

Annual NFP Tax Update



PRESENTED BY: NOELLE ALBERTO // SENIOR MANAGER

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Noelle has prepared returns for a variety of not-for-profit clients, including private foundations, private colleges and large hospital systems, but her primary focus is providing tax services to exempt organizations and health care entities. She has prepared federal annual returns, IRS applications for exemption and other IRS correspondence.

She is a member of the American Institute of CPAs and Texas Society of Certified Public Accountants.

Noelle is a 2013 graduate of Southern Methodist University, Dallas, Texas, with a B.S. degree and an M.S. degree in accounting.

Nonprofit Areas of Interest

- NFP tax compliance and consulting
- 501(r) consulting
- Unrelated business income consulting
- For profit subsidiary tax compliance, planning and consulting
- Employee classification/payroll tax consulting
- Public support test consulting
- State, local and international tax compliance

OBJECTIVE

- » Discuss key focus areas of the Form 990 and Form 990-T (Audit Risk)
- » Discuss strategies and priority areas of Schedule H and maintaining 501(r) compliance
- » Discuss current tax updates
 - » Employee Retention Credit
 - » IRC 4960 Excise tax on Executive Compensation
- » Q&A



3

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DATA-DRIVEN DECISION MAKING

- » As outlined in their TE/GE Priorities guidance, the IRS has committed to integrating data into their processes and procedures
- » E-file risk modeling
 - » Case selection model for examinations
 - » Approximately 250 queries focusing on the risky areas of Form 990 & related schedules
 - » Best practice questions
 - » Spot inconsistencies
 - » Identify missing items
 - » Historically have had approx. 90% change rate
 - » In 2016, fully implemented the process – most audits will be selected from this process going forward



4

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Notable 990 Items - Payroll Tax

Form 990 (2017)

Page 5

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V ☐

		Yes	No
1a	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable		
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable		
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?		
2a	Enter the number of employees reported on Form W-3, Transmittal of Wage and Tax Statements, filed for the calendar year ending with or within the year covered by this return		
b	If at least one is reported on line 2a, did the organization file all required federal employment tax returns?		
Note. If the sum of lines 1a and 2a is greater than 250, you may be required to e-file (see instructions)			

5

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Notable 990 Items - Payroll Tax

Form 990 (2017) Page 10

Part IX Statement of Functional Expenses

Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX ☐

Do not include amounts reported on lines 66, 76, 86, 96, and 106 of Part VIII.

	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1	Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21			
2	Grants and other assistance to domestic individuals. See Part IV, line 22			
3	Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16			
4	Benefits paid to or for members			
5	Compensation of current officers, directors, trustees, and key employees			

9	Other employee benefits				
10	Payroll taxes				
11	Fees for services (non-employees):				
	<ul style="list-style-type: none"> a Management b Legal c Accounting d Lobbying e Professional fundraising services. See Part IV, line 17 f Investment management fees g Other (If the 11g amount exceeds 10% of the 25, column (A) amount, list the 11g expenses on Schedule O) 12 Advertising and promotion 13 Office expenses 14 Information technology 15 Royalties 16 Occupancy 17 Travel 18 Payments of travel or entertainment expenses for any federal, state, or local public officials 19 Conferences, conventions, and meetings 20 Interest 21 Payments to affiliates 22 Depreciation, depletion, and amortization 				

6

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Notable 990 Items - Payroll Tax

Form 990 (2017)

Page **5**

Part V Statements Regarding Other IRS Filings and Tax Compliance

Check if Schedule O contains a response or note to any line in this Part V ☐

1a	Enter the number reported in Box 3 of Form 1096. Enter -0- if not applicable	1a			Yes	No
b	Enter the number of Forms W-2G included in line 1a. Enter -0- if not applicable	1b				
c	Did the organization comply with backup withholding rules for reportable payments to vendors and reportable gaming (gambling) winnings to prize winners?	1c				

7

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Notable 990 Items - Payroll Tax

Form 990 (2017) Page **10**

Part IX Statement of Functional Expenses
Section 501(c)(3) and 501(c)(4) organizations must complete all columns. All other organizations must complete column (A).

Check if Schedule O contains a response or note to any line in this Part IX ☐

Do not include amounts reported on lines 66, 76, 86, 96, and 106 of Part VIII.

	(A) Total expenses	(B) Program service expenses	(C) Management and general expenses	(D) Fundraising expenses
1 Grants and other assistance to domestic organizations and domestic governments. See Part IV, line 21				
2 Grants and other assistance to domestic individuals. See Part IV, line 22				
3 Grants and other assistance to foreign organizations, foreign governments, and foreign individuals. See Part IV, lines 15 and 16				
4 Benefits paid to or for members				
5 Compensation of current officers, directors, trustees, and key employees				

11 Fees for services (non-employees):

a Management				
b Legal				
c Accounting				
d Lobbying				
e Professional fundraising services. See Part IV, line 17				
f Investment management fees				
g Other. (If line 11g amount exceeds 10% of line 25, column (A) amount, list line 11g expenses on Schedule O.)				

