



November 42, 2019

Margaret Von Lienen  
Director, Exempt Organizations  
Tax Exempt & Government Entities  
Internal Revenue Service  
1111 Constitution Ave, NW  
Washington, DC 20224

**Re: Comments on Form 990, *Return of Organization Exempt from Income Tax*, and Related Instructions and Form 990-T, *Exempt Organization Business Income Tax Return*, and Related Instructions**

Dear Ms. Von Lienen:

The American Institute of CPAs (AICPA) is pleased to provide comments on Form 990, *Return of Organization Exempt from Income Tax*, and the related instructions and Form 990-T, *Exempt Organization Business Income Tax Return*, and the related instructions. Our matrices include comments and recommendations, while indicating the priority level of each recommendation.

The comments were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel (TRP) and approved by the AICPA Tax Executive Committee. The Exempt Organizations TRP is comprised of practitioners who serve tax-exempt organizations and are experienced with both the nuances of the form and the challenges that arise for taxpayers in trying to complete it.

The letter is submitted in a matrix format as the comments are meant to match up line by line with the Forms 990 and 990-T. Each page of the respective matrix has a title at the top of the page which indicates which part of the Form it is applicable to. Underneath the Form header is detail about the specific section and line item on the Form that the AICPA is commenting on.

The AICPA is the world's largest member association representing the accounting profession, with more than 429,000 members in the United States and worldwide, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America's largest businesses.

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We appreciate your consideration of our recommendations and welcome the opportunity to further discuss our comments. If you have any questions, please contact Richard Locastro, Chair, AICPA Tax Exempt Technical Resource Panel, at (301) 951-9090, or [rlocastro@grfcpa.com](mailto:rlocastro@grfcpa.com); or Elizabeth Young, Senior Manager – AICPA Tax Policy & Advocacy, at (202) 434-9247, or [elizabeth.young@aicpa-cima.com](mailto:elizabeth.young@aicpa-cima.com); or me at (612) 397-3071, or [chris.hesse@CLAconnect.com](mailto:chris.hesse@CLAconnect.com).

Sincerely,

A handwritten signature in blue ink that reads "Christopher W. Hesse". The signature is fluid and cursive, with a prominent flourish at the end.

Christopher W. Hesse, CPA  
Chair, AICPA Tax Executive Committee

<b>Form 990, Heading Part I &amp; II</b>	<b>AICPA</b>
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<b>Section of the Form</b>	<b>Priority Level</b>	<b>Comment</b>	<b>Recommendation</b>
Page 1, Box G, Gross Receipts	Low	As part of a diversified portfolio, many large organizations have material amounts of short term investments (i.e., less than one year). Short term investments that turn monthly or quarterly can substantially inflate the gross receipts total in box G, resulting in an amount that appears inconsistent with the rest of the return.	Eliminate the gross receipts entry in Box G. The total revenue reported in Part I, Line 12 is sufficient. The additional detail, if desired, is available to users in Part VIII.

Form 990, Heading Part I & II			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part IV, Line 28c	Medium	The definition of interested persons for Part IV, line 28c does not match the definition of interested persons on Schedule L.	The definition in Schedule L no longer includes the entity as an interested person if the officers/directors/key employees are officers or directors of the entity. The officers/directors/key employees need to be 35% owners of the entity in order for the entity to be an interested person. We suggest changing the language in Part IV, line 28(c) to: "An entity which is a 35% controlled entity" of one or more interested person(s) (see Schedule L instructions for defintions).
Part IV, Line 29	Medium	The threshold of \$25k is too low to be meaningful, especially with regard to larger organizations.  The \$25,000 currently includes the FMV of donations, gifts, grants, or other contributions of property other than cash.	Update the threshold for non-cash contributions to 5% of total contributions instead of \$25,000.

Form 990, Heading Part VI			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part VI, Section A, Line 1b	Medium	See Sch. L recommendation.	See Sch. L recommendation.
Part VI, Section A, Line 5	High	<p>The diversion of asset reporting threshold is increasingly inadequate for large organizations.</p> <p>The current threshold for reporting is the lesser of \$250,000 or 5% of total assets.</p>	Increase the minimum threshold for reporting to the lesser of \$1,000,000 or 10% of total assets.
Part VI, Section B, Lines 15a & b	Medium	The instructions require an organization that does not compensate any officers or key employees to check the box "No", which may be misleading to readers of the form.	Update the instructions to allow lines a and b to be left blank if the individuals listed are not compensated.

