

**United Way  
of Central New Mexico**

**Center for  
Nonprofit  
Excellence**



## **IRS Form 990**

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Toolkits are designed to provide you with easy to access information on key subject areas that can strengthen your organization.

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## **IRS Form 990**

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## **Filing Requirements:**

- Organizations with \$25,000 or less in gross receipts:
  - Are generally exempt from filing IRS Form 990.
  - Beginning in 2008 all organizations exempt from IRS Form 990 must file e-Postcard IRS Form 990-N. Go to the following website to file Form 990-N:  
<http://epostcard.form990.org> .
  - IRS will revoke tax-exempt status for those organizations that fail to file an IRS Form 990, Form 990EZ or Form 990-N for three consecutive years.
- Organizations normally having more than \$25,000 in gross receipts are required to file IRS Form 990.
- Churches or other religious organizations are normally exempt from filing IRS Form 990 (but not Form 990T).
- An IRS 990EZ can be file instead of a full form 990 for organizations with the following:
  - For 2008 gross receipts less than \$1,000,000 AND assets at year end less than \$2,500,000
  - For 2009 gross receipts less than \$ 500,000 AND assets at year end less than \$1,250,000
  - For 2010 gross receipts less than \$ 200,000 AND assets at year end less than \$ 500,000

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### **Why you should file an IRS Form 990 even if exempt:**

- A nonprofit could move from the 990-N category to the 990 category and not realize it. This often happens when revenues increase but the nonprofit official responsible for IRS tax filings files on the incorrect form.
- Filing of the IRS Form 990 helps the nonprofit develop adequate accounting procedures before growth complicates recordkeeping.
- A copy of IRS Form 990 is often requested by grantors.

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### **Should a nonprofit organization file the IRS Form 990 themselves?**

- It is important to remember IRS tax laws are complex and nonprofits should consult with a professional tax advisor when filing IRS Form 990.

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### **IRS Form 990 Filing Due Dates:**

- IRS Form 990 is due the 15<sup>th</sup> day of the 5<sup>th</sup> month after organization's fiscal year end. For example if your year ends on December 31, 2007 then the IRS Form 990 is due May 15, 2008.
- IRS Form 8868, *Application for Extension of Time to File*, gives you a 90 day automatic extension of the filing due date. However, this form must be filed by the original due date.
- Late filing fees are \$20 a day up to \$10,000 or 5% of gross receipts, whichever ever is lower. For organizations with \$1 million or more in gross receipts the late filing fees are \$100 a day up to \$50,000.
- Fees apply for incomplete returns. It is important to know that even having the organization's name incorrect on the form will make the form incomplete. Also failing to complete a required line or item or schedule will also make the return incomplete.

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### **E-filing Requirements of the IRS Form 990:**

- Nonprofits with \$10 million or more in assets and who file at least 250 IRS returns in one year must e-file for tax years ending on or after Dec. 31, 2006.
- Also, if an organization has assets less than \$10 million and e-files they are required by IRS to use an authorized IRS e-file provider.
- If an organization is required to file electronically and fails to do so the return is considered to not have been filed at all.

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## **Common mistakes made by nonprofits on the IRS Form 990:**

Each year IRS estimates 36% of the 990's and 52% of the 990-EZ's have errors. The following are some of the most common errors:

- Name of organization does not match name on application for exemption (Form 1023).
- Failing to consider unrelated business income tax issues.
- Improperly classifying employees as independent contractors.
- Improper functional allocation between programs, management and general, fundraising and membership development.
- Failure to report changes in operations or activities to IRS.
- Not dealing properly with related entities.
- Filing an incomplete or inaccurate tax return.
- Failing to maintain adequate books and records.
- Failing to properly handle vehicle donation programs. IRS Publication 4303 is a great guide to how to handle vehicle donations.
- Failing to comply with lobbying rules and limitations.
- Failing to comply with public inspection and fundraising disclosure requirements.

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## **When a nonprofit should file an IRS Form 990T:**

- Generally when the nonprofit has an activity related to trade or business and the trade or business is regularly carried on and is not substantially related to the organization's exempt purpose.
- Exclusions include:
  - a. Activities performed which are substantially carried on by volunteers. This means approximately 85% of those carrying on the activity are volunteers.
  - b. Activities related to selling donated merchandise.
  - c. Bingo activities.
  - d. Passive income, which includes, but is not limited to, interest/dividends, royalties, rental income from real property not financed by debt, gain on sale of property, income from research and most corporate sponsorships.
- Corporate sponsorships are not excluded if the nonprofit promotes the sponsor's products, services or facilities in exchange for the sponsorship. Unless the nonprofit only gives a simple acknowledgement of the sponsor's gift, the nonprofit should seek the advice of their professional tax advisor to determine if the corporate sponsorship is or is not exempt from inclusion on IRS Form 990T.

