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Beyond Form 990—Don't Overlook Filing Other Forms

Public charities are familiar with the requirements for filing Form 990 or 990-N and 990-T. But, an organization that receives non-cash contributions may also need to file other forms.

Donee Information Return

General Rule. Original and successor donee organizations that dispose of *charitable deduction property* (or any part of it) within three years after receipt must generally file Form 8282 (Donee Information Return) with the IRS within 125 days of disposition. *Charitable deduction property* means any donated property, other than money and publicly traded securities, if the donor's claimed value exceeds $5,000 per item (or group of similar items) donated to one or more organizations. Disposition means the sale, exchange, or consumption of the donated property. The organization must also provide a copy of Form 8282 to the original donor of the property.

Exceptions. There are two exceptions to the general rule. First, Form 8282 is not required if the donor had signed a statement on Form 8283 (Noncash Charitable Contributions) that the appraised value of the specific item was $500 or less. For purposes of this limitation, all shares of nonpublicly traded stock, or items that form a set, are considered one item. For example, a collection of books written by the same author or six place settings of a pattern of silverware are considered one item.

Second, an organization does not have to file Form 8282 if an item is consumed or distributed without consideration in conducting its exempt activities. For example, reporting is not required for donated medical supplies that are distributed by an exempt relief organization in aiding disaster victims.

Successor Donee. If property is transferred to another charitable organization within the three-year period, the initial donee must provide certain information to the successor donee, including a copy of Section B of Form 8283 that the organization received from the donor or a preceding donee. The information generally must be provided within 15 days after the property is transferred, subject to certain exceptions. The transferor organization

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must also furnish a copy of Form 8282 within 15 days after it is filed.

Penalties. For tax years beginning in 2018, the penalty for failure to file Form 8282 with the IRS or to provide a copy to the donor is $270 per failure when the organization's gross receipts are $5 million or less. The penalty is reduced to $50 if corrected within 30 days of the filing deadline and to $100 if corrected after the 30th day but before August 1st. The penalty increases if the failure to file timely is due to an intentional disregard of the rules; and it is higher for an organization with gross receipts over $5 million. Penalties are indexed annually for inflation. These penalties are subject to abatement for reasonable cause. See the March issue of this newsletter for additional discussion on reasonable cause.

Caution: Form 8282 and its instructions have not been updated since April 2009 to reflect the penalty increases and inflation adjustments.

Reporting Vehicle Donations

A charitable donee organization must file Form 1098-C (Copy A) with the IRS by February 28 each year (or March 31 if filed electronically) for each *qualified vehicle* with a claimed value of more than $500 received as a contribution. A vehicle held by the donor primarily for sale to customers, such as the inventory of a car dealer, is not a qualified vehicle and no reporting is required for such a donation.

Copies B and C of Form 1098-C must be furnished to the donor within 30 days after a vehicle is sold in an arm's length transaction to an unrelated party or is transferred to a needy individual for significantly below fair market value in furtherance of the donee's charitable purpose (Copy B or C can serve as the contemporaneous written acknowledgment to the donor that is required to support the donor's tax deduction).

There are no specified monetary penalties for the late filing of Form 1098-C or the failure to file it. However, the failure to adhere to the filing deadlines could jeopardize the donor's tax deduction since (1) Copy B must be attached to a paper return filed by the donor; or (2) if the donor files electronically, Copy B must either be attached to Form 8453 and mailed to the IRS; or if the tax software permits, Form 1098-C can be included as a pdf attachment. Consequently, the practical penalty to a donee for costing a donor a charitable deduction could be loss of donor goodwill.

Stiff monetary penalties do apply if a false or fraudulent Form 1098-C is filed (IRC Sec. 6720). The form is presumed to be false or fraudulent if—

a. the donee indicated on Form 1098-C that the vehicle would not be sold before completion of material improvements or significant intervening use, or would be sold to a needy individual; and
b. the vehicle is, in fact, sold to a buyer other than a needy individual, without a significant intervening use or material improvements within six months of the date of contribution.

The penalty is the larger of $5,000 or the claimed value of the vehicle multiplied by the highest individual income tax rate (currently 37%).

If the sales price is overstated, the penalty is the larger of the gross proceeds actually received from the vehicle's sale or the sales price stated (in box 4c of Form 1098-C) multiplied by the highest individual tax rate.

Practical Consideration:

Charities that infrequently receive contributions that are potentially subject to Form 8282 reporting must maintain adequate records to track the status of those gifts during the entire three-year period following the contribution and should periodically remind responsible personnel of the reporting obligations.

