the necessary information to answer these questions. An example of a reasonable effort would be for the Form 990 preparer or an officer eligible to sign the Form 990 to distribute a questionnaire annually to each of the organization's officers, directors, trustees and key employees asking for the information that needs to be reported in response to Questions 1 and 2. The questionnaire could include the name, title, date and signature of the person reporting information,

and contain the Form 990 Glossary definitions of independent voting member of governing body, family relationship, business relationship and key employee. The organization may rely on information it obtains in response to such a questionnaire in answering Questions 1 and 2.

9. Does the IRS intend to provide model or sample policies (e.g., joint venture policy) that organizations could adopt in order to answer yes to the questions in Part VI regarding such policies or practices?

The IRS does not plan to provide model or sample policies to be used for this purpose. Whether an organization adopts a policy of the type referred to in Part VI of Form 990 is a decision to be made by each individual organization. If an organization decides to adopt such a policy, it should consider its own particular facts and circumstances, including its size, culture, type and structure, in designing and implementing the policy.

10. Must the filing organization provide governance information regarding its related organizations?

In general, no. Part VI is to be completed with respect to the facts and circumstances of the filing organization. Thus, an organization is not required to provide information regarding the composition of the governing body or policies or practices of a related organization, such as a joint venture, for-profit subsidiary, parent, or brother-sister exempt organization.

However, Appendix E provides information regarding how Part VI is to be completed in the case of a group return, Question 1b asks about compensation from transactions with related organizations for purposes of determining a governing board member's independence, and Question 9 asks whether the organization's policies and practices extend to local affiliates.

11. If the filing organization is controlled by an organization with a conflicts of interest policy, whistleblower policy, and document retention and destruction policy, should the filing organization answer yes or no to Part VI, Questions 12a, 13 and 14?

Because these questions ask whether the filing organization has these policies, answer yes only if the filing organization's governing body has adopted the policies of the controlling organization or other such policies. Otherwise, answer no. The filing organization can explain in Schedule O how it is governed or otherwise affected by the policies of its parent.

12. What are the governance reporting requirements for organizations that file Form 990-EZ?

Form 990-EZ was not revised to include a governance section. However, Question 34 (regarding changes to organizing documents), which was included in the 2007 Form 990-EZ, has been retained.