

## INFORMATIONAL ALERT – REMINDER RE: IRS FILING OBLIGATIONS

To: All AAUP chapters and conferences

From: Rachel Levinson, AAUP Senior Counsel *RL 5/3/10*

Re: Reminder: IRS Filing Obligations for small chapters and conferences

Date: May 3, 2010

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### Background:

Until fairly recently, only chapters and conferences whose gross receipts normally exceeded \$25,000 were required to file the IRS's Form 990, a reporting vehicle for non-profit organizations. However, beginning in 2008, *all* AAUP chapters and conferences have been required to file a version of the Form 990 tax return. This requirement applies to 501(c)(3)'s (charitable associations); 501(c)(4)'s (often called "social welfare" organizations); 501(c)(5)'s (unions – that is, all recognized collective bargaining chapters); and 501(c)(6)'s (often called professional associations).<sup>1</sup> This requirement applies to AAUP chapters at both public and private sector institutions. As a general matter, this requirement applies only to chapters or conferences with a legal existence – that is, those that operate under a formal "organizing document" such as a constitution, charter, or articles of association.

In 2007 and 2008, the AAUP legal office sent out informational alerts to chapters and conferences regarding these requirements. Because 2010 is the deadline for compliance for any chapters or conferences that have been in existence since 2007, we are now sending this reminder and updated information.

This memo reviews the IRS's filing requirements, as well as some standard filing requirements for all AAUP chapters and conferences. This memo does **not** constitute legal advice; for further questions and for assistance in completing your chapter's or conference's tax returns, please consult your attorney, account, or other tax professional. In addition, see below for other resources available through the IRS.

### Details:

#### *Chapters or conferences with \$25,000 or less in gross receipts:*

AAUP chapters and conferences with gross receipts of \$25,000 or less are required to file an electronic Form 990-N, also called the e-Postcard.<sup>2</sup> The e-Postcard is

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<sup>1</sup> See pages 65-66 of Publication 557, <http://www.irs.gov/pub/irs-pdf/p557.pdf>, for a description of each type of exempt organization.

<sup>2</sup> In the 2010 tax year (for which returns will be filed in 2011), chapters and conferences with gross revenues of less than \$50,000 will be eligible to file the e-Postcard.

not technically a tax return, but is instead a method for small organizations to identify themselves and indicate why they do not need to file a tax return.

**Failure to file the e-Postcard for three years in a row will result in revocation of the chapter's or conference's tax-exempt status, and the chapter or conference would need to re-apply for tax-exempt status. Because this requirement was instituted in 2007, 2010 is an important year for all chapters and conferences that want to keep their tax-exempt status!**<sup>3</sup>

The e-Postcard will require the following information: the chapter's or conference's name, mailing address, and website address (if any); the chapter's or conference's employer identification number, or EIN (each chapter/conference will have its own EIN, as the AAUP does not have group exemptions); the name and address of a principal officer of the chapter or conference; the chapter's or conference's annual tax period (i.e., the calendar year, or some other measurement); and a statement that its gross receipts are normally \$25,000 or less. (See <http://www.irs.gov/charities/article/0,,id=177792,00.html>.)

The IRS supplies the following test for determining whether gross receipts are normally \$25,000 or less:

1. if the chapter or conference is up to a year old and has received, or donors have pledged to give, \$37,500 or less during its first tax year;
2. if the chapter or conference is between 1 and 3 years old and averaged \$30,000 or less in gross receipts during each of its first two tax years; or
3. if the chapter or conference is three years old or more and averaged \$25,000 or less in gross receipts for the immediately preceding 3 tax years (including the year in which the return would be filed).

(See <http://www.irs.gov/charities/article/0,,id=177338,00.html>.) An organization filing the e-Postcard must keep records sufficient to enable it to calculate its gross receipts. (In general, all exempt organizations must maintain adequate records.) In calculating whether the average income exceeds \$25,000, chapters can subtract dues collected on behalf of national AAUP and the state conference.