Financial Assistance for Victims of Foreign Disasters

The disastrous fire that gutted the Notre Dame Cathedral is the latest high-profile disaster to prompt pledges of financial relief assistance from U.S. charities. Therefore, it is appropriate to review the reporting requirements U.S. donor organizations must satisfy when they provide foreign financial assistance but are not otherwise conducting activities in a foreign country. These requirements are detailed in the instructions to Parts II and III of Schedule F (Form 990).

Assistance to Foreign Organizations (Part II)

A U.S. charity must complete Part II of Schedule F if it makes more than $5,000 of grants and other assistance to any foreign organization or entity (including a foreign government) or to a U.S. organization or U.S. individual for providing grants or other assistance to a designated foreign organization.

Data Required. A donor organization must report certain information for each recipient organization that was given more than $5,000 total in grants or assistance during the donor's tax year, including the—

- purpose of the grant, described in specific terms (e.g., general support, school constructions, purchase of medical supplies, or provision of food and clothing).
- amount of the cash grant and how it was disbursed (or for organizations using the accrual method of accounting, the intended manner of cash disbursement), such as by cash payment, electronic funds transfer, check, or charge against funds on deposit at a financial institution.
- the amount of any non-cash assistance and a description of it (e.g., medical supplies or equipment, pharmaceuticals, or clothing). When the fair market value of the non-cash assistance cannot be readily determined, an appraised or estimated value must be provided.

For each grantee, the grantor organization must determine whether it is (1) recognized by the IRS as exempt under IRC Sec. 501(c)(3); (2) recognized as a charity by the foreign country in which it operates; or (3) is the equivalent of a public charity based upon a good faith determination. This equivalency determination can be based on the opinion of legal counsel. The grantor must provide the total number of other organizations that do not fit one of these three categories.

Assistance to Foreign Individuals (Part III)

Although the caption to Part III of Schedule F is "Grants and Other Assistance to Individuals Outside the United States," it is applicable only for assistance to *foreign* individuals (and not U.S. citizens living abroad) unless the assistance is directly to a U.S. citizen for the purpose of providing assistance to a designated foreign individual.

Assistance to foreign individuals requires that the grantor accumulate essentially the same data described previously for assistance to foreign organizations. In addition, assistance must be categorized by type, with the number of recipients for each type.

Assistance to both foreign organizations and to individuals requires a description of how the grantor monitors the use of the assistance. In recent years, a primary concern has been that funds sent overseas by U.S. charities could be used, directly or indirectly, to finance terrorist organizations. Although not required to be reported on Form 990, organizations should review certain lists before granting money to a foreign organization or individual. (See the May issue of this newsletter.) Consequently, a grantor's failure to adequately monitor the ultimate use of its assistance could invite scrutiny by the IRS.

Practical Consideration:

The loss of control over funds sent to a foreign organization or individual makes it imperative that the domestic grantor carefully vet the recipient beforehand to minimize potential fraud or other abuse in the use of the funds.

Tax Briefs

IRS TIGHTENS EIN APPLICATION PROCESS. Effective May 13, 2019, the IRS is allowing only individuals with either a Social Security number (SSN) or an individual tax identification number (ITIN) to request an Employer Identification Number (EIN) as the responsible party on the application. This change should provide greater security, increase transparency, and prohibit entities from using their EINs to obtain additional EINs. The instructions to Form SS-4 [Application for Employer Identification Number (EIN)] note that for a tax-exempt organization, the responsible party is generally the same as the *principal officer*, as defined in the Form 990 instructions. Changes to the responsible party are made by completing Form 8822-B (Change of Address or Responsible Party) within 60 days of a change. Tax professionals acting as third-party designees for entities may continue to complete online applications on behalf of their clients (IRS News Release IR-2019-58).

IRS MODERNIZATION PLAN UNDERWAY. The IRS has announced a six-year plan to improve services for all taxpayers by modernizing its information technology systems and building infrastructure to meet the needs of the tax system (FS-2019-9). The catalyst for this initiative is that the current piece-meal systems additions, in response to new complex tax laws and time constraints, have resulted in a complex technical system that is growing at an unsustainable level.

The ambitious goals of the modernization include (1) new simplified and proactive services for taxpayers; (2) providing IRS employees and taxpayers with a complete view of their interactions; (3) the adoption of innovative technologies and processes to reduce cost and manual effort; and (4) enhancing cybersecurity standards to protect taxpayer data.