12 Advertising and promotion				
13 Office expenses				
14 Information technology				
15 Royalties				
16 Occupancy				
17 Travel				
18 Payments of travel or entertainment expenses for any federal, state, or local public officials				
19 Conferences, conventions, and meetings				
20 Interest				
21 Payments to affiliates				
22 Depreciation, depletion, and amortization				

8

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Notable 990 Items – Effective Governance Targets

Form 990 (2015) Page 6

Part VI Governance, Management, and Disclosure For each "Yes" response to lines 2 through 7b below, and for a "No" response to line 8a, 8b, or 10b below, describe the circumstances, processes, or changes in Schedule O. See instructions. Check if Schedule O contains a response or note to any line in this Part VI.

Section A. Governing Body and Management

1a Enter the number of voting members of the governing body at the end of the tax year **1a**

Yes	No

If there are material differences in voting rights among members of the governing body, or if the governing body delegated broad authority to an executive committee or similar committee, explain in Schedule O.

b Enter the number of voting members included in line 1a, above, who are independent **1b**

Yes	No

8 Did the organization contemporaneously document the meetings held or written actions undertaken during the year by the following:

a The governing body? **8a**

Yes	No

b Each committee with authority to act on behalf of the governing body? **8b**

Yes	No

10b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?

11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?

12a Describe in Schedule O the process, if any, used by the organization to review this Form 990.

12b Did the organization have a written conflict of interest policy? If "No," go to line 13.

c Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?

c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done **12c**

Yes	No

13 Did the organization have a written whistleblower policy? **13**

Yes	No

14 Did the organization have a written document retention and destruction policy? **14**

Yes	No

15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?

a The organization's CEO, Executive Director, or top management official **15a**

Yes	No

b Other officers or key employees of the organization **15b**

Yes	No

If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).

16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year? **16a**

Yes	No

b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements? **16b**

Yes	No

9

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Notable 990 Items – Effective Governance Targets

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Service)

- 10a** Did the organization have local chapters, branches, or affiliates?
- b** If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?
- 11a** Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?
- b** Describe in Schedule O the process, if any, used by the organization to review this Form 990.
- 12a** Did the organization have a written conflict of interest policy? If "No," go to line 13
- b** Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?
- c** Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done
- 13** Did the organization have a written whistleblower policy?
- 14** Did the organization have a written document retention and destruction policy?
- 15** Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?
- a** The organization's CEO, Executive Director, or top management official
- b** Other officers or key employees of the organization
- If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).
- 16a** Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?
- b** If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?

Notable 990 Items – Compensation Reporting

Form 990 (2017)

Page 7

Part VII Compensation of Officers, Directors, Trustees, Key Employees, Highest Compensated Employees, and Independent Contractors

Check if Schedule O contains a response or note to any line in this Part VII ☐

Section A. Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

1a Complete this table for all persons required to be listed. Report compensation for the calendar year ending with or within the organization's tax year.

- List all of the organization's **current** officers, directors, trustees (whether individuals or organizations), regardless of amount of compensation. Enter -0- in columns (D), (E), and (F) if no compensation was paid.

- List all of the organization's **current** key employees, if any. See instructions for definition of "key employee."

- List the organization's five **current** highest compensated employees (other than an officer, director, trustee, or key employee) who received reportable compensation (Box 5 of Form W-2 and/or Box 7 of Form 1099-MISC) of more than \$100,000 from the organization and any related organizations.

- List all of the organization's **former** officers, key employees, and highest compensated employees who received more than \$100,000 of reportable compensation from the organization and any related organizations.

- List all of the organization's **former** directors or trustees that received, in the capacity as a former director or trustee of the organization, more than \$10,000 of reportable compensation from the organization and any related organizations.

List persons in the following order: Individual trustees or directors; Institutional trustees; officers; key employees; highest compensated employees; and former such persons.

☐ Check this box if neither the organization nor any related organization compensated any current officer, director, or trustee.

(A) Name and Title	(B) Average hours per week (list and hours for related organizations below dotted line)	(C) Position (do not check more than one box, unless person is both an officer and a director/trustee)	(D) Reportable compensation from the organization (W-2/1099-MISC)	(E) Reportable compensation from related organizations (W-2/1099-MISC)	(F) Estimated amount of other compensation from the organization and related organizations
(1)		Individual trustee or director			
(2)		Officer			

11

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Notable 990 Items - Compensation Reporting

- » Reportable Compensation
 - » Severance Payments
 - » Taxable disability/life insurance payments
 - » Vested SERP & Section 457(f) payouts
 - » Gift Cards
 - » Other Taxable Benefits
- » Deferred Compensation
 - » Deferred Bonuses
 - » Employer retirement contributions
- » Nontaxable Benefits
 - » Employer & Employee payments Health/Dental/Vision Insurance premiums
 - » FSA/HSA Contributions



12

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Polling Question 1

How confident are you that you are reporting compensation correctly?

- Super confident
- Basically confident
- Not confident
- I don't know

13

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14

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Notable 990 Items – Compensation Reporting

Section B. Policies (This Section B requests information about policies not required by the Internal Revenue Code.)