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## Information needed by the nonprofit for the preparation of the IRS Form 990:

- Expenses need to be separated by functional categories: programs, management and general and fund-raising.
  - Fundraising expenses are those incurred in:
    - Maintaining donor mailing lists.
    - Preparing and distributing fund-raising manuals and materials (including grant writing).
    - Soliciting contributions or membership dues.
    - Publicizing and conducting fund-raising campaigns.
    - Soliciting bequests and grants from foundations or other organizations, or government grants.
    - Participating in federated fundraising campaigns.
  - Program service expenses:
    - Are mainly those activities that the reporting organization was created to conduct and which, along with any activities commenced subsequently, form the basis of the organization's current exemption from tax.
  - Management and general expenses:
    - Expenses related to the overall function and management of the organization.
    - Salaries and expenses of the chief officer of the organization and that officer's staff. If part of their time is spent directly supervising program services and fundraising activities, their salaries and expenses should be allocated among those functions.
    - Meetings of the board of directors or similar group (committee and staff meetings, etc.).
    - General legal services
    - Accounting
    - General liability insurance
    - Auditing
    - Personnel
    - Preparation, publication and distribution of an annual report.
  - IRS is now sending information letters to those who did not report fund raising expenses or reported fundraising expenses less than 5% of contributions. To avoid this attention from IRS a nonprofit should attach a statement explaining why little or no fund raising expenses were reported on their IRS Form 990.
- Program expenses and revenues summed by program achievement categories.
- Compensation and benefits paid in the current year to officers, executive director, and key employees.
- Compensation and benefits paid in the current year to former officers, directors, trustees and key employees.

- Investment earnings need to be separated into realized and unrealized gains or losses.
- List of contributors that gave greater than \$5,000 in contributions during the year.
- Contributions separated by direct and indirect contributions. Contributions are those gifts in which the donor receives nothing in return for their contributions. Direct contributions are those contributions received directly from the contributor. Indirect are those contributions that are received from organizations like the United Way.
- List of in-kind contributions: Gifts, securities and tangible gifts should be listed separately from donated services and donated use of facilities, materials and equipment.
- List of special events.
  - Special event receipts must be divided into two categories: that contributed and that portion of which something of value was received.
  - Direct costs of special event (food, venue, items sold, etc.) should be separated from fundraising expenses.
- Dues need to be separated into those that the member receives more than a nominal value for the dues and those that do not.

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### **Some additional questions that will be asked on the revised 2008 IRS Form 990:**

- Does the organization have documentation of governing body meetings?
- Did the governing body review the form 990 before it was filed?
- Does the organization have a written conflict of interest policy? Does this policy address recusals? Does the policy require annual written disclosures of conflicts of interest? During the year being reported were any actual or potential conflicts of interests identified? If so, was the organization's conflict of interest policy adhered to?
- Does the organization have a written whistleblower policy?
- Does the organization have a written document retention policy?
- Does the organization have a process for determining compensation? Is compensation of officers, directors and key employees approved in advance by an authorized body of the organization composed of individuals with no conflict of interest? Is comparability data used in making compensation determination? Is there written documentation of the compensation review?
- Did any of the organization's voting board members have a family relationship and/or outside business relationship with any other board member, officer or key employee?
- Are there systems or procedures in place intended to make sure assets are properly used and use was consistent with the organization's mission?
- How often did the organization provide board members with written reports of the organization's financial activities? How often did they discuss they reports?

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### **Who should sign the IRS Form 990?**

- An officer of the organization must sign the IRS Form 990.
- It is also very important to have you board of directors or appropriate committee review the IRS Form 990 prior to submitting it. This review should be documented.

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### **Disclosure requirement for the nonprofit's IRS Form 990:**

- The nonprofit's IRS Form 990 is considered public record and must be made available to the public upon request.
- The three most recent 990s must be given when requested with only a minimal charge equal to the cost of copying the forms.
- Schedule B of the IRS Form 990 is not considered public record and should not be included.
- The nonprofit can post their IRS Form 990s on their web site and when copies are requested the nonprofit need only to tell those requesting how to locate the forms on the web page.
- The IRS form 990T is also subject to public record disclosure.

