

## RECENT DEVELOPMENTS APPLICABLE TO TAX-EXEMPT ORGANIZATIONS

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The following article summarizes selected recent developments in the area of tax-exempt organizations during the October 2006-February 2008 period since the last Texas Tax Lawyer article relating to tax-exempt organizations was published.<sup>2</sup> The media and governmental agencies have increasingly focused scrutiny on tax-exempt organizations, leading to more pressure on such organizations to adopt best practices standards with respect to corporate governance and disclosure. Acknowledging the lack of legislative requirements governing tax-exempt organizations, the Internal Revenue Service ("IRS") has, in the past year, been particularly active in generating publications reflecting the IRS's ideal standards of conduct for such entities.<sup>3</sup> Also relevant was new guidance relating to political campaign activities, a revised Form 990, as well as a new mandatory "e-filing" requirement for tax-exempt organizations previously exempt from annual IRS filings.

### 1. IRS Issues Good Governance Practices for Section 501(c)(3) Organizations.<sup>4</sup>

In March 2007, the IRS issued a four-page document entitled "*Good Governance Practices for 501(c)(3) Organizations*." This relatively simple document is intended for distribution to tax-exempt governing bodies, ostensibly to minimize recurring problems the IRS and other regulators have found within the industry. Many of the following are reflected in questions in the revised Form 990, issued later in 2007.<sup>5</sup>

a. The Mission Statement. The IRS recommends a "clearly articulated mission statement" that serves as a guide to the organization's purpose.

b. Code of Ethics and Whistleblower Policy. The code of ethics and whistleblower policies reflect similar requirements under the Sarbanes-Oxley rules applicable to public, for-profit corporations regulated by the Securities & Exchange Commission ("SEC").

c. Due Diligence Policies and Procedures. Such policies and procedures should be in place to inform the executives of the organization's activities and whether goals are met. The executives should be fully informed of financial and other details, and should have regular access to this information.

d. Duty of Loyalty. The IRS states that this duty is in part fulfilled by the adoption, adherence, and regular evaluation of a conflicts of interest policy.

e. Transparency. The Form 990 should be reviewed carefully and posted on the public web site.

f. Fundraising Policy. The IRS recommends that organizations have a written fundraising policy and keep costs reasonable. Care should be taken to document any relationship between outside fundraisers and organization executives and ensure compensation is arms'-length and assure the parties are not receiving excessive benefits from such relationships.

g. Financial Statements. The IRS recommends independent auditors if the organization has substantial assets or annual revenue, and recommends rotating firms every five years. This rotation ensures a fresh look at financials and compensation practices regularly.

h. Compensation Practices. The IRS restates the requirement of reasonable compensation determined by a compensation committee – this relates to the need to have a conflicts of interest policy and have that policy followed. It recommends that the compensation committee be comprised of people who are not compensated by the organization and have no financial interest in the determination.

i. Document Retention Policy. There should be a written document retention policy. The IRS refers to its brochure, Publication 4221 ("Compliance Guide for 501(c)(3)

Tax-Exempt Organizations”), which outlines suggested times for retaining various tax and corporate records.

## 2. IRS Issues Report on Exempt Organization Compensation.

Concurrently with the “Good Governance” document, the IRS issued its *Report on Exempt Organizations Executive Compensation Compliance Project (Parts I and II)*,<sup>6</sup> outlining findings from an executive compensation study of exempt organizations begun in 2004. During this process, the IRS contacted 1,826 exempt organizations, requesting various disclosures on executive compensation. The report resulted in the following general conclusions.

- Accurate reporting of executive compensation on the Form 990 was the main and most widespread problem. There were substantial omissions with respect to excess benefit transactions and transactions with disqualified persons.
- The IRS Exempt Organizations (“EO”) Division intends to further educate the public charity sector about the section 4958 rebuttable presumption standard (relating to independent governing body, reliance on comparable data, and adequate documentation) and how to satisfy the requirements of the presumption.
- Problems with excessive compensation were not widespread, but where problems were found, the excise taxes assessed were significant. As such, “continued enforcement presence” in the area was warranted.