	Yes	No
10a Did the organization have local chapters, branches, or affiliates?		
b If "Yes," did the organization have written policies and procedures governing the activities of such chapters, affiliates, and branches to ensure their operations are consistent with the organization's exempt purposes?		
11a Has the organization provided a complete copy of this Form 990 to all members of its governing body before filing the form?		
b Describe in Schedule O the process, if any, used by the organization to review this Form 990.		
12a Did the organization have a written conflict of interest policy? If "No," go to line 13		
b Were officers, directors, or trustees, and key employees required to disclose annually interests that could give rise to conflicts?		
c Did the organization regularly and consistently monitor and enforce compliance with the policy? If "Yes," describe in Schedule O how this was done		
15 Did the process for determining compensation of the following persons include a review and approval by independent persons, comparability data, and contemporaneous substantiation of the deliberation and decision?		
a The organization's CEO, Executive Director, or top management official		
b Other officers or key employees of the organization		
(If "Yes" to line 15a or 15b, describe the process in Schedule O (see instructions).)		
16a Did the organization invest in, contribute assets to, or participate in a joint venture or similar arrangement with a taxable entity during the year?		
b If "Yes," did the organization follow a written policy or procedure requiring the organization to evaluate its participation in joint venture arrangements under applicable federal tax law, and take steps to safeguard the organization's exempt status with respect to such arrangements?		

15

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Notable 990 Items – Compensation Reporting

SCHEDULE J
(Form 990)

Compensation Information
For certain Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees

OMB No. 1545-0047
2021
Open to Public Inspection

Department of the Treasury
Internal Revenue Service
Name of the organization

Employer identification number

Part I Questions Regarding Compensation

	Yes	No
1a Check the appropriate box(es) if the organization provided any of the following to or for a person listed on Form 990, Part VII, Section A, line 1a. Complete Part III to provide any relevant information regarding these items.		
<input type="checkbox"/> First-class or charter travel		
<input type="checkbox"/> Travel for companions		
<input type="checkbox"/> Tax indemnification and gross-up payments		
<input type="checkbox"/> Discretionary spending account		
<input type="checkbox"/> Housing allowance or residence for personal use		
<input type="checkbox"/> Payments for business use of personal residence		
<input type="checkbox"/> Health or social club dues or initiation fees		
<input type="checkbox"/> Personal services (such as maid, chauffeur, chef)		
b If any of the boxes on line 1a are checked, did the organization follow a written policy regarding payment or reimbursement or provision of all of the expenses described above? If "No," complete Part III to explain		
3 Indicate which, if any, of the following the filing organization used to establish the compensation of the organization's CEO/Executive Director. Check all that apply. Do not check any boxes for methods used by a related organization to establish compensation of the CEO/Executive Director, but explain in Part III.		
<input type="checkbox"/> Compensation committee		
<input type="checkbox"/> Independent compensation consultant		
<input type="checkbox"/> Form 990 of other organizations		
<input type="checkbox"/> Written employment contract		
<input type="checkbox"/> Compensation survey or study		
<input type="checkbox"/> Approval by the board or compensation committee		

16

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Notable 990 Items – Target Rich Environments

Form 990 (2015) Page 4

Part IV Checklist of Required Schedules (continued)

Line	Yes	No
20a		
21		
22		

34 Was the organization related to any tax-exempt or taxable entity? If "Yes," complete Schedule R, Part II, III, or IV, and Part V, line 1

35a Did the organization have a controlled entity within the meaning of section 512(b)(13)?

b If "Yes" to line 35a, did the organization receive any payment from or engage in any transaction with a controlled entity within the meaning of section 512(b)(13)? If "Yes," complete Schedule R, Part V, line 2

Form 990 (2015) Page 4

Part IV Checklist of Required Schedules (continued)

Line	Yes	No
20b		
26		
27		
28a		
28b		
29		
30		
31		
32		

17

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Notable 990 Items – Target Rich Environments

SCHEDULE F
(Form 990)

Statement of Activities Outside the United States

OMB No. 1545-0047

2017

Complete if the organization answered "Yes" on Form 990, Part IV, line 14b, 15, or 16.

1 For grantmakers. Does the organization maintain records to substantiate the amount of its grants and other assistance, the grantees' eligibility for the grants or assistance, and the selection criteria used to award the grants or assistance? ☐ Yes ☐ No

2 For grantmakers. Describe in Part V the organization's procedures for monitoring the use of its grants and other assistance outside the United States.

2 For grantmakers. Describe in Part V the organization's procedures for monitoring the use of its grants and other assistance outside the United States.

