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## Relationship Reporting on the Form 990

The Form 990 to be filed by tax-exempt organizations for calendar year 2008 and thereafter asks detailed questions about relationships between board members and officers, as well as questions about relationships between the reporting organization and board members, officers, and others. The form includes detailed instructions defining the relationships that must be reported. (Note that these questions are not included on the Form 990-PF filed by private foundations.) To illustrate the complexity of answering these questions, this document outlines the analysis that a reporting organization might undertake to obtain the needed information for the 2008 Form 990. (This is the form to be filed for calendar year 2008 and fiscal years starting in 2008 and ending in 2009.) Of course, all details of definitions and combinations of circumstances aren't included here, and those details can change the result. Finally, while the questions asked on the 2009 Form 990 are the same as on the 2008 form, the 2009 definitions have not yet been released. Changes in the definitions can significantly change the analysis.

- I.** Determine Related Organizations For Reporting Year. A related organization may be:
  - A.** An organization that controls the reporting organization;
  - B.** An organization that is controlled by the reporting organization;
  - C.** An organization that is controlled by the same person(s) that control the reporting organization;
  - D.** A Section 509(a)(3) organization supporting the reporting organization; or
  - E.** If the reporting organization is a Section 509(a)(3) organization, an organization that is a supported organization of the reporting organization

**II. Determine Directors, Officers, Key Employees, And Highest Compensated Employees For Reporting Year**

**A. Directors<sup>1</sup>**

1. Voting directors only
2. In office at some time during reporting year
3. Director of disregarded entity (single-member limited liability company owned by reporting organization) is not treated as director of reporting organization

**B. Officers**

1. Officer is a person elected or appointed to manage daily operations, such as a president, vice-president, secretary or treasurer
2. An organization's top management official (the person who has ultimate responsibility for implementing the decisions of the governing body or for supervising the management, administration, or operation of the organization) and top financial official (the person who has ultimate responsibility for managing the organization's finances) are officers
3. In office at some time during reporting year
4. Officer of disregarded entity is not treated as officer of reporting organization

**C. Key Employees**

1. Key employee is defined as an employee who is not a director or officer who meets all of the following:
  - a. The employee's reportable compensation (see II.E.) from reporting organization and any related organizations for the calendar year ending in the reporting year is in excess of \$150,000
  - b. The employee
    - (1) Has responsibilities similar to officers or directors, or
    - (2) Manages a discrete segment or activity that makes up 10% or more of the organization's activities, or

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<sup>1</sup> Includes members of the governing body, whether called directors, trustees, or another name

- (3) Has or shares authority to control or determine 10% or more of capital expenditures, operating budget or employee compensation

c. The employee is one of the 20 employees satisfying both of the above tests with the highest reportable compensation from the reporting organization and related organizations for the calendar year ending in the reporting year

2. Employees of disregarded entities are tested for key employee status against reporting organization as a whole, including disregarded entities
3. Key employees are determined for the calendar year ending in the reporting year

**D. Five highest compensated employees (HCEs)**

1. Determine employees who received reportable compensation (see II.E.) of more than \$100,000 from the reporting organization and any related organizations for the calendar year ending in the reporting year and who are not directors, officers, or key employees
2. Rank employees by their reportable compensation for the calendar year ending in the reporting year; the five highest are reportable HCEs
3. Employees of disregarded entities are tested for “high five” status against employees of the reporting organization as a whole, including disregarded entities

**E. Determining “Reportable Compensation”**

1. Reportable compensation is compensation reported on W-2 box 5 (Medicare wages) or Form 1099 box 7 (nonemployee compensation) for the calendar year ending within the reporting year
2. In determining whether reportable compensation exceeds \$100,000 or \$150,000 from reporting organization and all related organizations, compensation under \$10,000 paid by a related organization can be disregarded

**F. Five Highest Compensated Independent Contractors**

1. The reporting organization must list the five highest paid independent contractors receiving more than \$100,000 in compensation for services

2. Note, however, that in measuring the amount of compensation for the \$100,000 threshold, compensation from the reporting organization only, and not from related organizations, is counted
3. Independent contractors' business or family relationships with directors, officers, key employees and HCEs are not requested
4. Compensation paid to independent contractors is not requested on Schedule J

**III. Determine Reportable Former Directors, Officers, Key Employees, and HCEs**

**A. Reportable Former Directors**

1. Former director who received more than \$10,000 of reportable compensation in capacity as director from reporting organization and any related organizations during the calendar year ending in the reporting year
2. Former director is one who was or should have been reported in that capacity for one or more of the five years before the reporting year

**B. Reportable Former Officers**

1. Former officer who received more than \$100,000 of reportable compensation from reporting organization and any related organizations during the calendar year ending in the reporting year
2. Former officer is one who was or should have been reported in that capacity for one or more of the five years before the reporting year

**C. Reportable Former Key Employees**

1. Former key employee who received more than \$100,000 of reportable compensation from reporting organization and any related organizations during the calendar year ending in the reporting year
2. Former key employee is one who was or should have been reported in that capacity for one or more of the five years before the reporting year