## 3. Notice 2007-45 (Guidance Regarding Public Inspection of Unrelated Business Income Returns) .

The Pension Protection Act of 2006 (“PPA”) requires public disclosure of a section 501(c)(3) organization’s Form 990-T (Exempt Organization Business Income Tax Return (and proxy tax under section 6033(e))) following the August 17, 2006 enactment date of the PPA. These forms are used by all tax-exempt entities reporting “unrelated business income,” and previously were not open to public inspection. The PPA changed this Form’s nondisclosure status, and now, Form 990-T now must be made available in the same manner as Form 990s must generally be made available for all section 501(c)(3) organizations, and subject to similar penalties for failure to comply.

Under the interim guidance provided by Notice 2007-45, I.R.B. 2007-22 (May 9, 2007), the IRS clarified that all public charities must comply with the disclosure requirement, regardless of whether Form 990 itself is required. For example, churches must now make public Form 990-Ts, even if the church does not file the basic Form 990 or 990-EZ. In addition, the IRS discussed the unique situation of state colleges and universities (and wholly owned corporations of such entities). These governmental entities are exempt from tax under section 115 of the Code (“Income of States, Municipalities, etc.”) but may often nevertheless apply for, and receive, a section 501(c)(3) determination letter. If such a 501(c)(3) determination letter has been received, the IRS will require public disclosure of Form 990-Ts (even though governmental entities may not actually file the basic Form 990.

An exception to disclosure exists if the Form 990-T is filed solely to request a refund of the federal telephone excise tax.

## 4. Revenue Ruling 2007-41 (Participation and Intervention in Political Campaigns).

In a timely ruling acknowledging the increased political activity in the 2008 Presidential election year, the IRS provided further guidance in *Rev. Rul. 2007-41, 2007-25 I.R.B.* (June 18, 2007) on what constitutes prohibited participation or intervention in political campaigns on behalf of (or in opposition to) any candidate for public office. Twenty-one factual situations were outlined in the ruling, and the IRS applied its interpretation of the law – as described below.

### a. Voter Education, Voter Registration and Get Out the Vote Drives.

These types of activities must be conducted carefully. Situation 1 discusses a section 501(c)(3) organization setting up a booth where citizens may register to vote. Information disclosed was limited to the name of the organization, the date of the upcoming state elections, and notice of an opportunity to register. No candidate names or parties were shown; thus, such facts indicated no political campaign intervention occurred. Situation 2 describes a telephone bank established by a section 501(c)(3) organization which calls registered voters and inquires as to voter’s views on environmental issues. Voters who respond in a manner favoring a particular candidate are reminded about an upcoming election and offered assistance in transportation. In this case, the facts indicate prohibited political campaign intervention.

### b. Individual Activity by Organization Leaders.

Four situations are outlined by the IRS, all involving the activities of tax-exempt organization leaders, describing permissible and prohibited activities. A situation whereby a CEO of a tax-exempt hospital permitted a candidate to publish an ad showing personal endorsements was permitted, where the ad stated, “Titles and affiliations of each individual are provided for identification purposes only.” The ad was entirely paid by the candidate and was not an official publication of the hospital. In contrast, other situations whereby costs were paid by the tax-exempt organization, held or otherwise associated with official organization activities, were not permissible.

### c. Candidate Appearances.

The IRS notes that candidates may be invited to speak at a tax-exempt organization event either in their capacity as candidates, or as individuals (not as a candidate). They may also appear without invitations. When speaking in a candidate capacity, the IRS looks to several factors to determine whether prohibited campaign activities occur.

- Whether the organization provides to other political candidates an equal opportunity to participate (the nature of particular events are considered, in addition to the manner of presentation).
- Whether the organization indicates any support for or opposition to the candidate (which looks to introductions and communications relating to candidate attendance).
- Whether any political fundraising occurs at the event.

Parameters relating to several candidates speaking at a public forum are outlined as well. The IRS considers whether the questions are prepared and presented by nonpartisan panels, whether the topics are of a broad range of issues, whether an equal opportunity to present views are offered, and whether a moderator comments or implies approval/disapproval.

d. Candidate Appearances Where Speaking or Participating as a Non-Candidate.

