

# The IRS and Home Care – Are You Compliant?

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## Agenda

- Contractor vs. Employee
- Redesigned Form 990
- Accounting Methods
- Work Opportunity Tax Credits
- Economic Stimulus

# Contractor vs. Employee

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# Contractor vs. Employee

- Worker Status Differences
  - ❖ 1099
  - ❖ W-2

## Guidance

- IRS Publication 1779 (Rev 8-2008)
  - ❖ Independent Contractor or Employee...
- IRS Publication 15A
  - ❖ Employer's Supplemental Tax Guide
- IRS Form SS-8
  - ❖ Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding
- IRS Tax Topic 762 (IRS website)

## Worker Status Criteria

- Examine the relationship between the worker and the business
  - ❖ Behavioral Control
  - ❖ Financial Control
  - ❖ Type of Relationship
- All evidence of control and independence in the relationship should be considered

## Behavioral Control

- Instructions
  - ❖ How, when or where to do the work
  - ❖ What tools or equipment to use
  - ❖ What assistants to hire to help
  - ❖ Where to purchase supplies and services
- Training

## Financial Control

- Significant investment
- Expenses
  - ❖ Reimbursed or unreimbursed
- Extent worker makes services available to relevant market
- Method of pay
- Opportunity for profit or loss

## Type of Relationship

- Written contract
- Extent worker makes services available to other similar businesses
- Employee benefits
- Permanency of the relationship
- Extent worker's services are a key aspect to the business

## Revised Form 990

## Form 990

- Form 990 is an “informational return” not a “tax return”
  - ❖ Form 990 must be complete & accurate
  - ❖ Form 990 must be available for public inspection
  - ❖ Form 990 must be filed electronically in many cases
- There are substantial penalties for non-compliance

## Public Disclosure

- Organizations should maintain a public disclosure copy of Form 990
- *Pension Protection Act* made Form 990-T subject to public disclosure as well
- Think of your 990 as a marketing tool
- Have you reviewed your organization’s website lately?

## GuideStar

- Program & financial information about more than 1.5 million tax-exempts
- Accessed by more than 7.9 million internet users
- Approximately 3.1 million Form 990 images available
- 120,213 non-profits have voluntarily provided supplemental information

## Who Is Looking at Form 990?

- Congress
- IRS
- Media
- General public
- Donors
- Vendors
- State Attorney Generals
- Other non-profits in your industry
- Other watchdog groups

## Redesigned Form 990

- Form 990 last revised in 1979
- Current Form 990
  - ❖ Illogical form design
  - ❖ Very complex
  - ❖ Nine page core form, Schedules A & B, & 36 possible attachments

## Redesigned Form 990

- 11-page Core Form
- 16 Potential Supplemental Schedules
- Required for 2008 Returns
- Relief provided for many small organizations

## Redesigned Form 990

File Form 990-EZ for.....	If gross receipts are less than....	And if total assets are less than.....
2008 (generally filed in 2009)	\$1,000,000	\$2,500,000
2009 (generally filed in 2010)	\$500,000	\$1,250,000
2010 and after	\$200,000	\$500,000

## Redesigned Form 990

- New Forms and Schedules Likely to be Required for Home Care and Hospice Agencies
  - ❖ Core Form
  - ❖ Schedule A – Public Charity Status and Public Support
  - ❖ Schedule B – Schedule of Contributors
  - ❖ Schedule C – Political Campaign and Lobbying Activities

## Redesigned Form 990

- New Forms and Schedules Likely to be Required for Home Care and Hospice Agencies
  - ❖ Schedule D – Supplemental Financial Statements
  - ❖ Schedule I – Grants and Other Assistance to Organizations, Governments and Individuals in the U.S.
  - ❖ Schedule J – Compensation Information
  - ❖ Schedule L – Transactions with Interested Persons

## Redesigned Form 990

- New Forms and Schedules Likely to be Required for Home Care and Hospice Agencies
  - ❖ Schedule M – Non-Cash Contributions
  - ❖ Schedule O – Supplemental Information
  - ❖ Schedule R – Related Organizations and Unrelated Partnerships

## Redesigned Form 990

- Major New or Expanded Reporting Requirements
  - ❖ Governance
  - ❖ Compensation
  - ❖ Hospitals
  - ❖ Tax-Exempt Bonds
  - ❖ Business Dealings with Interested Persons
  - ❖ Related Organizations