The 990-N *must* be filed electronically; go to <http://www.irs.gov/charities/article/0,,id=169250,00.html> for additional information, and <http://epostcard.form990.org/> for access to the electronic filing system.

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<sup>3</sup> Some chapters and conferences have inquired whether this requirement applies to them if they have no revenue at all. It is likely that a chapter or conference that has never had any revenue does not need to file, as there would be no need for the tax-exempt status. A chapter or conference that has received revenue in the past but does not currently receive any revenue will need to decide whether it expects to resume collecting dues or other moneys in the future, and therefore whether its tax-exempt status is important for the operation of the chapter or conference.

*Chapters or conferences with more than \$25,000 in gross receipts:*

Chapters or conferences whose gross receipts are normally *over* \$25,000 must file either the 990-EZ or the full 990 form. Currently, chapters or conferences with average yearly gross receipts of more than \$25,000 and less than \$500,000, and year-end total assets of less than \$1.25 million, may be eligible to use the simplified form 990-EZ.<sup>4</sup> (Chapters or conferences with gross receipts of \$500,000 or more, and year-end total assets of \$1.25 million or more, will need to fill out the full 990 form.)

The full 990 form was recently significantly revised and updated by the IRS to reflect additional information about organizational governance and other issues. See <http://www.irs.gov/charities/article/0,,id=176613,00.html> and <http://www.irs.gov/charities/article/0,,id=218938,00.html> for additional information about the “new” 990. In addition, as before, chapters/conferences that have received *charitable* status from the IRS – that is, those that are exempt under section 501(c)(3) – must file the Form 990 Schedule A.

**The due date for all 990 filings remains the same: the 15th day of the 5th month after the end of the chapter’s or conference’s fiscal year.** So, for instance, if the chapter or conference operates on a calendar fiscal year ending December 31, the filing would be due on May 15; if the chapter or conference operates on an academic fiscal year ending on July 31, the filing would be due on December 15. (Exempt organizations can receive an automatic three-month extension for the 990-EZ or full 990 by filing with the IRS; extensions do not appear to be available for organizations filing the 990-N e-Postcard.)

Note: all chapters and conferences, including those eligible to file the Form 990-N or the Form 990EZ, may choose to file the entire Form 990 instead (for instance, to share more detailed information with members). Chapters or conferences voluntarily choosing to file the full Form 990 must, however, complete the *entire* form – the IRS will not accept a partially completed Form 990 as a substitute for the Form 990-N or 990EZ.

Note that a chapter or conference with annual revenue of under \$5,000 can automatically qualify as a 501(c)(3) public charity without having to file an application with the IRS. If the chapter or conference loses the exemption as a result of automatic revocation (i.e., by not filing the 990-N), however, it will have to file an application for exemption.

Additional resources

The IRS has a very helpful list of Frequently Asked Questions (FAQs) about the 990 electronic postcard requirement at [http://www.irs.gov/pub/irs-tege/faqs\\_epostcard\\_080509.pdf](http://www.irs.gov/pub/irs-tege/faqs_epostcard_080509.pdf). In addition, the IRS recently posted a list of FAQs about the 990 requirements and possible revocation of tax-exempt status; see [http://www.irs.gov/pub/irs-tege/autorevfaqs\\_042710.pdf](http://www.irs.gov/pub/irs-tege/autorevfaqs_042710.pdf).

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<sup>4</sup> In previous years, the ceiling for 990-EZ eligibility was gross receipts of \$250,000 and year-end assets of \$250,000. In addition, as noted above, for the 2010 filing year, organizations with up to \$49,999 in revenues will be eligible to file the 990-N e-Postcard.

These FAQs address many of the issues that have arisen for small chapters and conferences attempting to file the electronic postcard, and they are an excellent resource. In light of questions we have received from chapters and conferences, we provide below a list of additional, tailored FAQs.

