

**Phone Forum: Impact of the Pension Protection Act of 2006 on Form 990**  
**March 21 & 22, 2007**

**Welcome—Richard Crom**

Good morning (afternoon). Welcome to Exempt Organization's phone forum on the "Impact of the Pension Protection Act of 2006 on Form 990". My name is Richard Crom and I work for Exempt Organization's office of Customer Education and Outreach. We've organized today's session. Making today's presentation are two EO Rulings and Agreements specialists from Washington, DC: Theresa Pattara and Mary Jo Salins.

Each of you should have received emails containing the list of forms that will be discussed today, and the links for those forms and instruction booklets. I recommend that you have copies of those forms in front of you, as Theresa and Mary Jo will be addressing specific line items and narrative sections on the forms and instruction materials. They will let you know what line or page they will be discussing so you can follow along. If you miss a Regulation citation or a particular reference to a line on a form, don't worry. You can check the transcript of today's presentation on the Charities and Non-Profits homepage on [irs.gov](http://irs.gov); we'll be posting it within a few days.

After you registered for the phone forum, we solicited your questions about today's topic. Asking for questions in advance allows us to select and address those that we believe are relevant to the widest audience. During their presentations, Theresa and Mary Jo have incorporated answers to as many questions as time will allow. We plan to post answers to some of your other questions on the Frequently Asked Questions page of the Charities and Non-profits homepage on [IRS.gov](http://IRS.gov). Please be aware that we cannot answer questions about taxpayer-specific situations or questions that require legal interpretation.

Let's begin. Theresa?

**Introduction (Theresa)**

I will be discussing changes to the Forms 990, 990-PF, Schedule A, 4720 and new forms 8921 and 8922 resulting from the Pension Protection of Act of 2006 ("Pension Act"). I will also be discussing new forms 8886-T resulting from the Tax Increase Prevention and Reconciliation Act of 2006 ("TIPRA").

In general, many of the provisions of the Pension Act were effective upon enactment – that is when the President signed the bill which was August 17, 2006. Some changes impacted the 2005 Forms and Instructions. However we are not able to amend forms and instructions because they have been in use for over a year. You can find information on how to file complete 2005 returns on the Pension Act page of [IRS.gov](http://IRS.gov) which you can access through the Charities and Nonprofits page. The 2005 Forms that were affected include the Form 990, 990-PF, and Schedule A.

Similarly, the 2006 forms and IRS processing systems had already been developed by the time the Pension Act was enacted so we essentially had to jury-rig the 2006 forms to squeeze in questions where we could. Unfortunately, we will not be fiddling with these

forms again until we completely overhaul the Form 990 so we ask you to bear with awkwardness for a few years.

As many of you know, the Form 990 has not been revised in 25 years. We expect to publish a draft 990 with instructions for comment sometime this summer. This new form will be implemented no earlier than 2010 for the 2009 tax year. We will be providing updates on this revision project on IRS.gov and through our EO Update e-mail newsletter.

### **Changes to Filing Requirements (Theresa)**

Before diving into the specific changes to each form, I would like to start today's discussion with the changes to filing requirements for exempt organizations.

First, an organization cannot file Form 990-EZ if it maintains donor advised funds or has controlled entities. See page 2 of the instructions.

Second, supporting organizations now have to file regardless of their gross receipts. Prior to the Pension Act, any organization with less than \$25,000 of gross receipts did not have a filing requirement. The Pension Act essentially removes that threshold specifically for supporting organizations. However, the \$5,000 gross receipts threshold still exists for supporting organizations that support religious organizations. This change is reflected in the Item K checkbox located in the header information on the both Forms 990 and 990-EZ. The corresponding instructions are found on pages 21 and 47 of the instructions.

Let's move on to the specific changes to the 990. I will be starting with page one. I will give you a few seconds to get that form in front of you. The most significant changes to the Forms 990, 990-EZ and 990-PF relate to new laws governing supporting organizations, sponsoring organizations of donor advised funds, and organizations with controlled entities which we refer to as controlling organizations.