Form 990, Heading Part VII			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part VII, Section A, Line 1a	Medium	<p>The highest compensated employee reporting threshold is increasingly inadequate for large organizations.</p> <p>The current reporting threshold for the highest compensated employees is \$100,000.</p>	Increase the reporting threshold for the highest compensated employees to \$200,000.
Part VII, Section A, Line 4	Medium	<p>The reporting threshold for Schedule J reporting is increasingly inadequate for large organizations.</p> <p>For most of the reporting requirements, the current reporting threshold for Sch. J is \$150,000.</p>	Increase the reporting threshold for reporting on Schedule J to \$200,000.
Part VII, Section B, Line 1	Medium	<p>The independent contractor reporting threshold is increasingly inadequate for large organizations.</p> <p>The current reporting threshold is for independent contractors that received more than \$100,000.</p>	Increase the reporting threshold to independent contractors that received more than \$200,000.

Form 990, Heading Part VIII, IX, X, XI & XII			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Part VIII, Column C	High	Unrelated Business Income based upon books and records vs. 512(a)(6).	Provide clarification in the instructions that the suspension of losses netting against gains is for tax purposes only on Form 990-T. Form 990 reports gains and losses from unrelated business income on a book basis which allows the netting of gains and losses within an accounting period. This netting of gains and losses from unrelated business activities whether regularly carried on is the rule which will apply for Schedule A Part II, line 9 and Part III, 11.
Part VIII, Column C	High	Unrelated Business Income based upon books and records vs. 512(a)(7).	Note in the instructions that the conversion of a qualified transportation fringe benefit expense which is included in Part IX, line 9 should not be converted to income and reported on Part VIII as unrelated business income. This is a tax only conversion reported on Form 990-T and will be reported in a net amount on Schedule A, Part III, line 10b.

Form 990, Schedule A			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule A	High	For the public support test for Schedule A Part II, line 9 and Part III, line 11 (net income from unrelated business activities whether regularly carried on or not), it is unclear as to how these lines are calculated due to the addition of section 512(a)(6) by the TCJA.	Consistent with our recommendation in Part VIII, we suggest basing the presentation for these lines on the organization's books and records. We recommend that the instructions clarify that suspension of losses from netting against gains is for Form 990-T purposes only and Form 990 should follow the organization's books and records which allows the netting of gains and losses within an accounting period.
Schedule A	High	Due to the changes brought about by new section 512(a)(6), it is unclear as to how Schedule A, Part III, line 10b is calculated.	<p>We suggest that the presentation on this line follows the current form instructions, which indicate losses and gains should be aggregated. The instructions state:</p> <p>"Enter the excess of the organization's UBTI from trades or businesses that it acquired or commenced after June 30, 1975, over the amount of tax imposed on this income under section 511. Net income and net losses for all of these trades or businesses should be aggregated. If a net loss results, then "0" should be entered on this line. See Regulations section 1.509(a)-3(a)(3)."</p> <p>If the IRS believes that this is no longer appropriate given the tax law changes, we suggest updating the instructions to clarify how this line should be calculated.</p>



Form 990, Schedule B			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule B	Medium	<p>The donor reporting threshold is increasingly inadequate for larger organizations.</p> <p>For the general rule, the current reporting threshold from any one contributor is \$5,000.</p>	Increase the reporting threshold for reporting of contributions from any one contributor to \$25,000.

Form 990, Schedule C			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule C, Part I-C, Line 5	High	Many politicians provide their Social Security number as the tax ID.	The instructions should clarify that social security numbers should not be reported on Schedule C. The instructions should state that a 527 organization must have a separate EIN, and that if it does not have one, it should apply for one.

Form 990, Schedule H			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule H, Part V	Medium	The listing of other health care facilities is time consuming, voluminous, and does not add value to the Form 990 user.	Consider substantially limiting or eliminating this disclosure.

