

## New IRS "Governance Check Sheet" Will Capture Data on Governance Practices

On December 10, the IRS issued a "Governance Check Sheet" for use by IRS agents in the course of audits of public charities. The stated purpose of the form is to collect data about governance and internal controls, which will be included in a long-term study of governance practices. Although the Check Sheet does not impose new requirements on charitable organizations, it represents the first time that the IRS is systematically collecting data on whether charities have *lived up* to their governing documents and policies.

Over the past several years, the IRS has increasingly made clear its interest in matters of governance, most recently with the redesigned Form 990. In materials accompanying a May 2009 training program for IRS agents, the IRS foretold the development of a check sheet to "explore [the] link between good or bad governance and compliance with tax laws." This "link" has long been touted as the rationale for the IRS's incursion into an area in which it does not have an oversight mandate – governance duties and standards being generally the province of state law.

The Check Sheet presumes access by the examining agent to the organization's governing documents, meeting minutes, policies, and financial reports, which would be typical in the audit context. It expands on themes already present in the Form 990 and tests these against actual practices, asking questions such as whether the number of meetings held by the board met or exceeded the requirements in the organization's bylaws, whether the organization relied on certain types of comparability data in setting compensation, and whether the organization adhered to its conflict of interest and record retention policies. The Check Sheet also asks questions, such as whether "effective control" of the organization rests with a single or select few individuals, that appear to require an exercise of judgment by the agent.

Although we do not expect results any time soon, we await disclosure of what this data yields, and what the IRS will make of it. We have no doubt that the results will inform the IRS's developing involvement in this area, as the agency has already indicated its desire to create "compliance initiatives" based on answers to the new governance questions on the Form 990. In the meantime, for charities reviewing governance compliance and internal control procedures, the Check Sheet provides a useful indication of how their actions will be "tested" by the IRS upon audit.

What does all of this mean? It means that merely adopting policies, such as a conflict of interest policy and a document retention policy, is not enough. While following internal policies has always been an essential component of good governance generally, the IRS has now placed adherence to such policies on *its* checklist in examining nonprofits for tax law compliance. ♦

[Click here for the Check Sheet.](#)

[Click here for materials accompanying the IRS training program in May 2009.](#)

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