Supporting organization changes are all on Schedule A while donor advised fund changes are on Form 990 & Schedule A. Controlling organization changes, which Mary Jo will be discussing, are on 990, 990-PF and 990-T.

Hopefully you have the Form 990 in front of you now so let's start with Page 1, Line 1.

### **Form 990 Changes (Theresa)**

#### *Line 1*

Line 1a was added to capture the first of four requirements under new section 6033(k) which requires organizations that maintain donor advised funds to report certain information. The first item is contributions to donor advised funds. We realize that incorporating this requirement here on line 1 is not perfect and is not consistent since the existing categories of direct and indirect support encompass sources of contribution while the new 1a requires the reporting the "destination" of a contribution, i.e. a donor advised fund.

Prior to the Pension Act, the term donor advised fund was commonly understood to refer to component funds of certain community trusts. This developed from the Treasury

Regulations for section 170 of the Internal Revenue Code which many of you know governs the deductibility of charitable contributions. See Treas. Reg. section 1.170A-9(e)(10) and (11). The term was also commonly understood to refer to an account established by one or more donors but owned and controlled by a public charity to which such donors or other individuals designated by the donors could provide nonbinding recommendations regarding distributions from the account or regarding investment of the assets in the account. The Pension Act now specifically defines a donor advised fund. The definition is complex so I will not attempt to explain it today. However, you can find the definition on page 23 of the instructions.

The important thing to know about this line is that if you do not have funds or accounts that do not meet the new statutory definition, including the exceptions, you do not need complete this line. What this means is that you need to analyze each fund and account to determine whether it is a donor advised fund.

That's it for the first page so let's move on to page 2 and the Statement of Functional Expenses.

*Line 22a*

Similar to line 1a, line 22a was added to capture the second of four requirements under new section 6033(k) – distributions from donor advised funds. Again, this line should only be completed for funds or accounts that meet the new statutory definition. See page 28 of the instructions.

*Line 25*

Line 25 was split into 25a, b, and c – see page 29 of the instructions.

Lines a and b were divided to distinguish compensation to current officers, directors, trustees or key employees from compensation to former officers, directors, trustees or key employees. This change was not related to the Pension Act.

Line 25c was added to capture compensation and other payments to disqualified persons other than current and former officers, directors, trustees and key employees. The Pension Act added new categories of disqualified persons particularly for donor advised funds and supporting organizations. For donor advised funds, disqualified persons include donors and investment advisors. For supporting organizations, disqualified persons now include substantial contributors. For a supported organization, disqualified persons now include the disqualified persons of its supporting organization. You can find information about the new categories of disqualified persons on pages 13 and 14 of the Form 990 instructions.

I would like to point out at this time that we are aware of at least one typographical error in these instructions. In the instructions for the attached scheduled for line 25c, bullet 1 should read “interest on loans and advances” instead of “loans and advances”. In general, any payments of compensation or other amounts paid to disqualified persons not included on lines 25a and b but reported on other lines of the expense statement should be reported on line 25c.

We have received many questions about the new instructions for lines 25a, 25b and 75c regarding compensation of current and former officers, directors, trustees and key employees. Because we are still sorting through these questions and comments, I won't

be addressing those today. However, we expect to post a Q&A sometime within the next 4-6 weeks on IRS.gov that will address them.

*Line 43*

The instructions for this line were changed to reflect a new reporting requirement that is not related to the Pension Act. Organizations that pay travel and entertainment expenses for any federal, state or local government official or their family members must report the total of these expenses as a separate line item on line 43. You must report an amount on this line if an expenditure for an official exceeds \$200 and if the aggregate for each official is \$1000. You are not required to provide a list of such officials – only the sum of all such expenditures should be separately reported on line 43. See page 30 of instructions.

That's it for page 2. There are no changes to page 3 so let's move on to page 4 – the balance sheet. There is only one change on this page.

*Line 50b*

Line 50b was added to capture receivables from disqualified persons other than the officers, directors, trustees and key employees listed on line 50a. This corresponds with line 25c. As a reminder, the Pension Act now subjects the entire amount of compensation, loans, grants or other similar payments made by supporting organizations and sponsoring organizations of donor advised funds, to disqualified persons, to section 4958 excise taxes. Again, that is the entire amount of such payments – not just the excess. See page 32 of the instructions.