3 Activities per Region. (The following Part I, line 3 table can be duplicated if additional space is needed.)

(a) Region	(b) Number of offices in the region	(c) Number of employees, agents, and independent contractors in the region	(d) Activities conducted in the region (by type (such as, fundraising, program services, investments, grants to recipients located in the region))	(e) If activity listed in (d) is a program service, describe specific type of service(s) in the region	(f) Total expenditures for and investments in the region
(1)					
(2)					
(3)					

18

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Notable 990 Items – Target Rich Environments

Schedule F (Form 990) 2015 Page **4**

Part III Foreign Corporations

Was the organization a U.S. transferor of property to a foreign corporation during the tax year? If "Yes," the organization may be required to file Form 926, Return by a U.S. Transferor of Property to a Foreign Corporation (see Instructions for Form 926)

Part IV Foreign Corporations

Did the organization have an ownership interest in a foreign corporation during the tax year? If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect to Certain Foreign Corporations (see Instructions for Form 5471)

Part V Foreign Corporations

Did the organization have an ownership interest in a foreign corporation during the tax year? If "Yes," the organization may be required to file Form 5471, Information Return of U.S. Persons With Respect to

Was the organization a direct or indirect shareholder of a passive foreign investment company or a qualified electing fund during the tax year? If "Yes," the organization may be required to file Form 8621, Information Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund (see Instructions for Form 8621).

Did the organization have an ownership interest in a foreign partnership during the tax year? If "Yes," the organization may be required to file Form 8865, Return of U.S. Persons With Respect to Certain Foreign Partnerships (see Instructions for Form 8865)

"Yes," the organization may be required to separately file Form 5713, International Boycott Report (see Instructions for Form 5713; do not file with Form 990) ☐ Yes ☐ No

Schedule F (Form 990) 2015 **BKD**

Polling Question 2

Does your organization have any foreign investments that require additional filings?

- Yes
- Yes, but no additional filings needed
- No
- I don't know

Notable 990 Items – Target Rich Environments

Schedule K (Form 990) 2014		Page 2							
Part III Private Business Use (Continued)		A		B		C		D	
		Yes	No	Yes	No	Yes	No	Yes	No
2a	Are there any management or service contracts that may result in private business use of bond-financed property?								
b	If "Yes" to line 2a, does the organization routinely engage bond counsel or other outside counsel to review any management or service contracts relating to the financed property?								
c	Are there any research agreements that may result in private business use of bond-financed property?								
d	If "Yes" to line 2c, does the organization routinely engage bond counsel or other outside counsel to review any research agreements relating to the financed property?								
From the operations of bonded property used in a private business use, the issuer:									
6	Total of lines 4 and 5		%		%		%		%
7	Does the bond issue meet the private security or payment test?								
8a	Has there been a sale or disposition of any of the bond-financed property to a nongovernmental person other than a 501(c)(3) organization since the bonds were issued?								
disposed of			%		%		%		%
c If "Yes" to line 8a, was any remedial action taken pursuant to Regulations sections 1.141-12 and 1.145-27?									
9 Has the organization established written procedures to ensure that all nonqualified bonds of the issue are remediated in accordance with the requirements under Regulations sections 1.141-12 and 1.145-27?									
Part IV Arbitrage		A		B		C		D	
		Yes	No	Yes	No	Yes	No	Yes	No
1	Has the issuer filed Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate?								
2	If "No" to line 1, did the following apply?								
a	Rebate not due yet?								
b	Exception to rebate?								
c	No rebate due?								
If "Yes" to line 2c, provide in Part VI the date the rebate computation was performed									
3	Is the bond issue a variable rate issue?								
4a	Has the organization or the governmental issuer entered into a qualified hedge with respect to the bond issue?								
b	Name of provider								
c	Term of hedge								
d	Was the hedge superintegrated?								
e	Was the hedge terminated?								

Notable 990 Items – Target Rich Environments

Part I Excess Benefit Transactions (section 501(c)(3), section 501(c)(4), and 501(c)(29) organizations only).
Complete if the organization answered "Yes" on Form 990, Part IV, line 25a or 25b, or Form 990-EZ, Part V, line 40b.

1	(a) Name of disqualified person	(b) Relationship between disqualified person and organization	(c) Description of transaction	(d) Corrected?	
				Yes	No
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					

2 Enter the amount of tax incurred by the organization managers or disqualified persons during the year under section 4958. \$

3 Enter the amount of tax, if any, on line 2, above, reimbursed by the organization \$

23

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Notable 990 Items – Target Rich Environments

Schedule L (Form 990 or 990-EZ) 2017

Page 2

Part IV Business Transactions Involving Interested Persons.
Complete if the organization answered "Yes" on Form 990, Part IV, line 28a, 28b, or 28c.

(a) Name of interested person	(b) Relationship between interested person and the organization	(c) Amount of transaction	(d) Description of transaction	(e) Sharing of organization's revenues?	
				Yes	No
(1)					
(2)					
(3)					
(4)					
(5)					
(6)					
(7)					
(8)					
(9)					
(10)					

24

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Notable 990-T Items

- UBI Criteria:
 - Activity must be a trade or business,
 - Activity must be regularly carried on, and
 - Activity is not substantially related to the organization's exempt purposes.
- All three criteria must be met for an activity to generate UBI.

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Polling Question 3

Does your organization have unrelated business income?

- Yes
- No
- Definitely not
- I don't know

26

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Notable 990-T Items - How Do You Identify Potential UBI?