Relatively innocuous appearances by political candidates, just by virtue of celebrity or expertise, in public events must be considered to see if political intervention occurs. Appearance per se is permissible; however, if the candidate is publicly recognized or invited to speak, the IRS will look to the following facts:

- Whether the individual is chosen to speak for reasons other than candidacy.
- Whether the individual speaks in a non-candidate capacity.
- Whether the individual or any representative of the tax-exempt organization makes any mention of his or her candidacy.
- Whether any campaign activity occurs in connection with the candidate's attendance.
- Whether the tax-exempt organization maintains a nonpartisan atmosphere on the premises or at the event.
- Whether the tax-exempt organization clearly indicates the capacity in which the candidate is appearing and does not mention the individual's political candidacy or the upcoming election in the communications announcing the event.

e. Issue Advocacy vs. Political Campaign Intervention.

Tax-exempt organizations may take positions on public policy issues, but must avoid any advocacy of issues which function as political campaign intervention. Even implied support for a specific candidate can cause problems. Factors to review include:

- Whether the public policy statement identifies one or more candidates for a public office.
- Whether the statement indicates approval or disapproval of a candidate's positions and/or actions.
- Whether the statement is delivered close in time to an election.
- Whether the statement refers to voting or an election.
- Whether the issue addressed in the statement has been raised as an issue distinguishing candidates for a given office.
- Whether the statement is a part of an ongoing series of communications by the organization on

the same issue which is made independent of the timing of any election.

- Whether the timing of the statement and identification of the candidate are related to a non-electoral event such as a scheduled vote on specific legislation by an officeholder who also happens to be a candidate.

f. Business Activity.

Activities relating to goods, services, and activities offered by tax-exempt organizations such as selling or renting mailing lists, leasing office space, or acceptance of paid political advertising can have political intervention implications. In these situations, the tax-exempt organization should consider:

- Whether the good, service, or facility is available to candidates in the same election on an equal basis.
- Whether the good, service, or facility is available only to candidates and not the general public.
- Whether the rates charged to candidates are at the organization's customary and usual rates.
- Whether the activity is an ongoing activity of the tax-exempt organization, or conducted only for a particular candidate.

g. Web Sites.

The IRS makes it clear that any materials posted on a web site shall be treated as distributed printed material, oral statements or broadcasts that favored or opposed a candidate. Web links are specifically discussed. The tax-exempt organization should consider the content of the web link, whether all candidates are represented, any exempt purpose served by offering the link, and the directness of links between the tax-exempt organization's web site and the web page that offers material favoring or opposing a candidate.

**5. IRS Releases Hospitals and Community Benefit Interim Report.**

An excellent recap of the general IRS rules on hospital community benefits (the principal standards relating to whether a hospital maintains section 501(c)(3) status as set forth in Rev. Ruls. 69-545, 1969-2 C.B. 117 and 83-157, 1983-2 C.B. 94) is outlined in the *Hospital Compliance Project Interim Report (Summary of Reported Data)*, released by the IRS on July 19, 2007.<sup>7</sup> The Interim Report, largely a statistical summary, summarized responses to a detailed questionnaire sent to tax-exempt hospitals in 2006. The IRS expects to issue further reports which will analyze the reported data. Key issues to be addressed will be differences in bad debt and uncompensated care reporting, and community benefit expense calculations.

**6. IRS Electronic Health Records Directive.**

On May 11, 2007, the IRS issued an internal "directive" (a guideline provided to reviewers and agents within the EO Division) that outlines its policy regarding tax-exempt hospitals' provision of discounted electronic health records ("EHR") systems to physicians.<sup>8</sup> The providers of such systems work with exempt health care organizations to implement their products - often at greatly reduced fees.

To provide at least some guidance to alleviate private inurement concerns, the directive presents two steps towards a safe harbor for EHR arrangements. First, the hospital should provide EHR systems within the parameters permitted under the Department of Health and Human Services ("HHS") final regulations. Under these regulations, the provision of EHR software and technical support ("Health IT Items and Services") will not violate the federal anti-kickback law (42 U.S.C. § 1320a-7b) and the physician self-referral law (42 U.S.C. § 1395nn). Once HHS parameters are met, the IRS safe harbor requires that:

a. The provision of EHR systems (called a "Health IT Subsidy Arrangement") must require both the hospital and the participating physicians to comply with the HHS rules on a continuing basis.

b. The Health IT Subsidy Arrangement provides that to the extent permitted by law, the hospital may access all of the electronic medical records created by the physician under the Health IT Subsidy Arrangement.

c. The hospital ensures that the Health IT Items and Services are available to all of its medical staff physicians.

d. The hospital provides the same level of subsidy to all of its medical staff physicians or varies the level of subsidy by applying criteria related to meeting the healthcare needs of the community.