Form 990, Schedule I			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule I	Medium	<p>The reporting requirement for grants is outdated for larger organizations.</p> <p>The current reporting threshold is \$5,000.</p>	<p>Similar to Schedule B (under the special rule), allow larger organizations to report only grants that are the greater of 2% of total Sch. I grants versus the \$5,000 threshold and/or the amounts reported on Part IX of Form 990.</p>

Form 990, Schedule L			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Instructions	Medium	<p>It appears there are gaps in the Sch. L instructions related to the 990-EZ; however, the instructions may be intentionally silent. Categories of IP are enumerated for the 990EZ as follows (in relevant part):</p> <ol style="list-style-type: none"> <li>1) Is limited to the current officers, directors, trustees, and key employees listed on Part IV which matches the Form 990 EZ definition.</li> <li>2) Is silent with regard to the 990-EZ regarding whether the founder/creator is an interested person.</li> <li>3) Specifically includes substantial contributors on which the 990-EZ instructions were silent.</li> <li>4) III and IV are N/A for the EZ.</li> <li>5) Family member of above.</li> <li>6) 35% controlled entity of above.</li> <li>7) Employee of a substantial contributor if the employee or their child received a grant award.</li> </ol>	<p>Provide clarification whether “founder/creator” is a classification of IP that Treasury intended to exclude or whether the intent was to have this individual subject to the disclosures of Sch L Part II when the taxpayer files the 990-EZ. Currently, it is not clear whether including transactions with a founder/creator who has no other relationship with the Form 990-EZ filing organization is required.</p>
Part IV, Business Transactions	Medium	<p>The threshold for loss of independence due to compensation of a family member is too low. A trustee of a large, multi-state organization can be deemed "not independent" because a great-grandchild living hundreds of miles away receives compensation of \$10,001.</p> <p>The current reporting threshold for family members of interested persons is \$10,000.</p>	<p>Increase the compensation threshold from \$10,000 to \$100,000 or to a percentage of total revenue or total compensation expense.</p>

Form 990, Schedule R			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Schedule R, Part V, Line 2	High	The listing of transactions between related entities is often lengthy and time consuming to prepare while adding minimal usable information to the Form 990 user.	Consider eliminating line 2. At a minimum, remove the requirement to disclose the amount of the transactions and report instead only the name of the related organization and the type of transaction.

Form 990-T, General Instructions			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Instructions, pages 6 & 15	Medium	For most exempt organizations, section 965 is not applicable as the income is similar to subpart F income and not subject to unrelated business income tax.	We recommend clarifying when Form 965 should be filed by an exempt organization.
Instructions, page 6	Medium	The at-risk limitation rules are only applicable to trusts and not to corporations.	Add language to the instructions clarifying that Form 6198 is only applicable if the entity was organized as a trust.
Instructions, page 6 & 7	Medium	Forms 5471 and 8858 may also apply to exempt organizations, however they are not listed in the instructions.	Add language to the instructions clarifying that Form 5471 or Form 8858 may also be required to be filed by an exempt organization. Also, clarify that filings may be attached to Form 990 or Form 990-T.
Instructions, page 7	Medium	The passive activity loss rules only apply to trusts and not to non-profit corporations under section 469.	Add language to the instructions clarifying that Form 8582 is only applicable if the entity was organized as a trust. "See passive loss and at-risk limitations" below for more information.
Instructions, page 7	Medium	In theory, if a Passive Foreign Investment Corporation (PFIC) was debt-financed, then a Form 8691 would need to be filed with the Form 990-T.	This is a rare occurrence; however, we recommend adding this filing to the form instructions with clarifying language that the form is required to be filed if the overall investment was subject to section 514. Adding this information would clarify the information reported on page 15 of the instructions.

Form 990-T, General Instructions			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Instructions, page 7	High	It is unclear when Form 8810 is required to be filed with Form 990-T as the organization is an exempt organization and not owned by only a few individuals.	Add language to the Form 990-T instructions to include the requirements for when an exempt organization is required to file and attach Form 8810.
Instructions, page 7	Medium	It is our understanding that Form 8975 does not apply to exempt organizations.	Either remove the reference to Form 8975 from the instructions or clarify when this filing applies. For example, if the organization has more than \$850 million in gross unrelated business income activity. If the filing should be included by an exempt organization, please clarify if Form 8975 should be attached to the Form 990T or Form 990/990-PF.
Instructions, page 7	High	It is unclear when Form 8990 should be attached to the Form 990-T. For instance, if a portion of the business interest is not subject to unrelated business income, should the Form 8990 reflect only the unrelated business income portion or the entire business interest limitation?	We recommend adding language to the Form 990-T and Form 990-PF instructions clarifying when and how the Form 8990 should be used. This will be a common disclosure for exempt organizations with partnership investments. We also recommend providing guidance related to how the unrelated business income portion should be calculated.