So that is the only change to the balance sheet. There are no changes to pages 5 and 6 other than the instructions for line 75c which as I mentioned before we will be addressing through a Q&A we will post on IRS.gov in about 4 to 6 weeks. So let's move on to page 7 where we added a few questions.

*Line 88b Form 990*

This question deals with controlling organizations which Mary Jo will be discussing.

*Line 89e*

Line 89e was added to identify those organizations that may have engaged in a prohibited tax shelter transaction. New section 4965, which was added in TIPRA – not the Pension Act, imposes an excise tax on proceeds an exempt organization receives as a result of being a party to prohibited tax shelter transaction. A definition of a prohibited tax shelter transaction can be found on page 42 of the instructions. If an organization answers "yes" on this line, it may also need to file Form 4720 as well as new Form 8886-T. The 8886-T is still in development and we expect it to be released later this year. The 8886-T is intended to satisfy the new requirement under section 6011 that an exempt organization disclose its participation in a prohibited tax shelter transaction to the IRS.

More information about prohibited tax shelter transactions and new section 4965 can be found on the Abusive Transactions page of IRS.gov which you access through the Charities and Nonprofits page – the link will be on the left side of the page.

Since the new section 4965 excise tax also applies to private foundations, the same question was added to Form 990-PF. If you have the 990-PF in front of you, the question can be found on page 6 of that form in Part VII-B - it is question 7a.

*Line 89f*

Line 89f was added to the Form 990 to identify those organizations that engage in certain life insurance transactions. This is because the Pension Act imposes a two-year reporting requirement for such transactions. Again, the definition of an insurance transaction for this purpose is quite complicated so I will just refer you to page 42 of the instructions. If an organization answers “yes” to this question, it must also file Forms 8921 and 8922. We released drafts of these forms and the related instructions with Notice 2007-24. You can find this notice and the forms on the Pension Act page of the Charities and Nonprofits page of IRS.gov. We expect these forms to be finalized in the next few months.

Again, as this reporting requirement also applies to PFs, a corresponding question was added to Form 990-PF. It can be found on page 5 of the Form 990-PF - it is question 12 in Part VII-A.

*Line 89g*

Line 89g was added to identify those organizations that may be subject to the section 4943 excise tax on excess business holdings. The Pension Act extended this tax to supporting organizations and to donor advised funds. You can find more information about this on page 42 as well as in the instructions for Form 4720 which I will be discussing a bit later.

*Page 9*

Page 9 of the Form 990 is brand new and was added to capture information about controlling organizations which Mary Jo will now discuss.

**Form 990 and 990-PF – Controlling Organizations (Mary Jo)**

First, the Form 990.

In her discussion, Theresa pointed out new line 88b, located in Part VI, titled “Other Information”, on page 7 of the Form. This is really a trigger question to get you to fill out another section if it is applicable. Line 88b asks – “At any time during the year did the organization, directly or indirectly, own a controlled entity within the meaning of section 512(b)(13)?” If yes, complete Part XI. Part XI asks for information regarding transfers to and from controlled entities. It is a whole new section of the Form.

As background, an organization owns a controlled entity within the meaning of section 512(b)(13) basically by ownership of more than a 50% interest in the entity. The controlled entity can be a taxable or a tax-exempt entity. You can find an explanation of section 512(b)(13) controlling organizations and controlled entities at pages 41 and 42 of the Form 990 Instructions.

Line 88b and Part XI were added to the Form due to new Code section 6033(h), added by the Pension Act **[[section 1205(b)]]**.

Section 6033(h), relating to returns by exempt organizations, imposes a new reporting requirement for controlling organizations. The provision stipulates that controlling organizations include in their annual returns information concerning:

- interest, annuities, royalties, or rents received from each controlled entity;
- loans made to each controlled entity;
- and transfers of funds between controlling organizations and each controlled entity.

Keep in mind that due to this new reporting requirement for controlling organizations, as Theresa noted, these types of organizations can no longer file Form 990-EZ. If you are a 512(b)(13) controlling organization you must now file Form 990.