- Identify income from activities – consider these
 - Charge for use of parking lot during special events?
 - Sell advertising in a publication, newsletter, program, website, or other media?
 - Operate a gift shop, bookstore, or restaurant?
 - Rent property to others?
 - Have ownership in a joint venture; i.e. partnership, S-Corp, etc.?
 - Conduct games of chance?
 - License use of name, logo, or mailing list?
 - Provide management or administrative services for a fee?
 - Provide lab services or pharmacy services to non-patients?

Income Excluded From UBI

- Dividends, interest, annuities and other investment income
 - Not excluded if received from controlled entity (except dividends)
 - Not excluded if debt-financed
 - Not excluded if from S Corporation
 - Not excluded if a 501(c)(7), (9), (17) or (20) organization
- Royalties
 - Not excluded if received from controlled entity
 - Not excluded if debt-financed



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Income Excluded From UBI (*Continued*)

- Rents
 - Not excluded if based on net profit
 - Mixed leases
 - If personal property is between >10% and <50% real property lease is excluded
 - If personal property >50% none are excludable
 - If personal services are rendered not excludable
 - Not excluded if received from controlled entity
 - Not excluded if debt-financed
- Research
 - Depends on nature of organization and type of research
- Gains and losses from disposition of property
 - Not for debt-financed property



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Form 990-T Updates

- Electronic filing
- Core form reduced to 2 pages
 - Acts as a summary document to combine all positive unrelated business income activities
- Calculation of tax liability
- An organization with no unrelated business taxable income that needs to file Form 990-T should complete and file Form 990-T only

Form 990-T Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))

OMB No. 1545-0047

For calendar year 2020 or other tax year beginning 2020, and ending 2020

Department of the Treasury Internal Revenue Service

Go to www.irs.gov/Form990 for instructions and the latest information.

Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Part I Total Unrelated Business Taxable Income

1 Total of unrelated business taxable income computed from all unrelated trades or businesses (see instructions) 1

2 Reserved 2

3 Add lines 1 and 2 3

4 Charitable contributions (see instructions for limitation rules) 4

5 Total unrelated business taxable income before net operating losses. Subtract line 4 from line 3 5

6 Deduction for net operating losses. See instructions 6

7 Total of unrelated business taxable income before specific deduction and section 199A deduction. Subtract line 6 from line 5 7

8 Specific deduction (generally \$1,000, but see instructions for exceptions) 8

9 Taxable Section 199A deduction. See instructions 9

10 Total deductions. Add lines 8 and 9 10

11 Unrelated business taxable income. Subtract line 10 from line 7. If line 10 is greater than line 7, enter zero 11

Part II Tax Computation

1 Organizations taxable as corporations. Multiply Part I, line 11 by 21% (0.21) 1

2 Trusts taxable at trust rates. See instructions for tax computation. Income tax on the amount on Part I, line 11 from: (1) Tax rate schedule or (2) Schedule D (Form 1041) 2

3 Proxy tax. See instructions 3

4 Other tax amounts. See instructions 4

5 Alternative minimum tax (trusts only) 5

6 Tax on nonexempt facility income. See instructions 6

7 Total. Add lines 1 through 6 to line 1 or 2, whichever applies 7

For Paperwork Reduction Act Notice, see instructions. (Cat. No. 11391J) Form 990-T 0000

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Form 990-T Updates

- Schedule A to replace Schedule M
 - Now includes what used to Schedules A – J on core Form 990-T
 - Must report a separate Schedule A for each “silo” of unrelated business income following requirements under the final 512(a)(6) regulations

SCHEDULE A (Form 990-T) Unrelated Business Taxable Income From an Unrelated Trade or Business

OMB No. 1545-0047

2020

Department of the Treasury Internal Revenue Service

Go to www.irs.gov/Form990 for instructions and the latest information.

Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

Part I Unrelated Trade or Business Income

A Name of the organization

B Employer identification number

C Unrelated business activity code (see instructions)

D Sequence: of

E Describe the unrelated trade or business

(A) Income (B) Expenses (C) Net

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Notable 990-T Items - Unrelated Business Income Siloing

- The loss from one business activity can no longer be used to offset the gain from another
- In other words, the sum of all unrelated business activities can't be less than \$0
- IRS Guidance – Issued Final Regulations under Section 512(a)(6)



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Notable 990-T Items - Siloing

Final Regulations provide:

- Exempt organization with more than one unrelated trade or business must compute UBTI separately with respect to each unrelated trade or business, without regard to the \$1K specific deduction, including determining any NOL deduction
- NAICS codes - first two digits
- Review unrelated business activities by NAICS codes and determine methodology for allocating the expenses



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Notable 990-T Items - UBI Generated from Partnerships

- If partnership interest meets certain criteria under the de minimis test or the significant participation test, the UBI can be aggregated as investment activities versus breaking out the income into various business lines or activities
- De minimis test - applicable if the institution doesn't directly or indirectly hold more than 2% of a profit or capital interest in the partnership
- Significant Participation test (formerly Control Test) - applicable if the institution doesn't directly or indirectly hold more than 20% of a capital interest & doesn't have control or influence over the partnership based on facts and circumstances

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HISTORY OF 501(r)

