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IRS GOVERNANCE CHECKLIST - PRELIMINARY RESULTS

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IN AN EFFORT TO ADD FURTHER TRANSPARENCY INTO NONPROFIT ORGANIZATION REPORTING, THE IRS ADDED PART VI TO THE REVISED FORM 990 IN 2008. THIS SECTION ASKS A VARIETY OF QUESTIONS WHICH COVER A SPECTRUM OF BEST PRACTICES IN THE AREAS OF GOVERNANCE, POLICY AND DISCLOSURES.

While most of the questions in this section do not refer to legal requirements, they do provide a good snapshot concerning governance, policies and transparency to the reader.

The Tax Exempt/Government Entities (TE/GE) Advisory Committee on Tax Exempt and Government Entities (ACT) suggested that more research was required in this area and the IRS designed a governance questionnaire that is used in all 501(c)(3) examinations strictly for research purposes. This is a 26-question document which goes into much more detail than Part VI of the Form 990.

The IRS has performed an initial analysis of data collected to date from these questionnaires. Lois Lerner, the director of the IRS Exempt Organization Division (EO), shared some of this preliminary analysis with the public at a recent nonprofit tax conference.

She shared that certain correlations emerged between some questions related to certain governance practices and tax compliance:

- Organizations with a written mission statement are more likely to be compliant.
- Organizations that always use comparability data when making compensation decisions are more likely to be compliant.
- Organizations with procedures in place for the proper use of charitable assets are more likely to be compliant.
- Organizations where the 990 was reviewed by the entire board of directors are more likely to be compliant. Lerner emphasized that this indicates having the entire board engaged in the 990 process is not only helpful but correlates to better compliance.

She also stated that when the questionnaire indicated that control of the organization was vested in one individual, or a small select group, that the organization was less likely to be compliant.

The IRS also found that responses to some questions had no statistically significant correlation with tax compliance. These questions included:

- Conflict of interest policies
- Organizations that never or only occasionally use comparability data to set compensation
- Voting board members that have a family relationship and/or outside business relationship with any other voting or non-voting board member, officer, director, trustee or key employee

Lerner concluded that these initial results are generally consistent with the premise that good governance and tax compliance go hand in hand. She noted that this conclusion is based only upon a select group (i.e., 501(c)(3) organizations selected for examination) and does not provide a statistically representative sample or an analysis of the entire population of exempt organizations. She has tasked the EO strategic planning group to design a project that will gather a statistically representative sample from the general EO population to determine if these results hold true for the population as a whole.

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