So you are an organization that owns a controlled entity and you answer yes to 88b. You then need to complete Part XI, located on page 9 of the 990. Part XI is explained on page 44 of the 990 Instructions.

Part XI asks three questions total. Line 106 asks whether the reporting organization, the one filing the Form 990, made any transfers TO a controlled entity as defined in section 512(b)(13). TO is emphasized. So it is transfers going in one direction. If you as the reporting organization did make any transfer to a controlled entity, you must complete the schedule for each controlled entity, as required by section 6033(h). The line 106 schedule asks for the name, address and EIN of each controlled entity, a description of each loan or transfer to each controlled entity, and the amount of each loan or transfer.

Line 107 deals with transfers in the other direction and asks whether the reporting organization received any transfers FROM a controlled entity. So information regarding transfers TO and transfers FROM a controlled entity is separated into two questions. If you are a controlling organization and you received any type of transfer of funds or payments from any of your controlled entities, you must complete the schedule for line 107. The schedule asks for the name, address, and EIN of each controlled entity from which you receive a transfer, a description of the transfer, and the amount of the transfer. A description of the transfer is the type of transfer. Types of transfers include interest, annuities, royalties, rents, dividends, fees or other payments for services, contributions to capital, and loans.

Lines 106 and 107 seem to require a lot of information and a lot of lines. In fact, one of the questions we received asked why the reporting of transactions in Part XI appears to go beyond the framework of transactions under section 512(b)(13) by requiring the reporting of any and all transactions. And the reason is that this is what Congress has required. The reporting requirement of section 6033(h) goes beyond the 512(b)(13) framework to include not only interest, annuities, royalties, or rents received from each controlled entity but also loans to each controlled entity as well as transfers between a controlling organization and each controlled entity.

However, that is not to mean that you necessarily have to report every single individual transfer that has occurred. Another question we received asked what is meant by each transfer. Let me answer by giving you an example. Rather than reporting each individual monthly payment by controlled entity X to controlling organization Y in repayment of Loan Z, it would be sufficient to disclose all receipts received for the taxable year from controlled entity X in repayment of that specific Loan Z. In other

words, report the total payment received specific to a particular transfer transaction, such as a specific loan.

Let me just also mention that in the description of the transfer in Column (C) of the line 107 schedule, you must also indicate whether the transfer is a qualifying specified payment, which is explained in the Instructions for line 108, and further explained in the Form 990-T, which will be discussed.

Line 108 addresses a temporary exception to unrelated business income tax, or as it is commonly referred to, UBIT, under section 512(b)(13), put into place by the Pension Act. **[[section 1205(a)]]** It asks whether the organization had a binding written contract in effect on August 17, 2006, covering the interest, rents, royalties, and annuities described in line 107. If you answer yes, then such payments received from a controlled entity are qualifying specified payments. This is only for interest, rents, royalties, and annuities received or accrued, not for any other transfers from the controlled entity.

As I said, qualifying specified payments and the exception to UBIT will be explained in the discussion on changes to the Form 990-T. But before we get into that, I'm going to first briefly talk about Form 990-PF.

The new section 6033(h) reporting requirement for controlling organizations also affects the Form 990-PF. Lines 11a and 11b in Part VII-A of the Form 990-PF, which is on page 5, mirror lines 88b and 108 of the Form 990, by asking whether the foundation directly or indirectly owned a controlled entity within the meaning of section 512(b)(13), and whether the foundation had a binding written contract in effect on August 17, 2006, covering the interest, rents, royalties, and annuities received from the controlled entity. We weren't able to add a whole new section to the Form 990-PF similar to the 990, so in the 990-PF Instructions, at pages 20 through 22, we have recreated the schedules and instructions from the Form 990. And you would attach schedules following that format with the required information to your Form 990-PF.

So now we move on to the Form 990-T.