AICPA Updates the *Not-for-Profit Entities* A&A Guide

The AICPA has updated its Audit and Accounting Guide, *Not-for-Profit Entities*, with conforming changes as of March 1, 2019 (Audit Guide). The Audit Guide applies to not-for-profit entities that meet the definition of a not-for-profit entity included in the Financial Accounting Standards Board (FASB) Accounting Standards Codification™ (ASC) glossary.

Hierarchy Status of Audit Guide

Accounting Guidance. The Audit Guide provides guidance on accounting, reporting, or disclosure matters that are not covered in the FASB ASC. Because only the FASB ASC is an authoritative source of GAAP, the accounting guidance included in the Audit Guide is nonauthoritative.

Such nonauthoritative financial accounting and reporting guidance is reviewed and approved by the AICPA's Financial Reporting Executive Committee (FinREC). In addition to discussing the requirements of GAAP in the ASC, the Audit Guide contains FinREC's understanding of industry practices. In some cases, FinREC may express a preference for certain practices.

Auditing Guidance. The auditing guidance included in the Audit Guide is considered an interpretive publication under AU-C Section 200. The Auditing Standards Board (ASB) has authority over interpretive publications, and auditors should consider them when planning and performing their audits. Auditors who don't follow interpretive publications should document how GAAS was complied with in the circumstances.

Contents of the Audit Guide

The most recent edition of the Audit Guide considers relevant accounting and auditing guidance contained in official pronouncements issued through March 1, 2019. This includes relevant guidance issued up to and including the following:

- ASU 2018-20, *Leases (Topic 842): Narrow-Scope Improvements for Lessors*.
- SAS 133, *Auditor Involvement With Exempt Offering Documents*, and auditing interpretations issued through March 1, 2019.
- SOP 17-1, *Performing Agreed-Upon Procedures Related to Rated Exchange Act Asset-Backed Securities Third-Party Due Diligence Services as Defined by SEC Release No. 34-72936*.

As usual, the Audit Guide reflects relevant guidance that is issued but not effective as of March 1, 2019, but that will become effective for fiscal years ending on or before June 30, 2019, as shaded gray text with a footnote indicating the effective date of the new guidance. Such guidance primarily is comprised of ASU 2016-01, *Financial Instruments—Overall (Subtopic 825-10): Recognition and Measurement of Financial Assets and Financial Liabilities*, and ASU 2018-08, *Not-for-Profit Entities (Topic 958): Clarifying the Scope and the Accounting Guidance for Contributions Received and Contributions Made*.

Appendix A of the Audit Guide, "Implementation Guidance for Accounting Standards Update (ASU) No. 2014-09, *Revenue from Contracts with Customers (Topic 606)*," provides implementation guidance to accompany Chapter 12, "Revenues and Receivables From Exchange Transactions." Selected text from the not-for-profit chapter of the AICPA Audit and Accounting Guide, *Revenue Recognition*, is included.

Appendix B of the Audit Guide presents an informational discussion, "The New Revenue Recognition Standard: FASB ASC 606." This material is for reference only and "has not been reviewed, approved, disapproved, or otherwise acted on by any senior committee of the AICPA and does not represent official positions or pronouncements of the AICPA."

Changes from the Prior Edition of the Audit Guide

The Audit Guide includes a table, Appendix F, that contains a schedule of changes identifying areas in the text and footnotes of the Audit Guide that were changed from the previous edition.

Practical Consideration:

The March 2019 edition of the Audit Guide is available on Checkpoint or may be ordered from the AICPA at (888) 777-7077 or **www.aicpastore.com**.

Implementation of ASU 2016-18

With all of the focus on implementing ASU 2016-14, *Not-for-Profit Entities (Topic 958), Presentation of*

Financial Statements of Not-for Profit Entities, organizations should not forget about implementing other ASUs. In 2016, the FASB issued ASU 2016-18, *Statement of Cash Flows (Topic 230): Restricted Cash*, which amends the guidance in FASB ASC 230. Although the guidance in ASU 2016-18 is not effective till fiscal years beginning after December 15, 2018 (for calendar year end organizations, it is effective for the fiscal year beginning January 1, 2019, and for June 30th year end organizations, it is effective for the fiscal year beginning July 1, 2019), organizations may want to consider implementing early.

Practical Consideration:

Organizations that choose to early implement ASU 2016-18 must adopt *all* of the provisions included in the ASU.

