

IRS Compliance Questionnaires

The Internal Revenue Service announced on October 1, 2008, that it would soon begin sending compliance questionnaires to 400 colleges and universities. These questionnaires are a continuation of the IRS's effort to better understand the exempt community which began in 2006 when the IRS sent similar questionnaires to hospitals. The higher education community is one of the key segments of the tax-exempt community that the IRS is studying in an effort to determine if current tax laws for exempt organizations are achieving their intended results in terms of a public benefit. There is some sense in Washington that colleges and universities have grown and expanded their activities without any serious oversight efforts by the IRS.

The questionnaire asks about the institution's organizational structure, activities, unrelated business income, endowment funds and executive compensation. Questions about student population size, tuition rates, governance policies, distance learning programs, and study abroad programs are intended to give the IRS an idea of the size and scope of the institution's programs.

About one-half of the questions focus on unrelated business income. The questionnaires will explore how institutions report revenues and expenses from their trade or business activities, how they classify their activities as exempt or taxable, and how they calculate and report income or losses on taxable activities.

Institutions will be asked how they invest and use their endowment funds. Some members of Congress have suggested that the government should impose a mandatory pay out requirement on college and university endowments similar to that imposed on private foundations. The assumption is that a mandatory pay out would result in more scholarships and other financial assistance for students. Questions about how endowments are managed and invested and how distributions are made are intended to determine if the community is in effect self-regulating. Congressional action might not be needed if colleges and universities

are already using their endowments on a regular basis to fund tuition and other student needs.

IRS officials deny that any major change in the regulation of colleges and universities is in the works. They maintain that this is an information gathering procedure. Although tax-exempt colleges and universities file their Form 990 information returns each year, the IRS has not done any comprehensive analysis of the information provided. The questionnaires are intended to answer some basic questions about this segment of the tax-exempt community. For example, the questions about endowments are intended to provide information such as how many endowments exist, their size, whether they are growing or shrinking, and how they are being used. Questions about executive compensation are intended to identify whether colleges and universities are similar to other exempt organizations in setting their compensation or whether there are extreme differences that need to be addressed.

The IRS expects to receive most of the responses by early 2009. It will analyze the results and then conduct examinations of some of the responding institutions. The IRS expects to issue a report on the questionnaire project in 2009. As a result of the 2006 hospital survey, the new Form 990 includes a separate schedule for hospitals to report their revenues and activities. IRS officials predict a similar schedule for colleges and universities will be a likely result of this 2008 survey but they give no hint as to when such a schedule might be introduced.

Some institutions that receive the questionnaire do not need to complete it. Private institutions exempt under § 501(c)(3) offering only a two-year degree, private institutions that are not tax-exempt, and churches that are not separately incorporated schools need only return the questionnaire to the IRS.

At 33 pages, the questionnaire is complex and will require thoughtful consideration of the responses that are given. Any institution that receives a questionnaire is advised to consult with counsel and their accountants before returning the questionnaire to the IRS.