### **Form 990-T (Mary Jo)**

The Form 990-T required changes because the Pension Act **[[section 1205(a)]]** created a temporary two-year change in the calculation of UBIT for controlling organizations. The change for the 990-T is in Schedule F, on page 3, dealing with Interests, Annuities, Royalties, and Rents from Controlled Entities. Well, actually, Schedule F itself has not been changed, but the calculations for certain of the columns in Schedule F are revised, and those calculations are explained in the 990-T Instructions at pages 21 and 22.

Let me give you some background. Section 512(b)(13) now provides a type of subset of UBIT for qualifying specified payments received by a controlling organization from its controlled entities. A qualifying specified payment is any payment of interest, rents, royalties, and annuities received or accrued from a controlled entity after December 31, 2005, and before January 1, 2008, pursuant to a binding, written, legally enforceable, contract in effect on August 17, 2006, or to a renewable contract under substantially similar terms of a contract in effect on that day. Qualifying specified payments are subject to tax only on the amount that exceeds what would have been paid or accrued if

such payment had been determined under the principles of section 482. In other words, basically only the amount that exceeds fair market value is taxed.

So, in Schedule F, columns 4 and 9 ask for a break out of specified payments received, and of the qualifying specified payments received, from each controlled entity. And columns 5, 10, 6 and 11 ask only for the excess over the fair market value amount if the payment was a qualifying specified payment. But keep in mind that the UBIT calculation change for these payments from a controlled entity to a controlling organization sunsets December 31, 2007.

Another change, this one is permanent, to the Form 990-T is the public inspection requirement. This is explained in the Form 990-T Instructions beginning at page 7.

Section 6104(d) of the Code now requires 501(c)(3) organizations to make their Form 990-T available for public inspection. The IRS does not have a requirement to disclose the Form, but if you are a section 501(c)(3) organization and you file a Form 990-T, you must make the form available for public inspection and copying, similar to the public inspection rules for Form 990 and 990-PF. Be on the look-out for a notice with interim guidance regarding the Form 990-T public inspection requirements coming out soon.

One final change to the Form 990-T is the inclusion of a line for exempt organizations to request a refund of the federal telephone excise taxes paid. The telephone excise tax refund (known as TETR) is a one-time payment available on the 2006 federal return. It is designed to refund previously collected long distance telephone taxes. Even if an exempt organization does not have UBIT, but they want a refund of the federal telephone excise tax paid, they would file a 2006 Form 990-T. This request of the refund is at line 44f of the Form, located in Part IV, on page 2, and the 990-T Instructions explain the refund and how to complete the Form for this refund at page 7. This is a one-time deal, so it won't be on the 2007 Form.

So, to summarize the changes I discussed, for the Form 990 and 990-PF, there is now a requirement that a controlling organization report transfers between it and each of its controlled organizations, and for the Form 990-T, if the controlling organization has a binding written contract that was in place on August 17, 2006, or is renewable on substantially similar terms to one in place on that day, only the excess of fair market value is taken into account as UBIT for interest, rents, royalties, and annuities received or accrued from its controlled entities. Also, there is now a requirement for 501(c)(3) organizations to make the Form 990-T available for public inspection. And, finally, for this year, organizations can file the Form 990-T to request a refund of the federal telephone tax paid.

Now back to Theresa.

### **Schedule A – Part III (Theresa)**

You can put the Forms 990, 990-EZ, 990-PF and 990-T aside for now as I will now be focusing on Schedule A and the related instructions. The significant changes to the Schedule A result from the new rules governing supporting organizations and donor advised funds. Before I discuss these, however, I want to quickly highlight some changes that are not related to the Pension Act.

So let's start on page 2 of the Schedule A.

*Rewrite of and New Attachment for Line 3c*

Line 3c was added to the Schedule A in 2005. In addition to rewriting the question to provide a little more clarity, if an organization answers "yes" to this question, it must provide a very detailed statement of their conservation activities. The exact information to be provided in this attachment can be found page 3 of the Schedule A instructions.

*Renumbering of Line 4b to 3d*

Next, line 4b was added to the 2005 return in order to identify organizations that conduct credit counseling and related activities. This line is renumbered to 3d for 2006 so that all the questions in line 4 would relate to organizations that maintain donor advised funds.