## 7. IRS Releases Redesigned Form 990.

A revised, final version of a new *Form 990* (Return of Organization Exempt From Income Tax) was delivered in December of 2007.<sup>9</sup> The new *Form 990*, circulated for public comment in June 2007, will be used for the 2008 tax year (and first due during the calendar year 2009). In addition to a "core" *Form 990*, supplemental Schedules may be required for tax-exempt public charities, who are conducting particular activities. The group return filing mechanism was retained.

There are phase-in provisions for small organizations, permitting a *Form 990-EZ* to be filed for 2008 and 2009 tax years.<sup>10</sup> In addition, Schedules H and K (relating to hospitals and tax-exempt bonds, respectively) are partly optional for the 2008 tax year and fully implemented for the 2009 tax year. Draft instructions were not released as of submission date of this Article.

The following is a brief discussion of the "core" *Form 990* and selected supplemental Schedules.

### a. **Summary of Core Form.**<sup>11</sup>

The new *Form 990* has a summary first page which discloses key substantive information immediately. The idea is to present core information first, alleviating "prospecting" work for reviewers.

Part I (Summary), Lines 1 through 7 (*Activities & Governance*), discloses the exempt organization's overall mission and activities (in general terms), along with the number of voting members of the body, employees, volunteers, and "unrelated business revenue and taxable income."

Lines 8-19 (Expenses) and Lines 20-22 (*Net Assets or Fund Balances*) of the new *Form 990* require summary financial statement figures on the first page. The abbreviated format discloses items the IRS found most relevant during its

compliance initiatives - grants paid to recipients, benefits paid to members, salaries and employee benefits, and fundraising expenses paid to professionals. The rest of the detail is lumped into a one-line listing for "other expenses," although later parts of *Form 990* require more detail.

Part III (*Statement of Program Service Accomplishments*) on Page 2 is a detailed reporting page for activities and accomplishments of the exempt organization. The "program service accomplishment" section was always required in the original *Form 990*, but the reporting page has been moved closer to the front.

Part IV (*Checklist of Required Schedules*) consists of Pages 3 through 4 and may eventually be the most time-consuming part of the new *Form 990*. The IRS now asks 37 specific questions designed to highlight key issue areas where the IRS has found problems in the past. Part IV should be reviewed most carefully by officers and directors. While the questions are phrased in a simple "yes-no" format, answering "yes" to any requires completion of additional supporting schedules and forms.

Key questions within Part IV relate to whether the tax-exempt organization participated in campaign or lobbying activities, prepared audited financial statements, operated any hospitals, have a tax-exempt bond issue, made any loans to officers and directors, or participated in any "excess benefit" transactions. Reporting an excess benefit transaction, for example, requires completion of new Schedule L ("*Transactions with Interested Persons*").

Part V (*Statements Regarding Other IRS Filings and Tax Compliance*) contains some new questions never asked in the past. Since the IRS has found periodic tax reporting (*W-2s*, *1099s*, etc.) within exempt organizations sometimes lacking, the new Part V solicits information relating to the number of information reports submitted and the number of employees.

Part VI (*Governance, Management, and Disclosure*) solicits more detailed disclosures on the governing body of an exempt organization. The prior *Form 990* had somewhat scattered governance questions; now, relevant information relating to those in control of the exempt organization exists neatly in one place. Section A of Part VI asks questions relating to the number of governing board members, and whether such members had family or business relationships with other members. The new *Form 990* now asks if the governing body contemporaneously documents meetings (such that the board needs to review documentation policies to make sure it can answer this question affirmatively). In addition, the IRS now asks if a draft *Form 990* was provided to the governing body *before* it was filed.

Section B of Part VI (*Policies*) now asks whether the exempt organization has numerous written policies, and reflects many "good governance" principles required by Sarbanes-Oxley for public companies, but technically inapplicable to nonprofit organizations. In addition to conflicts of interest policies, the new *Form 990* now asks if the organization has a written whistleblower policy and a document retention and destruction policy. The IRS also asks if there is a written policy or procedure relating to the participation in joint venture arrangements, along with steps taken to safeguard the organization's exempt status when participating in such arrangements. Most significantly, Section B now directly asks if the process for determining executive and key employee compensation follows a review and approval process by independent persons, using

comparability data and contemporaneous substantiation of the decision-making process.