## Governance

- IRS Best Practices, Not Legal Requirements
- Independent Voting Members of the Governing Body
- Family and Business Relationships
- “Reasonable Effort”

## **Governance**

- Delegation of Management Duties
- Contemporaneous Documentation of Actions of the Governing Body
- Review of Form 990 by Governing Body

## **Policies**

- Written Conflict of Interest Policy
  - ❖ Disclosed annually?
  - ❖ Consistently monitored?
- Written Whistleblower Policy
- Written Document Retention and Destruction Policy

## **Policies**

- Process for Determining Compensation
- Joint Venture Policy
- Written Policy Regarding Payment of Certain Benefits
- Gift Acceptance Policy
- Charity Care Policy (Hospitals)

## **Compensation – Who is Reported?**

- Current Directors and Trustees
- Current Officers
- Current Key Employees (>\$150,000)
- Other Five Highest Compensated Employees (>\$100,000)

## **Compensation – Who is Reported?**

- Certain Former Directors and Trustees (>\$10,000)
- Certain Former Officers, Key Employees, or Other Five Highest Compensated Employees (>\$100,000)
- “Current” – any time during tax year
- “Former” – 5 prior years

## **Compensation – What is Reported?**

- Reportable Compensation (Box 5 of W-2 and/or Box 7 of 1099-MISC)
- Reportable Compensation from Related Organizations
- Estimated Other Compensation

## Compensation – Schedule J

- Most generally required if any listed individual receives > \$150,000 compensation
- Required if certain “formers” are listed
- Compensation paid by unrelated organization for services rendered to the organization

## Compensation – Schedule J

- Do you provide any of the following to an individual listed on Form 990?

First-class or charter travel	Housing allowance
Travel for companions	Payments for business use of personal residence
Tax indemnification or gross-ups	Health or social club dues
Discretionary spending account	Personal services

## **Compensation – Schedule J**

- Resources used to establish compensation
- Other types of compensation
- Table with a breakdown of W-2 or 1099, deferred compensation, and nontaxable benefits
- Column for compensation reported in a prior year

## **Transactions With Interested Persons – Schedule L**

- Excess Benefit Transactions
- Loans to and/or From Interested Persons
- Grants or Assistance Benefitting Interested Persons
- Business Transactions Involving Interested Persons
- “Reasonable Effort”

## Automatic Excess Benefits

- Taxing scheme
  - ❖ 25% x excess benefit, plus
  - ❖ 200%, if not corrected
  - ❖ Also, 10% tax on organization manager

## When Automatic?

- Compensation, including taxable fringe benefits, not properly substantiated
  - ❖ Reported on W-2, 1099, or 990
- Regardless of FMV, IRS treats unsubstantiated compensation/benefits as automatic excess benefits, subject to excise taxes
  - ❖ Also subject to payroll & income taxes

## Exposure Items

- Personal use of automobile
- Personal use of club memberships
- Moving expense reimbursements
- Personal travel (e.g., spouse & family)
- Housing allowances
- Business travel, entertainment & other expenses not adequately documented
  - ❖ Accountable plan rules
  - ❖ Business purpose, who entertained, date, amount, etc...

## Example

- Assume a key executive receives the following:
  - ❖ Salary of \$155,000
  - ❖ Personal use of a car and a country club membership with a FMV of \$25,000
  - ❖ Reimbursement of travel and entertainment expenses of \$10,000
- Adequate documentation required by IRS to support business purpose is not maintained contemporaneously
- Only \$155,000 included in W-2

## Example

- Excess benefit transaction occurs
  - ❖ Penalty assessed of  $\$35,000 \times 25\% = \$8,750$
  - ❖ If  $\$35,000$  not repaid, then 2<sup>nd</sup> tier tax of  $\$35,000 \times 200\% = \$70,000$
  - ❖ Total excise tax =  $\$78,750$
  - ❖ Possible 10% penalty ( $\$3,500$ ) on any organization manager or board member who knowingly participates

## How to Avoid Automatic Excess Benefits

- Have a written plan in place
- Educate employees
- Have the board of directors periodically review
- Review employment arrangements
- Obtain contemporaneous documentation of the value of goods or services

# Accounting Methods

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## Accounting Method Changes

- Accrual v. Cash?
- Depreciation
- Automatic accounting method changes
- Non-automatic accounting method changes