*Lines 4a through 4g*

Finally on page 2 of the Schedule A, the major changes are to line 4. As I mentioned in the 990 discussion, the Pension Act created a specific definition for donor advised funds. Organizations that maintain funds or accounts that meet this definition must answer "yes" to line 4a and also complete lines 4b through 4g, if applicable.

Line 4b was added to identify those organizations that maintain donor advised funds that may be subject to one of two new excise taxes. The Pension Act created two new excise taxes related to donor advisor funds. First, section 4966 imposes an excise tax on an organization that maintains donor advised funds and fund management if any of the organization's donor advised funds makes a taxable distribution. The definition of a taxable distribution is fairly complex but can be found on page 4 of the Schedule A Instructions.

Second, section 4967 imposes an excise tax on donors, donor advisors or related persons and on management for distributions that result in more than incidental benefits to those persons. Line 4c was added to identify those organizations that made any distributions to any donor, donor advisors or related persons regardless of whether those distributions resulted in more than incidental benefits. Because the term incidental benefit is not defined in the statute, we expect to issue guidance on this topic.

Lines 4d and 4e were added to capture the third and fourth requirement under section 6033(k). Remember that the first two – contributions to and distributions from – are on lines 1a and 22a respectively of the Form 990. As with those lines, only organizations with funds or accounts that meet the statutory definition of donor advised fund need to complete these lines.

All organizations must complete lines 4f and 4g, even those that answer "no" to line 4a. If an organization does not maintain any such accounts or funds, it must enter zero on these lines.

That's it for page 2 of the Schedule so let's move on to page 3.

**Schedule A – Part IV (Theresa)**

All of the changes in this section relate to new reporting requirements for supporting organizations. The Pension Act added section 6033(l) which requires a supporting

organization to identify what type of supporting organization it is, all of its supported organizations and to certify that it is not controlled by any disqualified persons.

The rule that disqualified persons could not control a supporting organization existed prior to the Pension Act so the only new requirement is the certification which we have incorporated by modifying the introductory sentence at the top of this page. Note that it now begins with “I certify.”

We addressed the other two requirements in 2005 by amending Line 13 to add checkboxes for the three types of supporting organizations. We also added the table following line 13 to capture the list of supported organizations. As you may know, the provisions regarding supporting organizations were created in the 1969 Tax Act which imposed the then-new Chapter 42 excise taxes on private foundations. Supporting organizations were exempt from these taxes because they were exempt from the definition of a private foundation under section 509(a)(3). The regulations for section 509(a)(3) further classified supporting organizations into three categories which commonly came to be called Type I, Type II and Type III.

The Pension Act codified these types and essentially created a new category of Type III supporting organizations – a Type III- Functionally Integrated Supporting Organization. Some of the excise taxes I discussed earlier such as the section 4943 excess business holdings tax and the section 4966 tax on taxable distributions from donor advised funds only apply if a supporting organization is a regular Type III – not a Type III-Functionally Integrated Supporting Organization. In addition, regular Type III organizations will also be subject to a payout requirement, the rate for which is mandated to be set by regulations. Thus, we labeled the existing Type III checkbox as Type III-Other and added a new checkbox for Type III-Functionally Integrated Supporting Organization to identify these organizations. The instructions for this line, which can be found on page 7 of the Schedule A instructions helps you determine which box to check. Note that additional information about Type III- Functionally Integrated Supporting Organizations can be found in Notice 2006-109 which is also available on the Pension Act page of IRS.gov. Please note, however, that we expect to issue further guidance on this topic.

In addition to adding this new checkbox, we have added columns (b), (d) and (e) to capture additional information about the supported organizations. You must list a supported organization here regardless of whether you provided any monetary support to that organization during the year. You must enter zero for such organizations. The instructions for line 13 can be found on page 7 of the Schedule A Instructions.

That's it for the Schedule A. I am going to switch gears and talk about some issues affecting private foundations. You don't necessarily need to have the form 990-PF in front of you for this.

### **Form 990-PF Changes (Theresa)**

Aside from the new questions added to the Form 990-PF already discussed, the Pension Act contained two other significant changes for private foundations.

