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September 7, 2007

Form 990 Redesign
ATTN: SE:T:EO
1111 Constitution Ave., N.W.
Washington, DC 20224.

To Whom It May Concern:

The AMC Institute, on behalf of its 160 association management company members, submits the following comments on the June 14, 2007 draft redesigned Form 990, *Return of Organization Exempt from Income Tax*.

The AMC Institute

The AMC Institute is a Section 501(c)(6) association whose membership consists of association management companies, commonly referred to as "AMCs." An AMC is a for-profit business that provides professional management and administrative services to nonprofit organizations, primarily trade associations and professional societies. The AMC business model is based on the concepts of shared resources, including personnel, and bringing the talent to bear based on the needs of the association client. The typical AMC applies shared resources across a variety of association clients by applying infrastructure and staff skilled in operations, strategic planning, meeting planning, education and training, codes and standards, government and public relations, marketing, website development and other functions.

There are many benefits to exempt organizations that utilize AMCs, including:

- Allowing association leaders to concentrate on policy issues instead of administrative tasks;
- Advising volunteer leaders on best practices and appropriate governance procedures;
- Providing an affordable, high degree of professionalism, management expertise and technology through the concept of shared resources;
- Customizing staff activity to meet association needs;
- Maintaining continuity of business operation during changes in leadership and staff; and

- Providing cost-effective solutions to personnel, equipment, facilities, and budget considerations.

Collectively, AMC Institute members serve over 3,000 associations and other nonprofit, exempt organizations.

Comments on the Draft Redesigned Form 990

The redesign and enhancement of the Form 990 is an important activity that the AMC Institute strongly supports. Our comments are intended to promote, rather than impede, the Internal Revenue Service's efforts in this regard and are consistent with the principles identified by the IRS as guiding this initiative - enhancing transparency, promoting tax compliance, and minimizing the burden on the filing organization.

A. Reporting of Management Company Fees:

Part III, Section B, items 5, 5e, and 5f

Part V, item 11a

Our first comment is that we strongly urge the IRS to maintain the approach adopted in the draft redesign for the reporting of fees paid to management companies and, in particular, for reflecting the relationship between an individual who is officer, director, or trustee of the exempt organization and also serves as in an officer, director, owner or similar capacity for a management company doing business with the exempt organization.

Without question one of the most significant aspects of the proposed redesigned Form 990 is the resolution of a problem that has persisted since at least 2000. This is the possibility that a key employee of an exempt organization could attempt to avoid reporting his or her compensation on the Form 990 by setting up a bogus, for-profit entity and becoming an "employee" of that entity. The IRS initially proposed to address this kind of scheme by adding a new instruction to the 2000 Form 990 requiring exempt organizations to characterize the fee paid to a management company as the "compensation" of the individual management company employee who serves as an officer or director of the exempt organization.

Following complaints from the AMC and association communities that such an approach was fundamentally flawed, the IRS issued Announcement 2001-33, which, in addition to seeking comment on the instruction, allowed exempt organizations to list the name of the management company in Part V of the Form 990 (rather than the management company employee), along with the management fee.

But now the draft redesign has adopted an alternative approach that is decidedly preferable. Pursuant to item 5 of Part III, Section B, if there is any person who is (or was) an officer, director, or trustee of the exempt organization within the past five years, and,

pursuant to section 5e, is also an officer, director, owner, key employee, or similar insider of any entity doing business with the exempt organization, such person's name must be disclosed in section 5f along with the any fee paid by the exempt organization to the entity. This effectively prevents use of a bogus, separate entity to hide compensation.

Further, the statement in the draft instructions that the information to be reported in item 5f "concerns only the relationship between the organization and the entity that is doing business with the organization" and therefore "compensation or other payments from such entity to the organization's listed persons" is not to be reported, conclusively resolves the issue of the proper interplay between reporting management company fees and listing management company personnel who serve as officials of the exempt organization.

Finally, the reporting of fees paid to management companies is now addressed in a direct and unequivocal manner: they are to be disclosed in Part V, item 11a, "Fees for services (non-employee) Management."

We strongly recommend that the IRS maintain these provisions and not make any changes or adjustments. Comments submitted by others recommending that the IRS regress on this issue, and in particular advocate a return to the approach reflected in the old Form 990 instruction, are, frankly, uninformed and ill-advised.

B. Filing Threshold

The IRS is proposing to increase the filing threshold for the Form 990 from \$25,000 in annual gross revenue to \$100,000 and total assets of \$250,000 or more at the end of the year.. While this is favorable and logical, the AMC Institute recommends that this be increased to \$500,000 in gross revenue and total assets of \$250,000 or more at the end of the year. for Section 501(c)(6) trade associations and for Section 501(c)(3) professional membership societies.