**D. Reportable Former HCEs**

1. Former HCE is an individual who was or should have been reported as an HCE for one or more of the five years before the reporting year according to instructions then in place
2. Former HCE is reportable if received more than \$100,000 of reportable compensation from reporting organization and any related organizations during the calendar year ending in the reporting year, if:
  - a. Individual was not an employee of the reporting organization at any time during the calendar year ending in the reporting year; but
  - b. The individual's reportable compensation for the reporting year would place the individual among the organization's current five highest compensated employees if the individual were an employee during the calendar year ending in the reporting year

**IV. Determine Reportable “Intraboard” Relationships**

- A.** What is Reportable: director, officer, or key employee has family or business relationship with another director, officer, or key employee
- B.** Definition of Family Member
  - 1. Spouse, ancestors, siblings, children, grandchildren, great grandchildren, and spouses of siblings, children, grandchildren, and great grandchildren
- C.** Definition of Business Relationship Between Two Persons
  - 1. One person is employed by the other in a sole proprietorship or by an organization with which the second person is associated as a director, officer, key employee, or greater-than-35% owner; or
  - 2. One person is transacting business with the second person (other than in ordinary general public course) in transactions involving transfers of cash or property valued in excess of \$10,000 in the aggregate during the reporting organization’s year
    - a. Transactions may be contracts of sale, lease, license, loan, performance of services, or other transactions
    - b. Transaction of business may be direct or indirect
    - c. Indirect transactions are transactions with an organization with which one of the two persons is associated as a director, officer, key employee, or greater-than-35% owner; or
  - 3. The two persons are each at least one of the following with respect to the same business or investment entity: a director, officer, or greater than 10% owner
  - 4. Ownership includes indirect ownership

**V.** Determine Schedule L Part IV Reportable Transactions (business transactions involving interested persons)

**A.** Definition of Interested Person

1. Current or former directors, officers, or key employees identified in II or III above
2. Family members of individuals in V.A.1
3. An entity more than 35% owned by persons in V.A.1 or 2
4. A non-exempt entity in which an individual in V.A.1 was serving at the time of the transaction as a director, officer, key employee, or in which such an individual or a family member was a greater than 5% partner of a partnership, or greater than 5% shareholder of a professional corporation
5. Note that the definition of “interested person” for Schedule L Part IV does not include current or former HCEs or independent contractors

**B.** Definition of Business Transactions (a subset of “business relationships” as defined in IV.C.)

1. Contracts of sale, lease, license, loan, performance of services, or other transactions
2. The organization and the interested person are both a greater than 10% owner in an entity taxed as a partnership
3. A transaction between the reporting organization and a management company of which a person who was a director, officer, or key employee of the reporting organization within the past five reporting years owns (directly or indirectly) more than 35% or is a director, officer, or key employee

**C.** Definition of Family Member

1. Spouse, ancestors, siblings, children, grandchildren, great grandchildren, and spouses of siblings, children, grandchildren, and great grandchildren

**D.** What is Reportable

1. Business transactions between the reporting organization and the interested person if total payments exceeded \$100,000 during the reporting period

2. A single business transaction between the organization and the interested person if the payment during the reporting period exceeded the greater of \$10,000 or 1% of the reporting organization's total revenues
3. Payments of reportable compensation in excess of \$10,000 during the reporting year by the reporting organization to family members of current directors, officers, or key employees of the reporting organization (whether as employees or independent contractors)
4. In each case, the time at which the transaction was entered into is irrelevant

**VI.** Determine Independent Directors for Part VI, Section A, Line 1b

**A.** Definition of Independent Director

1. Was not compensated during organization's reporting year as an officer or other employee of the reporting organization or its related organizations;
2. Did not receive total compensation or other payments exceeding \$10,000 during the organization's reporting year from the reporting organization or its related organizations as an independent contractor other than
  - a. Reimbursement of expenses under accountable plan or
  - b. Reasonable compensation for services provided in capacity of director;
3. Was not involved in a transaction with the reporting organization, directly or indirectly, that
  - a. Must be reported on Schedule L for the organization's reporting year, or
  - b. Would have been reportable on Schedule L if the related organization had to file Schedule L; and
4. Did not have a family member involved in a transaction with the reporting organization, directly or indirectly, that
  - a. Must be reported on Schedule L for the organization's reporting year, or
  - b. Would have been reportable on Schedule L if the related organization had to file Schedule L

**B.** Schedule L Reportable Transactions

1. A business transaction with an interested person as defined in V.A.
2. An excess benefit transaction under Section 4958
3. A organization loan to or from
  - a. Current or former directors, officers, key employees, and HCEs (all as identified in II or III),
  - b. Disqualified persons as defined in Section 4958, or

- c. If the reporting organization is a Section 509(a)(3) organization, substantial contributors or their family members or controlled entities
- 4. Grants or assistance (e.g. scholarships) to
  - a. Current or former directors, officers, key employees, and HCEs (all as identified in II or III);
  - b. Substantial contributors;
  - c. Members of the organization's grant selection committee; and
  - d. Family members of, or entities more than 35% owned by, any of the persons defined in VI.B.4.a-c.

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