#### *Distributions to Certain Supporting Organizations Not Allowed*

First, as I mentioned briefly, some of the more onerous rules for supporting organizations only apply to Type III supporting organizations. Another restriction for

these supporting organizations is that they essentially cannot receive distributions from private foundations. Type I and Type II supporting organizations also cannot receive distributions from a private foundation if the private foundation's disqualified persons control the supporting organization or any of the supporting organization's supported organizations. If a private foundation does make distributions to these supporting organizations, such distributions are not qualifying distributions and the distributions may also be deemed to be a taxable expenditure. As with some of the other provisions, this one is quite complicated. But you can find more information about these changes in the instructions for Form 990-PF, Part I, line 25 and Part VII-B, line 5. That would be Page 22 of the 990-PF instructions.

Please note that Notice 2006-109 which I mentioned before provides interim guidance for private foundations that make grants to supporting organizations.

#### *Definition of Net Investment Income*

The other significant change for private foundations is the change in the definition of net investment income. The Pension Act essentially codified a regulation that was challenged in a court decision. This change is reflected in the instructions for Form 990-PF, Part I, column (b) on pages 11 and 18 of the Form 990-PF Instructions.

The last form I am going to talk about today is the Form 4720. I will give you a few seconds to find that form.

While you are doing that, I want to remind you that one of most common errors we see during filing season is organizations not attaching Schedules A and B when they are required to do so. We assess an incomplete return penalty for this which means we consider the return as not filed. The penalty is \$20 a day up to a maximum of \$10,000. We know this is a lot of money for small organizations. You can find a list of the most common errors associated with the Form 990, 990-EZ and 990-PF under our FAQs on the Charities and Nonprofits page of IRS.gov.

Ok – so hopefully you've found your Form 4720 by now.

#### **Form 4720 (Theresa)**

The Form 4720 was changed to incorporate all of the new excise taxes we have mentioned today. I am going to quickly summarize these new taxes and explain where they are to be reported on the Form 4720.

#### *Section 4943 – Excess Business Holdings*

The Pension Act extends the restriction on excess business holdings to donor advised funds, as defined by the statute, and Type III supporting organizations that are not functionally integrated. This tax is the same as that imposed on private foundations so there is no change to Schedule C (page 3 of the form) where the tax is reported. There are only changes to the instructions which can be found pages 7 through 9 of the Form 4720 instructions.

#### *Section 4958 – Excess Benefit*

While there are specific new rules for this tax for supporting organizations and donor advised funds, there is no change to Schedule I (pages 5 and 6 of the form) where the

tax is reported. There are only changes to the instructions which can be found on pages 12 and 13 of the Form 4720 Instructions.

*Section 4965 – Prohibited Tax Shelter Transactions*

Schedule J (pages 6 and 7) was added to the Form 4720 to report the new section 4965 tax on proceeds from prohibited tax shelter transactions. See pages 13 and 14 of the Form 4720 instructions.

*Sections 4966 and 4967 – Donor Advised Funds*

New Schedules K and L (pages 7 and 8) were added to report the section 4966 and 4967 excise taxes that apply to donor advised funds. See pages 14 and 15 of the Form 4720 Instructions.

And that's it for actual changes to the Form 4720 schedules. Before turning it over to Mary Jo for a discussion of the Form 8282, I want to just remind everyone that the excise tax rates and the maximum tax amounts on managers under sections 4941 through 4945 have increased. This is effective for tax years beginning after the enactment of the Pension Act, i.e. tax years beginning August 18, 2006.

**Form 8282 (Mary Jo)**

Thanks Theresa. Now we will discuss changes to Form 8282, the Donee Information Return. While you get that form handy, let me give you some background.

Form 8282 has been revised to reflect changes (first) to the deductibility of a donation of tangible personal property after the disposition of such property by the charity and (second) to the reporting requirements for such disposition.