There is of course a clear distinction between bona fide membership organizations and charitable organizations, and they should not be treated as being identical for reporting purposes. The reasons for enhancing the reporting requirements of charitable organizations, such as through this redesign of the Form 990, are: (a) to protect charitable donors, and (b) to prevent misuse of charitable assets. These concerns do not apply to true industry/professional membership organizations. Indeed, it is no coincidence that almost all, if not in fact all, scandals and other calumny in recent, or even not-so-recent, memory in the exempt sector involved organizations other than trade associations and professional societies.

One consistent observation of those seeking greater accountability in the exempt organization sector is that charities lack members, who are analogous to shareholders. As recently articulated by one author, "the overwhelming majority of nonprofit corporations do not have voting members ... [and this] ... lack of voting members significantly

contributes to an accountability vacuum that plagues nonprofit boards.”¹ Significantly, trade associations and professional membership societies do not share this problem; they have active, voting members who elect, and can remove, the board of directors.

Trade associations are easily distinguishable based on their section 501(c)(6) tax classification. For professional societies exempt under section 501(c)(3), simple but strict criteria could be established to ensure they are, in fact, member-controlled.²

While we understand that the IRS has stated publicly that it will not prepare a separate Form 990 for trade associations and other membership organizations, the revenue threshold is a simple and easy opportunity to finally recognize the distinction between these kinds of exempt organizations and charitable organizations.

Equally important is the strain this revised Form 990 will place on smaller associations, which make up a large percentage of AMC clients. Without question, the increased costs associated with gathering, organizing, and reporting the information mandated by the Form 990 will be significant once this revised Form becomes effective. Detailed allocations for activities such as Board and committee meetings, fundraising, and international operations are prime examples of new, time-consuming obligations. These and other requirements will further burden smaller associations already struggling with existing mandates, such as tracking and allocating time and expenses to legislative and unrelated business activities. And of course this follows closely the sharp increase in audit fees that all exempt organizations have experienced due to the changes in audit practices in the wake of the Sarbanes-Oxley Act.

C. Miscellaneous Items

Part III, Question 9

This question asks: “Does the organization have an audit committee?” Our concern is that this question suggests that an organization must have an audit committee in order to conform to best practices. In fact, the establishment of such a committee is not called for by good governance principles. Certainly there should be some “body” that performs the functions of an audit committee, but this can just as easily be accomplished by an executive committee or a finance committee. Therefore, we suggest that this question be changed, for example, to say: “Does the organization have an audit committee or a body that performs the functions of an audit committee?”

¹ *What's Good For The Goose Is Not Good For The Gander: Sarbanes-Oxley-Style Nonprofit Reforms*, 105 Mich. L. Rev. 1981, 1986 (June 2007).

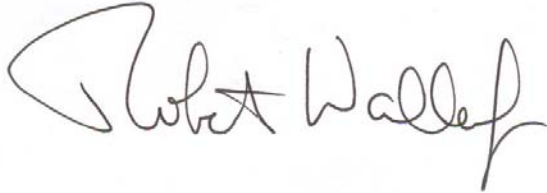
² An example of a definition of a professional society might be: “An organization consisting of individuals who have occupations and/or advanced degrees in a similar, recognized profession or discipline; are required to pay regular dues; and who enjoy the full rights of participating in the organization, including the right to elect, and remove, at least a majority of the governing body.”

Part III, Question 10

This question asks: “Did the organization’s governing body review this Form 990 before it was filed?” We respectfully disagree with the suggestion that a best practice is for boards to review the Form 990. Indeed, we are unaware of a single association board that reviews the Form 990 in the normal course of business, nor are we aware of any authority on nonprofit governance advocating this practice. In fact, likely very few for-profit companies review their tax returns; even the Sarbanes-Oxley Act does not require or even encourage this exercise. Further, having a board review the Form 990 would be hugely time consuming and entirely unnecessary. An association that employs comprehensive financial oversight according to existing best practices will ensure sound financial management. Imposing the additional burden of reviewing the organization’s tax return will take up valuable time of boards without adding substantive protection for the organization.

Thank you again for this opportunity to submit comments regarding the draft redesigned Form 990.

Sincerely,

A handwritten signature in black ink that reads "Robert Waller, Jr." The signature is written in a cursive style with a large, sweeping initial 'R'.

Robert Waller, Jr., CAE
President
AMC Institute