Part VII (*Compensation of Officers, Directors, Employees, Contractors Etc.*), Pages 7 through 8, contains redesigned disclosure pages for reporting compensation to all types of recipients. The new compensation disclosures now require showing the actual reportable compensation to certain persons as per the underlying W-2 or 1099s - from both the entity filing the Form 990 and related organizations. In most large exempt organizations, however, additional disclosures will be required on new Schedule J.

Parts VIII through Part XI, Pages 9 through 11, contain the detailed overall financial information which is only summarized in Part I. Part XI now asks whether the financial statements were compiled, reviewed, or audited by an independent accountant, and whether such processes were required due to other federal or state laws.

#### b. Summary of Schedule H (Hospitals).<sup>12</sup>

If the exempt organization operates a hospital, Schedule H must be filed. The new Schedule H solicits much of the information about tax-exempt hospitals which have been identified as problem areas during the IRS compliance initiative. All but the last part (Part V (Facility Information)) is *optional* for the 2008 filing period; to ease transition burdens, the IRS is only requiring all Parts of Schedule H to be completed starting for the 2009 filing period (in other words, all of Part H will be mandatory for returns due in 2010).

Part I (*Charity Care and Certain Other Community Benefit at Cost*) solicits more detailed information about charity care policies and community benefit reports. This part asks, for example, if the organization uses Federal Poverty Guidelines in providing free or discounted care to low income individuals, and whether community benefit reports are required. For the first time, the new Schedule H, informs the IRS of such requirements. Those organizations in states which already require community benefit activities will be ahead of the game; in states which do not have such requirements, this mandatory reporting will be a first.

Part II (*Community Building Activities*) requests a detailed breakdown of programs, revenues, and expenses relating to the more general charitable activities of hospitals, such as physical improvements, community support, and community health improvement. Hospitals will, therefore, be able to disclose costs associated with less obvious ways of providing benefits to the community.

Part III (*Bad Debt, Medicare, & Collection Practices*), entirely new, asks for details on the bad debt reporting methods of the organization, such as whether bad debt is reported in accordance with Healthcare Financial Management Association Statement No. 15. The amount of total revenue from Medicare is requested, as well as whether a surplus or shortfall exists after deducting allowable costs of care. The IRS also asks if a written debt collection policy exists. These items are separate from the Part on "community benefits," which means that state calculations of community benefit costs may reflect different aggregate figures.

Part VI (*Supplemental Information*) follows up with requested information on how the organization assesses healthcare needs within the communities served, and asks how the public is informed on who may be billed for patient care.

#### c. Summary of Schedule J (Compensation Information).<sup>13</sup>

New Schedule J (*Compensation Information*) is a more extensive compensation disclosure schedule which will likely be completed in addition to the core Form 990's compensation disclosures for most large exempt organizations. Payment of more than \$150,000 in aggregate compensation to any officer, director, or key employee, payments to former such persons, or payments from related organizations for services rendered to the exempt organization, triggers the Schedule J requirement. Schedule J will require disclosure of non-financial perks such as first-class or charter travel, spousal travel, and personal services (which the IRS actually defines to include maids, chauffeurs, and chefs).

#### d. Other Schedules.

In addition to the Schedules discussed above, other Schedules were retitled and/or modified. Schedule A (now titled "*Public Charity Status and Public Support*")<sup>14</sup> splits out the compensation information and political activity questions in old Schedule A and now focuses solely on public charity and public support tests. Schedule C ("*Political Campaign and Lobbying Activities*")<sup>15</sup> replaces the old Schedule A political questions and requires separate disclosure of direct and indirect campaign activities, including volunteer hours. Schedule G ("*Supplemental Information Regarding Fundraising or Gaming Activities*")<sup>16</sup> replaces old questions relating to fundraising that were scattered within the old Form 990. New Schedule R ("*Related Organizations and Unrelated Partnerships*")<sup>17</sup> requests detail on the controlled entities previously disclosed on the original Form 990's basic form.