The Pension Act **[[section 1215]]** amended section 6050L of the Code to extend the time period from 2 years to 3 years for when a donee organization (the exempt organization) has to report to the donor and the IRS that it has sold or exchanged charitable deduction property. Charitable deduction property is property other than publicly trade securities with a claimed deduction value over \$5,000. And section 6050L now requires the donee organization to provide more detailed information about the disposed-of property in its report, including a description of the donee's use of the property and a statement indicating whether the use was related to the donee's exempt purpose or function. It also requires a certification be included in the report if the donee indicates that the property was used for an exempt purpose or function and it was tangible personal property with a claimed deduction value of over \$5,000.

Also, section 170(e) was amended to now limit the amount of the deduction if the use is unrelated to the organization's exempt purpose or function, or requires a recapture of the tax benefit by the donor if the donee organization sells the certain donated tangible personal property within the 3 years and does not certify as to its exempt use.

Let's use an example. A therapy organization receives a donation of a horse worth more than \$5,000 for which the donor took a charitable deduction. It used the horse for therapy for 2 ½ years, but then sold it. The organization has to use Form 8282 to let the donor and the IRS know that it was sold and to report how the horse was used, and how the use furthered the organization's exempt purpose or function. OR lets say it had all intentions to use the horse for therapy, but it couldn't because the horse developed a

problem with its legs. It kept the horse for 2 ½ years hoping its legs would improve but they did not and so the organization sold the horse. The organization has to use Form 8282 to let the donor and the IRS know that it was sold and to report how the horse was used, and that it was intended that its use would further the organization's exempt purpose or function. Unless an officer of the organization also certifies that the horse was used for exempt purposes, or was intended to be used for exempt purposes but that such use became impossible, the donor of the horse has to recapture part of the deduction for the taxable year in which the horse was sold – in other words, only take as a charitable deduction his basis in the property, rather than fair market value.

The changes have expanded Form 8282 from being one page to 2 pages long. Part III, Information of Donated Property, now on page 2 of the Form, was extensively revised to include the required information. Column 1 asks for the description of the property sold, exchanged or otherwise disposed of and how the organization used the property. Column 2 asks whether the disposition involved the organization's entire interest. If it was a partial disposition, answer no. Column 3 asks whether the use was related to the organization's exempt purpose or function. If you answer "Yes" in Column 3, and it involved tangible personal property, such as the therapy horse, then in Column 4, you include a description of how the use furthered the organization's exempt purpose or function. If you answer "No" in Column 3 that the use of the tangible personal property was not related to the organization's exempt purpose or function, but you had intended that the use be related only that became impossible or infeasible, then in Column 4 you include a description of the intended use.

If you have to answer Column 4, then you must also complete Part IV, which is the new certification requirement. An officer of the organization must certify, under penalties of perjury and a new penalty under section 6720(B) (which is a \$10,000 penalty for fraudulent identification of exempt-use property) that the disposed-of tangible personal property was exempt-use property or intended to be exempt-use property but such use became impossible or infeasible to implement.

Finally, a new signature line has been added to Form 8282 which is required for all returns under section 6061.

In summary, the main changes to Form 8282 involve the change from 2 years to 3 years for disposition of property by the original donee organization, the additional information required regarding use of the property, and whether it was exempt-use property or intended to be exempt use property, and the certification requirement if it was exempt-use property.

### **Closing Comments (Richard)**

Thank you, Theresa and Mary Jo. And, thank you all for joining us today. I hope you found the presentation helpful. I encourage you to go to the Charities and Non-profits homepage on the IRS website at [www.irs.gov/charities/index.html](http://www.irs.gov/charities/index.html) for more information. On our homepage you'll also find a link to *EO Update*, a free electronic newsletter containing information on the latest happenings in EO. Signing up to subscribe is quick and easy. You might also want to visit [www.taxtalktoday.tv](http://www.taxtalktoday.tv) to view the March 13<sup>th</sup> webcast featuring a panel of IRS and other experts discussing the Pension Act's impact on exempt organizations. If you've not participated in a Tax Talk Today webcast before, you'll need to complete a free, simple registration process to access the archive.

For today's forum we will email you a confirmation of your attendance. This email will also ask you for feedback on this session. Please take a few minutes to share your thoughts and provide comments. We use your feedback to improve and tailor our education and outreach programs. So please return the survey as soon as you can. Have a good (morning)(afternoon).