## Work Opportunity Tax Credit

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### Federal Work Opportunity Tax Credit (WOTC)

- Effective January 1, 2007 WOTC was combined with the Welfare to Work Credit (WTWC)
- Extended to August 31, 2011
- Enhanced by allowing the credit to offset alternative minimum tax (AMT)

## WOTC

- Basic WOTC is 40% of qualifying wages up to \$6,000 (\$2,400 credit)
- Credit amount is doubled for certain veterans (\$12,000 wages x 40% = \$4,800 maximum credit)
- A maximum credit of \$9,000 is available over 2 years for “long-term family assistance recipients”

## WOTC

- Qualified IV-A Recipient
- Qualified Veteran
- Qualified Ex-felon
- Designated Community Resident
- Vocational Rehabilitation Referral
- Qualified Summer Youth
- Qualified Food Stamp Recipients
- Qualified Supplemental Security Income Recipient
- Long-Term Family Assistance Recipient

## WOTC

- Application Process

- ❖ Job applicant completes Form 8850 by the date offered employment
- ❖ Complete Form 9061
- ❖ Form 8850 and Form 9061 are submitted to the Division of Workforce Development within 28 days of employment
- ❖ The Division of Workforce Development will check the state government records and send a certification letter if qualified

## Economic Stimulus

## Economic Stimulus Bill

- **Signed Into Law 2/17/09**
- **Intended to Stimulate Economy**
- **Projected Cost - \$787 Billion**
  - ❖ \$212 billion in tax cuts
  - ❖ \$575 billion in spending

## Economic Stimulus Bill

- **Exactly How Much Is \$787 Billion?**
  - ❖ If someone paid you \$1 million a day for rest of your life, it would take more than 2,000 years to reach \$787 billion
  - ❖ Approx. \$2,600 for every man, woman & child in U.S.
  - ❖ 1.7 times size of largest U.S. budget deficit (\$455 billion recorded in fiscal 2008)

## Business Incentives

### ▪ Bonus Depreciation

- ❖ 50% write-off of qualifying property
- ❖ Generally, must be placed in service before 1/1/2010
- ❖ Allowed for regular & AMT
- ❖ May elect out (by property class)

## Business Incentives

### ▪ Enhanced Section 179 Expensing

- ❖ Immediate write-off of up to \$250,000 of 2009 additions
- ❖ Phaseout if total additions exceed \$800,000
- ❖ Personal property & off-the-shelf software qualifies
- ❖ Deduction limited to taxable income

## Business Incentives

### ▪ Net Operating Loss Carryback (NOL)

- ❖ May be carried back up to 5 years vs. normal 2-year period
- ❖ Applies to NOLs incurred in tax year ending in 2008 (or beginning in 2008 if taxpayer elects)
- ❖ Applies to businesses with average receipts of \$15 million or less

## Business Incentives

### ▪ Work Opportunity Tax Credit (WOTC)

- ❖ Expanded to include two new targeted groups
  - ✓ Unemployed veterans
  - ✓ Disconnected youth
- ❖ 40% of first-year wages up to \$2,400 maximum credit per qualified employee
- ❖ Certification & minimum employment period rules apply

## Business Incentives

### ▪ Deferral of Cancellation of Debt Income (CODI)

- ❖ 2009 CODI included ratably over 5 years beginning in 5th year after year of realization, *i.e.*, 2014
- ❖ Similar rules for 2010 except recognition period begins in 4th year after year of realization, *i.e.*, 2014
- ❖ Election required
- ❖ Acceleration rules apply

## Business Incentives

### ▪ S Corp Holding Period Modified

- ❖ Applies to S corps previously taxed as C corps
  - ✓ 35% corporate level tax applies to built-in gain
  - ✓ Applies to disposals during first 10 years from date of S corp election
- ❖ Act reduced time period from 10 to 7 years
- ❖ Impacts S corp elections made in or prior to 2003

## Business Incentives

### ▪ Small Business Capital Gains

- ❖ Increases gain exclusion on sale of certain small business stock by individuals
- ❖ 75% exclusion up to greater of 10 times basis or \$10 million
- ❖ Remaining gain taxed at maximum of 28%
- ❖ Must be held > 5 years
- ❖ Applies to stock issued after 2/17/09 & before 1/1/2011

Questions?

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## **How to contact us...**

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