#### **8. New Mandatory Reporting for Small Exempt Organizations (Under \$25,000 in Gross Receipts) – First E-Postcards For Calendar Year Exempt Organizations Due May 15, 2008.**

Until recently, small tax-exempt organizations with gross receipts of under \$25,000 were not required to file Form 990 with the IRS. The PPA implemented a mandatory requirement for all tax-exempt organizations regardless of gross receipts, with few exceptions.<sup>18</sup> The requirement is the filing of an "e-Postcard" by responding to questions via an online form.

Fortunately the disclosures are simple, requiring the following.

- a. The legal name of the organization.
- b. Any assumed name under which such organization operates or does business.
- c. The organization's mailing address and Internet web site address (if any).
- d. The organization's taxpayer identification number.
- e. The name and address of a principal officer.
- f. If applicable, a statement that the tax-exempt organization has terminated.

Links to the current e-filing site can be found through the IRS site at <http://www.irs.gov/charities/article/0,,id=169250,00.html>. The link refers to the IRS partner for the e-Postcard, the Urban Institute.

Exceptions from this requirement exist for churches, governmental units (including agencies and instrumentalities (described as "affiliates") and entities included on a group

return. In addition, the IRS has indicated the gross receipts threshold of \$25,000 may be increased in later years (i.e., \$50,000 beginning with the tax year 2010).

### 9. State Tax Developments.

Corporate and most partnership entity taxpayers doing business in Texas will file the first tax returns based on the revised Texas franchise tax<sup>19</sup> on May 15, 2008.<sup>20</sup> Partnerships in particular will be filing their first franchise tax reports, and many tax-exempt organizations who are partners in limited partnerships or general partnerships may have to review filing obligations not previously required.

For the most part, the Texas franchise tax exemption regime remains in place for the Texas margin tax. Subchapter B of the Texas Tax Code, beginning with Section § 171.051, outlines the requirements for exemptions from the margin tax. The tax-exempt organization must file evidence establishing the qualifications for an exemption within fifteen (15) months after the last day of the calendar month in which the entity's charter or certificate of authority is dated. The exemption is recognized if it is finally established, as of the date of the charter or certificate. Unfortunately, the most common method for establishing the state exemption, providing a copy of the section 501(c)(3) determination letter, does tie to the deadline for filing the federal Form 1023 (which is 27 months from the date of incorporation).

Texas Administrative Code Rule § 3.583 ("Margin: Exemptions") outlines procedural requirements for obtaining exemptions and appears similar to its predecessor. Nevertheless, the rules still warrant a review due to discrepancies in deadlines with federal exemptions.

The requirements for provisional, or temporary, exemptions from margin tax filings are particularly important. As stated above, while Form 1023 is not due until 27 months after the date of a tax-exempt organization's incorporation, deadlines for margin tax exemptions are different. For margin tax exemptions, the organization must show that:

a. The application for recognition of exemption (Form 1023) is provided to the IRS within their timely filing guidelines; and

b. the copy of the Form 1023, and either the letter from the IRS confirming Form 1023 receipt or the return receipt confirmation or other evidence of delivery, is postmarked within 15 months after the day that is the last day of a calendar month and that is nearest to the entity's beginning date.

