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MEMORANDUM

To: PPSV Clients and Friends
From: Rob Portman
Ben Tesdahl
Date: October 28, 2008
Re: Deadline Approaching for New Form 990 Governance Policies

As you may know, the IRS has a new Form 990 information return that applies to fiscal year 2008. The new form specifically asks about five governance policies that some nonprofits may not yet have in place. For a calendar year nonprofit that wants to be able to say that it has all of the governance policies asked about in the new Form 990, the board of directors would need to meet and approve the policies by December 31st of this year. Therefore, nonprofits that are missing any of the policies have a very limited amount of time left in this year to enact the necessary policies.

General Overview of New Form 990

The new Form 990 for 2008 is the first major redesign in the past 30 years of the information return that most nonprofits file. Unlike the prior form, which allowed questions to be answered in unstructured attachments that could lead to inconsistent and incomplete answers, the new Form 990 is more structured and requires more detail in up to 16 formal “schedules” of detailed information that are attached to a “core form” of basic information.

A. The Core Form

The new Form 990 starts with an 11-page “core form” that is completed by all nonprofits that must file the form. In addition to the typical income and expense information and a place to

summarize program accomplishments, the core form includes a front page summary that provides a snapshot of key financial and reporting information, a revised section on compensation and the reporting of information on related organizations, and an entirely new section on governance.

B. New Governance Questions

The core form's section on governance has attracted significant attention because it involves the IRS asking for the first time about various nonprofit policies that are sometimes not required by law and that are arguably beyond the jurisdiction of the IRS. The IRS has been adamant that a "no" answer would not by itself trigger an audit; however, most nonprofits will not want to take any chances and, in any case, will want to be able to answer "yes" to the policy questions for public relations and other purposes. As noted above, in order to answer "yes" on a 2008 Form 990, a calendar-year nonprofit organization must have the policies approved by the board prior to December 31, 2008.

Specifically, the new Form 990 asks nonprofit organizations to answer "yes" or "no" as to whether they have the following five governance policies:

- (1) a conflict of interest policy,
- (2) a whistleblower policy,
- (3) a document retention and destruction policy,
- (4) a policy for determining compensation of top management officials and key employees, and
- (5) a joint venture policy (if there were any joint ventures during the year).

There is also a new question asking whether the board of directors, or a committee of the board, has had the opportunity to review the organization's Form 990 (in paper or electronic form) prior to it being filed. As part of the same question, organizations also are asked to explain the process used to review Form 990. In many nonprofit organizations, there is insufficient time prior to filing Form 990 to share it with the board, and more importantly, there is seldom an opportunity for any meaningful review of Form 990 by the board or an opportunity for the accountants to answer questions about the form at a board meeting prior to the filing deadline. Perhaps realizing that fact, the form allows (and indeed requires) an entity to explain any post-submission review process that the board may have, thereby implying that a post-submission review is not necessarily improper or uncommon. However, indicating that there is no review process by the board at all would likely be problematic.

We would be happy to assist your organization in developing any of the five governance policies outlined above, as well as developing a Form 990 review policy for your board.