- » Part of the Patient Protection and Affordable Care Act (the ACA), enacted March 23, 2010
- » Applies to all 501(c)(3) organizations that operate one or more hospital facilities
 - » A hospital facility is a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital
- » Provisions of 501(r)(3)-(6) applied to taxable years beginning after March 23, 2012
- » Final regulations were released on December 29, 2014 and apply to tax years beginning after December 29, 2015



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KEY 501(r) PROVISIONS TO REVIEW

- ▶▶ Check website to ensure all required and most recently board-approved documents are listed in an easy-to-find area
 - ▶▶ Community Health Needs Assessment (CHNA)
 - ▶▶ Implementation Strategy (IS)
 - ▶▶ Financial Assistance Policy (FAP)
 - ▶▶ Include all attachments and references to the FAP
 - ▶▶ Plain Language Summary (PLS)
 - ▶▶ FAP Application
 - ▶▶ Billing & Collection Policy, if separate from FAP
 - ▶▶ All required translations for Limited English Proficiency (LEP) population
- ▶▶ Carefully review 990 (Schedule H in particular)



37

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Polling Question 4

Does your website have all required documents to be compliant under 501(r)?

- Yes
- No
- No, but we're working on it
- I don't know

38

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SCHEDULE H RED FLAGS

3 During the tax year or either of the two immediately preceding tax years, did the hospital facility conduct a community health needs assessment (CHNA)? If "No," skip to line 12

3		b

If "Yes," indicate what the CHNA report describes (check all that apply):

- a ☐ A definition of the community served by the hospital facility
- b ☐ Demographics of the community
- c ☐ Existing health care facilities and resources within the community that are available to respond to the health needs of the community
- d ☐ How data was obtained
- e ☐ The significant health needs of the community
- f ☐ Primary and chronic disease needs and other health issues of uninsured persons, low-income persons, and minority groups
- g ☐ The process for identifying and prioritizing community health needs and services to meet the community health needs
- h ☐ The process for consulting with persons representing the community's interests
- i ☐ The impact of any actions taken to address the significant health needs identified in the hospital facility's prior CHNA(s)
- j ☐ Other (describe in Section C)

4

SCHEDULE H RED FLAGS (cont.)

Part III Bad Debt, Medicare, & Collection Practices	
Section A. Bad Debt Expense	
1	Did the organization report bad debt expense in accordance with Healthcare Financial Management Association Statement No. 15? 1
2	Enter the amount of the organization's bad debt expense. Explain in Part VI the methodology used by the organization to estimate this amount 2
3	Enter the estimated amount of the organization's bad debt expense attributable to patients eligible under the organization's financial assistance policy. Explain in Part VI the methodology used by the organization to estimate this amount and the rationale, if any, for including this portion of bad debt as community benefit. 3
4	Provide in Part VI the text of the footnote to the organization's financial statements that describes bad debt expense or the page number on which this footnote is contained in the attached financial statements.

- New Audit reporting rules – Topic 606
- No longer have financial statement footnotes

41

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SCHEDULE H RED FLAGS (cont.)

8	Did the hospital facility adopt an implementation strategy to meet the significant community health needs identified through its most recently conducted CHNA? If "No," skip to line 11	8	b
9	Indicate the tax year the hospital facility last adopted an implementation strategy: 20 ____		
10	Is the hospital facility's most recently adopted implementation strategy posted on a website?	10	
a	If "Yes," (list url): _____		
b	If "No," is the hospital facility's most recently adopted implementation strategy attached to this return?	10b	b
11	Describe in Section C how the hospital facility is addressing the significant needs identified in its most recently conducted CHNA and any such needs that are not being addressed together with the reasons why such needs are not being addressed.		
12a	Did the organization incur an excise tax under section 4959 for the hospital facility's failure to conduct a CHNA as required by section 501(r)(3)?	12a	b
b	If "Yes" to line 12a, did the organization file Form 4720 to report the section 4959 excise tax?	12b	b
c	If "Yes" to line 12b, what is the total amount of section 4959 excise tax the organization reported on Form 4720 for all of its hospital facilities? \$		

42

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Excise Tax under Section 4959

- Imposes an excise tax of **\$50,000** on hospitals that fail to meet one or more requirements under Section 501(r)(3)
- Reported on Form 4720

Form 4720 (2020) Page **9**

Schedule M—Tax on Hospital Organization for Failure to Meet the Community Health Needs Assessment Requirements (Sections 4959 and 501(r)(3)). (See instructions.)

Part I Failures to Meet Section 501(r)(3)				
(a) Item number	(b) Name of hospital facility	(c) Description of the failure	(d) Tax year hospital facility last conducted a CHNA	(e) Tax year hospital facility last adopted an implementation strategy
1				
2				
3				
4				
5				

Part II Computation of Tax	
1 Number of hospital facilities operated by the hospital organization that failed to meet the Community Health Needs Assessment requirements of section 501(r)(3)	1
2 Tax—Enter \$50,000 multiplied by line 1 here and on Part I, line 12	2

43

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SCHEDULE H RED FLAGS (cont.)

17 Did the hospital facility have in place during the tax year a separate billing and collections policy, or a written financial assistance policy (FAP) that explained all of the actions the hospital facility or other authorized party may take upon nonpayment?