**Question 1:** Does my chapter or conference need an employer identification number (“EIN”) in order to file the 990-N?

**Answer: Yes.** If you have previously received an EIN, you should be able to use it to file the 990-N. If you have never obtained one before, you will need to go through the process outlined below to obtain one. And if you have previously received an EIN but it has been dormant for a while (i.e., some number of years), it may have expired.

If your chapter or conference has never requested an EIN before, go to <https://sa1.www4.irs.gov/modiein/individual/index.jsp> or call (800) 829-4933. For additional information on the EIN, see <http://www.irs.gov/charities/article/0,,id=156360,00.html>.

If your chapter or conference has previously received an EIN but you are unable to use it to file your 990-N, see FAQ #4 below.

**Question 2:** Can (or must) my chapter/conference use the national AAUP’s EIN?

**Answer: No.** Each chapter or conference filing a return must obtain its own EIN.

**Question 3:** Is there a group exemption?

**Answer: No.** Some IRS representatives have told chapters and conferences that before the chapter or conference can file the 990-N, the national AAUP must send a letter to the IRS indicating that the chapter or conference is a subsidiary of the AAUP. **This is incorrect.** While all AAUP chapters and conferences are chartered by the national AAUP, each has its own tax status, and each must therefore file independently; there is no “group exemption.”

**Question 4:** If I am having trouble filing the Form 990-N – for instance, because I tried to file using an old or a just-received EIN, or because I have not had to file a return previously and there is no record of my chapter or conference in the IRS’s computers – what do I do?

**Answer:** If you are having problems with the e-postcard system itself, such as logging in, email [epostcard@urban.org](mailto:epostcard@urban.org). For any problems related to the actual filing, follow these steps:

- 1) Call (877) 829-5500, which is the phone number for the IRS office in Cincinnati.

- 2) As soon as you hear the option to continue in Spanish, press 2 to enter the phone tree for tax-exempt organizations.
- 3) Once you are in that phone tree, press 2 (for questions regarding a previously-filed return or an extension), 3 (for help completing a return for an exempt organization), or 4 (to verify the status of an exempt organization, for assistance completing an application for exemption, and all other questions pertaining to exemption). (Note: you may experience a wait. In addition, the caller must be an authorized officer of the chapter or conference or a person with power of attorney.)
- 4) When you reach someone, tell them that you are trying to file the 990 postcard; that you DO have an EIN (because you will have obtained one before calling, using the process described above if necessary); and that you probably do NOT have a master file in the IRS computers because you have not previously had to file a return or other documents with the IRS (if in fact that is true). Most importantly, even if it comes up that the organization for which you are filing is a subsidiary chapter or conference of a national organization, emphasize that there is NOT a group exemption and that you must file separately. If they tell you that you need a letter from the national, state again that there is no group exemption.
- 5) The representative in Cincinnati should be able to do any necessary research (including confirming the status of your EIN, if you have one but are unable to use it to file your 990-N) and create a master file in the IRS's computers, allowing you to file the 990 online. (One chapter reported that after creating the master file, the IRS representative actually filed the 990-N for them.)

For further information, go to [www.irs.gov/eo](http://www.irs.gov/eo), which is the IRS's site for non-profit organizations, or call the IRS's non-profit customer service line at 877-829-5500. You can also subscribe to a free IRS update service, which will notify you when the electronic filing system has been put in place; go to <http://www.irs.gov/charities/content/0,,id=154838,00.html>. Finally, you can download all forms and instructions at <http://www.irs.gov/formspubs/index.html>.

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**THANK YOU** for your attention to this matter. Please understand that the AAUP legal office cannot provide tax advice to individual chapters or conferences. For tax advice, or for assistance in completing your chapter's or conference's tax returns, please consult an attorney and/or a tax professional.

To ensure compliance with Treasury Department regulations, we advise you that, unless otherwise expressly indicated, any federal tax advice contained in this message was not intended or written to be used, and cannot be used, for the purpose of (i) avoiding tax-related penalties under the Internal Revenue Code or applicable state or local tax law provisions or (ii) promoting, marketing or recommending to another party any tax-related matters addressed herein.