

MEMO



COUNCIL ON FOUNDATIONS

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Date: January 14, 2005

To: Council on Foundations Members

From: Kelly Shipp Simone, Staff Attorney

Re: Mandatory Electronic Filing Regulations

This week the IRS announced another step in their e-filing initiative: temporary regulations for mandatory electronic filing of Forms 990 and 990-PF for some exempt organizations.

Applicability for Foundations

Voluntary electronic filing of Form 990 has been available since last year and voluntary electronic filing of Form 990-PF was just made available on January 10, 2005. The new regulations address which organizations will be *required* to e-file. These temporary regulations apply to a private foundation or public charity if the organization:

- (1.) Is required to file at least 250 returns during the calendar year ending with or within the organization's taxable year;
- (2.) Was required to file Form 990 or Form 990-PF the preceding taxable year;
- (3.) Was in existence for at least one calendar year prior to the due date (excluding extensions) of its Form 990 or Form 990-PF; and
- (4.) Is either a public charity that meets certain asset levels as described below or is a private foundation.

This requirement of mandatory e-filing is being phased in over the next two years in accordance with the following schedule:

Entities	Applicability Date
Public charities with assets of \$100 million or more	Taxable years ending on or after December 31, 2005
Public charities with assets of \$10 million or more	Taxable years ending on or after December 31, 2006
Private foundations	Taxable years ending on or after December 31, 2006

Defining "Returns"

To determine the number of returns an exempt organization files each year, the organization should include *all* returns that it is required to file with the IRS during the applicable calendar year. This includes information returns (e.g., Form 990), income tax returns (e.g., Form 990-T), excise tax returns (e.g., Form 4720) and employment tax returns (e.g., Form W-2). The

calculation of returns excludes filing of amended or corrected returns. The temporary regulations provide the following example to illustrate this requirement:

In 2006, Organization T, with total assets in excess of \$10 million, is required to file one Form 990, "Return of Organization Exempt from Income Tax," 200 Forms W-2 "Wage and Tax Statement," and 60 Forms 1099-MISC, "Miscellaneous Income." Because T is required to file 261 returns during the calendar year, T must file its 2006 Form 990 electronically.

Determining Asset Size

Asset size for public charities is determined based upon the total assets reported at the end of the taxable year on Form 990. Public charities with assets less than \$10 million will not be required to e-file under the temporary regulation. Private foundations will be required to e-file their Form 990-PF regardless of asset size if all other requirements listed above are met.

Failure to E-File

If an organization is required to e-file Form 990 or Form 990-PF and does not file electronically, the organization is considered to have failed to file the return. Absent a showing of reasonable cause, the organization will be subject to financial penalties.

Final Regulations

In addition to announcing the temporary regulations, the IRS released proposed regulations on mandatory e-filing identical in substantive content to the temporary regulations. The IRS is soliciting written comments and participants for a public hearing prior to the enactment of final regulations. All written comments and requests to speak at the public hearing must be received by February 28, 2005.

The Council is in the process of preparing comments on the proposed regulations. If you have any questions or for more information, please contact Kelly Shipp Simone (simok@cof.org or 202/467-0464).

Additional Resources

- The IRS announcement with links to the temporary and proposed regulations is available at <http://www.irs.gov/charities/article/0,,id=133968,00.html>
- More information on e-filing is available on the website of EDIN (Electronic Data Initiative for Nonprofits) at www.edinonline.org and through the IRS at <http://www.irs.gov/efile/article/0,,id=108211,00.html>