### ENDNOTES

- 1 The author is a partner with the law firm of Brown McCarroll, L.L.P., 111 Congress Avenue, Suite 1400, Austin, Texas 78701, [alin@mailbmc.com](mailto:alin@mailbmc.com). Portions of this article were derived from previous articles written by the author for the CCH Healthcare Compliance Letter, CCH Exempt Organization Reports, and the Journal of Healthcare Compliance. Thanks to G. Philip Morehead and Bruce Bernstien, who provided helpful comments to this Article.
  - 2 See Tyree Collier, Recent Developments Applicable to Tax-Exempt Organizations, Tex. Tax Law. p. 22 (Oct. 2006).
  - 3 Practitioners may expect a comparatively more focused IRS Exempt Organizations ("EO") Division, which has announced its goals of enhanced enforcement and improved customer service. See FY 2008 Implementing Guidelines, available at [http://www.irs.gov/pub/irs-tege/fy08\\_implementing\\_guidelines.pdf](http://www.irs.gov/pub/irs-tege/fy08_implementing_guidelines.pdf).
  - 4 Unless otherwise indicated, references to Sections contained herein are references to the Internal Revenue Code of 1986, as amended ("Code").
  - 5 After the publication deadline of this article, the IRS posted on its web site a "Corporate Governance Update" which continues the theme of good governance and refines further the IRS "best practices" positions on governance of tax-exempt public charities. The update is available at [http://www.irs.gov/pub/irs-tege/governance\\_practices.pdf](http://www.irs.gov/pub/irs-tege/governance_practices.pdf).
  - 6 Available at [http://www.irs.gov/pub/irs-tege/exec\\_comp\\_final.pdf](http://www.irs.gov/pub/irs-tege/exec_comp_final.pdf).
  - 7 Available at <http://www.irs.gov/charities/charitable/article/0,,id=172267,00.html>.
  - 8 Available at <http://www.irs.gov/pub/irs-tege/ehrdirective.pdf>.
  - 9 All forms and IRS discussion materials for the new Form 990 may be found at <http://www.irs.gov/charities/article/0,,id=176613,00.html>.
  - 10 Entities satisfying both a gross receipts test and assets tests in accordance with the following table may file Form 990-EZ:
- | <u>May file 990-EZ for:</u>   | <u>If gross receipts are:</u> | <u>and</u> | <u>If assets are:</u> |
|-------------------------------|-------------------------------|------------|-----------------------|
| 2008 tax year (filed in 2009) | >\$25,000 and < \$1M          |            | < \$2.5M              |
| 2009 tax year (filed in 2010) | >\$25,000 and <\$500K         |            | <\$1.25M              |
| 2010 and later tax years      | >\$50,000 and <\$200,000      |            | <\$500K               |
- 11 Available at <http://www.irs.gov/pub/irs-tege/f990rcore.pdf>.
  - 12 Available at <http://www.irs.gov/pub/irs-tege/f990rschh.pdf>
  - 13 Available at <http://www.irs.gov/pub/irs-tege/f990rschj.pdf>.
  - 14 Available at <http://www.irs.gov/pub/irs-tege/f990rscha.pdf>.
  - 15 Available at <http://www.irs.gov/pub/irs-tege/f990rschc.pdf>.
  - 16 Available at <http://www.irs.gov/pub/irs-tege/f990rschg.pdf>.
  - 17 Available at <http://www.irs.gov/pub/irs-tege/f990rschr.pdf>.
  - 18 Temp. Reg. § 1.6033-6T (available at [http://www.irs.gov/pub/irs-tege/epostcard\\_tregs111507.pdf](http://www.irs.gov/pub/irs-tege/epostcard_tregs111507.pdf)).
  - 19 More colloquially referred to as the Texas "margin" tax, although the Texas Comptroller continues to refer to it as a franchise tax.
  - 20 Some taxpayers, of course, have had to file the returns early, whether for termination or fiscal year purposes.

# SECTION OF TAXATION

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April 11, 2008

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Re: Proposed Regulations -- RALs

Dear Commissioner Shulman:

On January 7, 2008, the Internal Revenue Service and Treasury issued an advance notice of proposed rulemaking (REG-136596-07) addressing guidance on the marketing of refund anticipation loans (RALs) and certain other products in with connection with the preparation of a tax return. On behalf of the Section of Taxation of the State Bar of Texas, I am pleased to submit the enclosed set of comments.

THE COMMENTS ENCLOSED WITH THIS LETTER ARE BEING PRESENTED ONLY ON BEHALF OF THE SECTION OF TAXATION OF THE STATE BAR OF TEXAS. THE COMMENTS SHOULD NOT BE CONSTRUED AS REPRESENTING THE POSITION OF THE BOARD OF DIRECTORS, THE EXECUTIVE COMMITTEE OR THE GENERAL MEMBERSHIP OF THE STATE BAR OF TEXAS. THE SECTION OF TAXATION, WHICH HAS SUBMITTED THESE COMMENTS, IS A VOLUNTARY SECTION OF MEMBERS COMPOSED OF LAWYERS PRACTICING IN A SPECIFIED AREA OF LAW.

THE COMMENTS ARE SUBMITTED AS A RESULT OF THE APPROVAL OF THE COMMITTEE ON GOVERNMENT SUBMISSIONS OF THE SECTION OF TAXATION AND PURSUANT TO THE PROCEDURES ADOPTED BY THE COUNCIL OF THE SECTION OF TAXATION, WHICH IS THE GOVERNING BODY OF THAT SECTION. NO APPROVAL OR DISAPPROVAL OF THE GENERAL MEMBERSHIP OF THIS