What's Included in ASU 2016-18

The requirements of ASU 2016-18 include:

- Cash and cash equivalent balances in the statement of cash flows should include amounts that are considered restricted cash and restricted cash equivalents.
- When the statement of financial position includes more than one line item for cash, cash equivalents, restricted cash, and restricted cash equivalents, a reconciliation of the totals in the statement of financial position and the statement of cash flows must be disclosed either on the face of the statement of cash flows or in the notes to the financial statements.
- Changes in restricted cash and restricted cash equivalents that result from transfers between cash, cash equivalents, and restricted cash and restricted cash equivalents should not be presented as cash flow activities in the statement of cash flows.
- Material balances of amounts generally described as restricted cash and restricted cash equivalents must disclose information about the nature of the restrictions.

Practical Consideration:

The ASU does not define the terms *restricted cash* and *restricted cash equivalents* but states that an organization should continue to provide appropriate disclosures about its accounting policies pertaining to restricted cash in accordance with GAAP.

Effective Date and Transition Requirements

The amendments in ASU 2016-18 are effective for annual financial statements issued for fiscal years beginning after December 15, 2018, and interim periods within fiscal years beginning after December 15, 2019. Early adoption is permitted, including implementing in an interim period.

An organization should apply the amendments of ASU 2016-08 retrospectively to all periods presented in the financial statements. Organizations considering changing their accounting policy for determining restricted cash and restricted cash equivalents will apply the guidance included in FASB ASC 250 and make the following disclosures:

- The nature of and reason for the change in accounting principle, which should include an explanation of why the new accounting principle is preferable.
- If prior-period information is presented, a description of the information that has been retrospectively adjusted.
- If the organization issues interim financial statements, the required disclosures in the financial statements of both the interim period of the change and the annual period of the change should be provided.

Practical Consideration:

PPC's Guide to Nonprofit GAAP and *PPC's Guide to Preparing Nonprofit Financial Statements* provide detailed guidance on ASU 2016-18.

More Lease Guidance for Lessors and Lessees

As the effective dates for ASU 2016-02, *Leases (Topic 842)* near, the FASB issued a few ASUs to clarify some lease accounting details and address implementation questions. The latest such guidance was issued by the FASB in March 2019 as ASU 2019-01, *Leases (Topic 842): Codification Improvements*, to address two issues for lessors and a transition issue for both lessees and lessors.

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Lessors: Fair Value and Statement of Cash Flows

ASU 2019-01 aligns the guidance for fair value of the underlying asset by lessors that are not manufacturers or dealers in FASB ASC 842 with existing guidance. The fair value of the underlying asset at the start of the lease is its cost after considering any applicable discounts; however, if a significant amount of time has passed between the acquisition of the underlying asset and the commencement of the lease, the definition of fair value in FASB ASC 820, *Fair Value Measurement*, should be applied. The other guidance for lessors involves the presentation on the statement of cash flows for sales-type and direct financing leases originated by financial services entities.

Lessors and Lessees: Disclosures

Finally, ASU 2019-01 explicitly exempts both lessees and lessors from applying the requirements in FASB ASC 250-10-50-3 to provide certain interim disclosures in the fiscal year in which the new leases standards are adopted.

Effective Date and Transition Requirements

The effective date and transition requirements for ASU 2019-01 for entities that haven't adopted FASB ASC 842 before the issuance of ASU 2019-01 are the same as the effective date and transition requirements in ASU 2016-02 (for example, January 1, 2019, for calendar year-end public business entities and certain nonprofit organizations, and January 1, 2020, for most calendar year-end nonprofit organizations).

For entities that have adopted FASB ASC 842 before the issuance of ASU 2019-01, the effective date of ASU 2019-01 is the same as the original effective date of FASB ASC 842 for the entity. Alternatively, the entity has the option to apply the amendments in either the first reporting period ending after the issuance of this ASU (for example, December 31, 2018, for calendar year-end entities) or in the first reporting period beginning after the issuance of this ASU (for example, January 1, 2019).

Practical Consideration:

ASU 2019-01 is available at **www.fasb.org** and on Checkpoint at **checkpoint.riag.com**.

Auditing Brief

AICPA DELETING RECENTLY-ISSUED Q&A 8100.03. In March 2019, the AICPA revised Q&A 8100.03, *Using Current Auditing Standards for Audits of Prior Periods*, with the goal of providing some clarity on which auditing standards apply when performing an audit. Evidently, there was some confusion amongst practitioners after the AICPA released the revised Q&A. Due to some unintended misinterpretation of the nonauthoritative guidance in the Q&A, the AICPA announced that it would delete Q&A 8100.03 by the end of May 2019.