Form 990-T, General Instructions			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Instructions, page 7	Medium	We believe Form 8992 may also apply to exempt organizations. If the overall foreign investment is subject to acquisition indebtedness, then it is our understanding that GILTI would apply even though it will be treated similar to subpart F income (per Notice 2018-67).	Add language to the instructions indicating that Form 8992 may apply. Also clarify how Form 8992 should be prepared if only a portion of the GILTI is subject to unrelated investment income under section 514. For example, should Form 8992 only reflect the unrelated business tax portion? Likewise, if the exempt organization is subject to the excise tax on net investment income should a separate Form 8992 be attached to Form 4720 or 990-PF to reflect the investment income portion of the GILTI?
Instructions, page 7	High	Forms 8991 and 8993 will likely be rare filings for an exempt organization.	Clarify in the instructions when Forms 8991 and 8993 must be filed and if they should only reflect amounts subject to unrelated business income.

Form 990-T, Heading			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Line E	Medium	There are many organizations that merely file the Form 990-T to attach certain required foreign filings or to report qualified transportation benefits under section 512(a)(7).	We suggest that the form instructions leave this line blank or provide a different code to use if the entity does not have a related trade or business.
Lines H & E	Medium	Based on Notice 2018-67, there will be organizations that group their unrelated trade or business by something other than NAICS codes. For example, by qualified partnership interests, 512(b)(13), or debt-financed activities.	Create additional codes for activities that are not easily classified by NAICS codes or those activities that can be grouped together based on Notice 2018-67 or future regulations.

Form 990-T, Part I			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Line 12	High	See comments in Part III, regarding the reporting of qualified transportation fringe benefits under 512(a)(7).	See comments in Part III, regarding the reporting of qualified transportation fringe benefits under 512(a)(7).

Form 990-T, Part II			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Line 31	Medium	The Form implies that post-2017 NOLs should be applied after the pre-2018 net operating loss rules.	Update the Form and instructions related to the application of NOLs under the siloing rules once forthcoming guidance is issued.
Trusts	Medium	For entities that are trusts it is unclear where the section 199A and excess business losses should be reported.	Provide additional guidance in the instructions on how these items should be applied.
Line 31	High	If a trade or business ceases to exist, there is no guidance on what happens to the remaining NOLs. For example, it is unclear if the losses can be allocated among other trades or businesses. If not, clarification is needed to determine if the NOL can be used to offset qualified transportation benefits.	Clarify the treatment of loss allocations within the instructions.

Form 990-T, Part III			AICPA
Section of the Form	Priority Level	Comment	Recommendation
Line 34	Medium	The line description for "amounts paid for disallowed fringes" is misleading to taxpayers. For example, organizations and preparers believe the line description means that disallowed moving expenses or entertainment should be included in this line item.	Clarify the line description within the Form. For example, potentially rephrasing as follows: "Taxable amounts for certain fringe benefits (see instructions.)"
Line 34	High	Under 512(a)(6) the limitation of net operating losses does not apply if the organization does not have more than one trade or business. Therefore, if the the entity has one trade or business it should be able to report the qualified transportation benefits on Part I, line 12 of the Form 990-T.	Revise the instructions for this item to clarify that if the entity has only one trade or business it can report the qualified transportation benefits on Part I, line 12 of the Form 990-T.
Line 34	High	Qualified transportation benefit expense is subject to unrelated business income tax. Therefore, it is reasonable that expenses connected to this tax such as tax preparation fees and state taxes should be allowed to offset unrelated taxable income similar to how charitable contribution deductions are allowed against section 512(a)(7). This is especially important for organizations where the only UBTI present is QTB (at both the federal and state level).	Revise the form to reflect that expenses connected to the unrelated business tax such as tax preparation fees and state taxes offset unrelated taxable income.