18 Check all of the following actions against an individual that were permitted under the hospital facility's policies during the tax year **before** making reasonable efforts to determine the individual's eligibility under the facility's FAP:

a ☒ Reporting to credit agency(ies)

b ☐ Selling an individual's debt to another party

c ☐ Deferring, denying, or requiring a payment before providing medically necessary care due to nonpayment of a previous bill for care covered under the hospital facility's FAP

d ☐ Actions that require a legal or judicial process

e ☐ Other similar actions (describe in **Section C**)

f ☐ None of these actions or other similar actions were permitted

17		18

44

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SCHEDULE H RED FLAGS (cont.)

19	<p>Did the hospital facility or other authorized party perform any of the following actions during the tax year before making reasonable efforts to determine the individual's eligibility under the facility's FAP?</p> <p>If "Yes," check all actions in which the hospital facility or a third party engaged:</p> <p>a <input type="checkbox"/> Reporting to credit agency(ies)</p> <p>b <input type="checkbox"/> Selling an individual's debt to another party</p> <p>c <input type="checkbox"/> Deferring, denying, or requiring a payment before providing medically necessary care due to nonpayment of a previous bill for care covered under the hospital facility's FAP</p> <p>d <input type="checkbox"/> Actions that require a legal or judicial process</p> <p>e <input type="checkbox"/> Other similar actions (describe in Section C)</p>	19		
20	<p>Indicate which efforts the hospital facility or other authorized party made before initiating any of the actions listed (whether or not checked) in line 19 (check all that apply):</p> <p>a <input type="checkbox"/> Provided a written notice about upcoming ECAs (Extraordinary Collection Action) and a plain language summary of the FAP at least 30 days before initiating those ECAs (if not, describe in Section C)</p> <p>b <input type="checkbox"/> Made a reasonable effort to orally notify individuals about the FAP and FAP application process (if not, describe in Section C)</p> <p>c <input type="checkbox"/> Processed incomplete and complete FAP applications (if not, describe in Section C)</p> <p>d <input type="checkbox"/> Made presumptive eligibility determinations (if not, describe in Section C)</p> <p>e <input type="checkbox"/> Other (describe in Section C)</p> <p>f <input type="checkbox"/> None of these efforts were made</p>			

45

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SCHEDULE H RED FLAGS (cont.)

Policy Relating to Emergency Medical Care				
21	<p>Did the hospital facility have in place during the tax year a written policy relating to emergency medical care that required the hospital facility to provide, without discrimination, care for emergency medical conditions to individuals regardless of their eligibility under the hospital facility's financial assistance policy?</p> <p>If "No," indicate why:</p> <p>a <input type="checkbox"/> The hospital facility did not provide care for any emergency medical conditions</p> <p>b <input type="checkbox"/> The hospital facility's policy was not in writing</p> <p>c <input type="checkbox"/> The hospital facility limited who was eligible to receive care for emergency medical conditions (describe in Section C)</p> <p>d <input type="checkbox"/> Other (describe in Section C)</p>	21		

Schedule H (Form 990) 2016

46

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SCHEDULE H RED FLAGS (cont.)

		YES	NO
22	Indicate how the hospital facility determined, during the tax year, the maximum amounts that can be charged to FAP-eligible individuals for emergency or other medically necessary care.		
a	<input type="checkbox"/> The hospital facility used a look-back method based on claims allowed by Medicare fee-for-service during a prior 12-month period		
b	<input type="checkbox"/> The hospital facility used a look-back method based on claims allowed by Medicare fee-for-service and all private health insurers that pay claims to the hospital facility during a prior 12-month period		
c	<input type="checkbox"/> The hospital facility used a look-back method based on claims allowed by Medicaid, either alone or in combination with Medicare fee-for-service and all private health insurers that pay claims to the hospital facility during a prior 12-month period		
d	<input type="checkbox"/> The hospital facility used a prospective Medicare or Medicaid method		
23	During the tax year, did the hospital facility charge any FAP-eligible individual to whom the hospital facility provided emergency or other medically necessary services more than the amounts generally billed to individuals who had insurance covering such care?	23	23
If "Yes," explain in Section C			
24	During the tax year, did the hospital facility charge any FAP-eligible individual an amount equal to the gross charge for any service provided to that individual?	24	24
If "Yes," explain in Section C			

Schedule H (Form 990) 2016

47

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FINAL THOUGHTS ON 501(r)

- » IRS is working its way through every hospital in the country – if you have red flags on your return, the odds of being selected for examination are high
- » Two policy changes that can simplify 501(r) compliance
 - » Free care only discounts for FAP-eligible patients (typically see 200% FPG)
 - » Eliminate Extraordinary Collection Activities (ECAs)
- » Make sure your hospital is following through & implementing policy changes operationally
 - » Conduct regular assessments
 - » Update provider lists regularly and include updated versions on website
 - » Internal audit procedures



48

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Employee Retention Credit (ERC)- General

- Credit is allowed against the employer's share of Social Security tax
- Fully refundable credit
 - If the credit exceeds the employer's share of Social Security tax on all wages, the excess is treated as an overpayment & refunded
 - Claim on Form 941 or 941-X

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Polling Question 5

Has your organization considered utilizing the Employee Retention Credit?