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### **Changing the nonprofit's name with IRS:**

- If incorporated, the nonprofit must amend articles of incorporations and submit to the state for approval.
- The nonprofit must send a letter to IRS notifying IRS of the name change. The letter must include the nonprofit's Federal ID number and exemption code section (i.e. 501(c)(3)). If the nonprofit is incorporated they must also include the confirmation of name change and approval of amended articles of incorporation received from the state.

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### **Changing the nonprofit's tax-exempt purpose with IRS:**

- Nonprofits must review their exempt purpose stated in their application for exemption (Form 1023) at least annually to make sure the organization is still aligned with their exempt purpose.

- Significant changes in purpose stated in Form 1023 must be reported to IRS by answering “Yes” to Part III line 2 of the IRS 990 form for the year the change was made. A description of the change must also be made on Schedule O of that tax return.

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#### **Activities that could threaten a nonprofit’s exempt status:**

- Transactions that privately benefit insiders of the organization. Insiders include, but are not limited to, members, employees, board members and/or individuals who have any control of the organization. Transactions include:
  - Payout of surpluses.
  - Paying unreasonable compensation.
  - Use of organization’s property, including but not limited to, cars, computers and/or cell phones for personal uses.
- Lobbying as a substantial part of the organization’s activities.
- Participating in political campaign in any manner.

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#### **State of New Mexico’s requirements for nonprofits:**

- All charitable organizations must register with the New Mexico Attorney General’s office.
- Each year a copy of the organization’s IRS Form 990 and all attached schedules must be filed with the New Mexico Attorney General’s office within six months following the close of the organization’s fiscal year. The State will grant the same extension given by the IRS Form 8868, however when sending your IRS Form 990 you must also include the IRS Form 8868.
- If an organization does not file an IRS Form 990, they must file an annual report with the New Mexico Attorney General’s office.
- It is unlawful for charitable organizations to solicit funds in New Mexico if they are not current with their filing requirements with the New Mexico Attorney General’s office.

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#### **Some other filing requirements:**

- The Employee Retirement Income Security Act (ERISA) normally requires retirement plan sponsors to file an annual IRS Form 5500. It is important to seek a professional tax advisor if you have any retirement or benefit plans.
- Payroll related requirements are varied and complex. If your nonprofit has any employees, you should seek professional advice on these requirements. You can also order *PPC’s Payroll Tax Deskbook* which gives you detail information on these requirements. PPC’s website is [www.ppcnet.com](http://www.ppcnet.com).

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### Resources:

Congress CRS Report, Tax-Exempt Organizations: Political Activity Restrictions and Disclosure Requirements: [www.fpc.state.gov/documents/organization/66481.pdf](http://www.fpc.state.gov/documents/organization/66481.pdf)

IRS website for nonprofits: [www.irs.gov/charities/index.html](http://www.irs.gov/charities/index.html)

IRS website with online training for Form 990: <http://www.stayexempt.org>

IRS Form 990 forms and instructions: [www.irs.gov/formspubs](http://www.irs.gov/formspubs)

IRS Instructions for Form 990: [www.irs.gov/pub/irs-pdf/i990.pdf](http://www.irs.gov/pub/irs-pdf/i990.pdf)

IRS Instructions for Form 990-EZ: <http://www.irs.gov/pub/irs-pdf/i990ez.pdf>

IRS e-file for Charities and Non-Profits: <http://www.irs.gov/efile/article/0,,id=108211,00.html>

New Mexico's statute on charitable organizations:  
<http://www.nmag.gov/office/Divisions/Civ/charity/statute.aspx>

New Mexico Charitable Organizations Registrar: <https://secure.nmag.gov/coros/>

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### About the Author:

Janice Moen has over 25 years of accounting experience, twelve years of which were as Chief Financial Officer or Chief Executive Officer of nonprofit agencies. Janice is currently the CFO of ARCA, a nonprofit providing service to individuals with developmental disabilities. Janice also has five years experience as an external auditor of governmental and nonprofit agencies. Janice received her BBA and Master in Accounting from the Anderson School of Management at the University of New Mexico. Janice was awarded the 2007 Outstanding Member in Corporate Practice Award by the New Mexico Society of CPA's in 2007. She was also recognized as one of the Business Weekly's Top CFO's in 2007. Janice is a member of the American Institute of CPA's and currently serves on the New Mexico Society of CPA's Course Selection Committee and the Anderson School of Management's Accounting Department Advisory Committee.



ARCA, working together to open doors for people with developmental disabilities to be valued members of the community. [www.arc-a.org](http://www.arc-a.org)

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