

May 30, 2008



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IRS
Draft 2008 Form 990 Instructions, SE:T:EO
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Submitted via email: Form990Revision@irs.gov

Alliance for Justice (“AFJ”) submits these comments in response to the Service’s request for comments on the draft instructions for the newly revision Form 990.

AFJ is a national association of environmental, civil rights, mental health, women’s, children’s, and consumer advocacy organizations. Our organization supports legislative and regulatory measures to promote political participation, judicial independence, and greater access to policy processes. We also provide training to numerous nonprofit organizations throughout the country with respect to the rules governing advocacy. While most of our members are organized as charitable and educational organizations under section 501(c)(3) of the Internal Revenue Code (“IRC”), a significant number also work with or are affiliated with social welfare and other advocacy organizations organized under IRC § 501(c)(4) and/or IRC § 527.

AFJ submitted comments regarding the form redesign on September 14, 2007, and is pleased that the Service heeded many of its suggestions. After looking at the final form and the draft instructions, we have chosen to submit comments on a few specific issues.

The Service’s stated goal of the revised Form 990 is to enhance transparency, promote tax compliance, and minimize the burden on reporting organizations. It has furthered this goal by providing the Glossary, Appendix, and other explanatory documents. Yet, many of the terms used in the Form and the schedules have not been defined. The lack of definition will prevent filers from filling out the form consistently.

Core Form

In Part III, line 2, organizations must indicate if they undertook new significant program service activities. The term “significant” is not defined, however. What standards should an organization use in determining whether a new program is “significant”? For the first time, Part IX, line 11d of the core report requires all nonprofit organizations to report separately on certain expenses relating to lobbying as part of the general statement of functional expenses. Since this part of the form applies to all reporting organizations regardless

of their tax status, what definition of lobbying activities should all 501(c) and 527 organizations use? Neither the instructions nor the glossary provide a definition.¹ May 501(h) electors use the tax code definitions of lobbying? Moreover, the instructions state that filers should include amounts paid for “legislation liaison services,” yet that term is not defined.

Schedule C

The instructions for Schedule C, Part II-B, Line 2a state that non-electing 501(c)(3) organizations must answer “Yes” if its lobbying activities were substantial. The instructions (as well as the tax code and accompanying regulations) do not define substantial, and therefore require organizations to make a legal determination about whether they are in compliance with tax law.

In the definition of “Direct lobbying communications,” we suggest the instructions incorporate ballot measure activity to be consistent with the regulatory definition.

The instructions for Part I-A, line 1 indicate that 501(c) organizations must describe their “direct and indirect political campaign activities” and that 527 organizations must describe their “exempt function activities.” This recognizes the differences between the different types of tax-exempt organizations. However, the instructions for line 3, which apparently is applicable to both 501(c) and 527 organizations, merely asks for the number of volunteer hours used for political campaign activities. It is unclear how 527 organizations, which engage in “exempt function activities” rather than “political campaign activities” are to complete line 3. We suggest that the instructions specify that only 501(c) organizations should complete line 3.

The instructions for Part I-B use different terminology than the form itself. On the form, 501(c)(3) organizations must report if they incurred excise taxes. The instructions state they should report the amount of taxes imposed. Please be consistent, and explain whether organizations should report taxes actually paid during the tax year or those imposed on activities conducted during the tax year.

We urge the Service to consider these comments before issuing a final version of the instructions for the redesigned Form 990.

Sincerely,

Abby Levine

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¹ As mentioned in our September 2007 comments, we believe creating such an all-encompassing definition of lobbying will lead to significant confusion with respect to existing definitions under sections 501(c)(3), 4911, and 162(e), which have been in place for many years and which are applicable to portions of Schedule C. Yet, if the form uses a term, it must be defined so it is used consistently by all filers.