- Yes, we have calculated and filed
- Yes, but it doesn't apply
- No
- I don't know

50

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51

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ERC- Eligible Employers

- Experience one of the following:
 - Full or partial suspension of operations during any calendar quarter in 2020 due to orders from an appropriate government authority
 - A significant decline in gross receipt during the calendar quarter
- No limit on number of employees, more lucrative if under certain thresholds
- Trade or business requirement
- Government entities not eligible (for 2020, some are in 2021)
- Tax exempt organizations under Section 501(c) are eligible

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ERC- Interesting Facts

- IRS Notices 2021-20 , 2021-23 & 2021-49
- Partial Shutdowns
 - An employer may be considered to have a partial suspension of operations if more than a nominal portion of its business operations are suspended due to a government order despite the ability to work remotely.
- Revenue Decline
 - The evaluation of the decline is performed on a quarterly basis.
 - Income from forgiveness of the PPP loan in a quarter, that revenue may be excluded from the calculation of gross receipts.

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2020 vs. 2021 ERC Summary

	2020 ERC	2021 ERC
Significant decline in gross receipts threshold	50%	20%
Applicable dates	3/13/20-12/31/20	1/1/21-09/30/21
Credit percentage applied to qualified wages	50%	70%
Per employee wage limit	\$10,000 for the year	\$10,000 per quarter
Maximum credit per employee	\$5,000	\$14,000
Maximum number of full-time employees allowed to claim credit on all wages paid	100	500
Certain government employers eligible?	No	Yes
Eligible if obtaining PPP loan?	Yes, retroactively	Yes

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EXCISE TAX ON EXECUTIVE COMPENSATION

- » Final regulations issued January 2021
- » Section 4960 was enacted to mirror the rules under §162(m), which limit the deduction for corporations to “covered employees” in excess of \$1 million and §280G, which limits the deduction for “parachute payments”
- » Excess remuneration taxed at corporate rate (flat 21 percent)
- » Applicable for the first taxable year beginning after December 31, 2017 (2021 for final regs)
- » Organization’s fiscal year has a major impact on first-year applicability



55

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EXCISE TAX ON EXECUTIVE COMPENSATION (cont.)

- » Applicable tax-exempt organizations
 - » Organizations exempt from taxation under §501(a)
 - » Farmers’ cooperative organizations described in §521(b)(1)
 - » Organizations with income that is excluded under §115(1)
 - » Political organizations described in §527(e)(1)
- » Related Organizations



56

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COVERED EMPLOYEES

- » One of an applicable tax-exempt organization's (ATEO's) five highest-compensated employees for the current taxable year or anyone who was a covered employee of the ATEO for any preceding taxable year beginning after December 31, 2016
- » No minimum threshold for an employee to be a covered employee (need not be paid excess remuneration or excess parachute payment)



57

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REMUNERATION & EXCESS REMUNERATION

- » Defined as wages, excluding designated Roth contributions
- » Includes amounts required to be included in gross income under §457(f)
- » Does not include certain retirement benefits, including payments from or contributions to qualified retirement plans
- » Compensation for the performance of medical or veterinary services by a licensed medical professional (including a veterinarian) is excluded from remuneration & parachute payments under §4960(c)(3)(B) & (c)(5)(C)(iii) respectively
 - » When a covered employee is compensated for both medical services & other services, the employer must allocate remuneration paid to such employee between medical services & such other services



58

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PARACHUTE PAYMENTS & EXCESS PARACHUTE PAYMENTS

- » A parachute payment is defined as any payment arising out of an employment relationship to a covered employee if:
 - » Such payment is contingent on such employee's separation from employment and
 - » The aggregate present value of the payments in the nature of compensation to such individual that are contingent on such separation equals or exceeds an amount equal to three times the base amount
- » An anticipated reduction of the level of service of less than 50 percent is not treated as a separation from employment
- » An excess parachute payment is the excess of the amount of any parachute payment made by an ATEO over the portion of the covered employee's base amount that is allocated to the payment
 - » Note that this is the excess over one times the base amount and not the excess over three times the base amount

59

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Example

- » A, a covered employee of M, has a base amount of \$200,000. A is to receive payments contingent on an involuntary separation from employment with a present value equal to \$800,000. The payments are parachute payments because \$800,000 is more than three times A's base amount of \$200,000. Thus, the amount of payments in excess of the base amount of \$200,000 (\$600,000) is subject to the excise tax. However, if the amount of contingent payments was only \$580,000, no amount would be subject to the excise tax.

60

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PARACHUTE PAYMENTS & EXCESS PARACHUTE PAYMENTS

Payments Contingent on involuntary separation from Employment		800,000
Base Amount		200,000
Amount times Base		4
Is this Excess Parachute Payment		Yes
Amount Subject to Excise Tax		600,000
Amount of Excise Tax		126,000

61

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Questions?

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Thank You!

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