

**PUBLIC CHARITY ORGANIZATIONAL ISSUES,
UNRELATED BUSINESS INCOME TAX, AND
THE REVISED FORM 990**

HEARING

BEFORE THE

SUBCOMMITTEE ON OVERSIGHT

OF THE

COMMITTEE ON WAYS AND MEANS

U.S. HOUSE OF REPRESENTATIVES

ONE HUNDRED TWELFTH CONGRESS

SECOND SESSION

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Mr. MILLER. It depends what the system looks like. If we were moving the filing date, no, it wouldn't be. That is a legally set date. Certainly there would be discussions with the Hill before we move forward with anything that even remotely touched on those issues.

Mr. PAULSEN. So you believe you need to have congressional authorization for those types of changes?

Mr. MILLER. For some of the changes, absolutely.

I also want to say, you know, and there has been concern about this, this is not in order to send out pre-filed returns, that is not really what we are talking about here. And I know there has been concern by some in the industry that this is a stalking horse for that. It simply isn't.

Mr. PAULSEN. Do you have any sort of estimates on what the cost would be, because given that we are talking about I had heard some conversation and testimony about resources and employees and staff and how—the intention—to be—to pay for that or what the cost would be on a realtime system for preparing for that as well?

Mr. MILLER. So absent a blueprint of what it would look like, we have no way of doing a cost estimate at this point, sir.

Mr. PAULSEN. Thank you, Mr. Chairman.

I yield back.

Chairman BOUSTANY. Thank you, Mr. Paulsen.

That concludes our questioning, Mr. Miller, and we thank you for coming before the Committee once again, and I look forward to future visits, and this Subcommittee particularly looks forward to working with you going forward to resolve some of these issues.

Mr. MILLER. Thank you.

Chairman BOUSTANY. I would like to call up the next panel. Next we have four witnesses on our second panel, all distinguished witnesses who will lend some clarity to this debate. We will hear from Eve Borenstein.

Ms. Borenstein is a partner with Borenstein and McVeigh Law Office in Minneapolis, Minnesota, and is known as the queen of the 990.

So we welcome you.

Second, we welcome Mr. Thomas Hyatt. Mr. Hyatt is a partner with SNR Denton here in Washington and is chair of SNR Denton's health care practice focusing on tax-exempt organizations.

Sir, welcome.

Thirdly, Mr. John Colombo.

Mr. Colombo is the Albert E. Jenner, Jr., Professor at the University of Illinois, College of Law, in Champaign, Illinois. And Mr. Colombo has written extensively on tax-exempt organizations.

Mr. Colombo, thank you for being here today.

And finally, we will hear from Donald Tobin. Mr. Tobin is associate dean for faculty and the Frank E. and Virginia H. Bazler Designated Professor in Business Law at the Ohio State University's Moritz College of Law in Columbus, Ohio. Mr. Tobin is an expert on campaign finance law and previously worked on the Joint Economic Committee.

Mr. Tobin, welcome.

You will each have 5 minutes to give us your oral testimony. Keep in mind that your full written statements will be made part

of the formal record, and so I ask you to keep your oral comments to 5 minutes so we can get to questions.

Ms. Borenstein, we will begin with you.

**STATEMENT OF EVE BORENSTEIN, BORENSTEIN AND
MCVEIGH LAW OFFICE LLC, MINNEAPOLIS, MINNESOTA**

Ms. BORENSTEIN. Thank you Chairman Boustany, Ranking Member Lewis, Members of the Committee.

I thank you for inviting me to testify today. I do not elaborate in my written submission as to why I believe that the redesigned Form 990 for the most part makes the right asks of those who are afforded tax exemption.

There are four points I want to offer in that regard now. One, because the filing is appropriately not just numbers, organizations must be proactive and collect from internal sources the various information the form seeks, as well as prepare written narratives. Accordingly, the amount of resources and time that filers expend in favor of preparation has undoubtedly increased. This is not a bad thing; it is just a fact.

Two, the information the form provides the IRS is more thorough and descriptive than before, allowing the agency to more effectively apply its resources toward improved enforcement and education.

Three, the fact that the filing is widely available makes filers transparent in ways they never were before, which is huge. The public relations power of that transparency leverages the IRS's limited resources as the reading audience brings their own potential "enforcement" forward.

And four, while the new form does have a sharp learning curve, which has burdened the sector, filers are starting to master the form, and I am certain further improvement will be evidenced over the next few years, particularly if the IRS can help.

It is this last point that generates the recommendations I make in my written testimony. As to charges leveled of being overly burdensome, the new form makes multiple asks that its predecessor did not and imposes new architecture for the form—a core form with 15 subject schedules tailored to the individual topics that the IRS seeks information upon, not all of which are in play for most filers.

But as a result, the form's instructions comprise a new playbook for filers and those who assist them. The need to master this new regime has clearly shocked many filers, but many of those had not properly understood or appreciated the form's complexity in the years prior to the redesign. Indeed, many filers have misperceived the prior form as only a financial statement report to the IRS belonging solely to the domain of the organization's accountants.

The new form is clearly a full information return for exempt entities that extends well beyond financial results. It cannot be wholesale handed off to auditors or paid preparers. Completion requires meaningful participation by the filer, whose staff or leadership must now provide firsthand data on the group's output and operations, including information that resides outside of the finance staff.

The understanding by groups of all sizes that this is the case and that they must have a preparer (either internal and/or external)

who is committed to mastering more of the new form's learning curve each year has been evidenced as we have moved from the form's filing season in 2009 to today.

Ms. BORENSTEIN. In the recommendations section of my written testimony, I make five specific suggestions and note that comments on overlapping burdens of two schedules should be opened. I urge this Committee and the tax press to read each of those six points not as signs of the redesign's failure or overreach but as lessons from the field.

In that spirit, I want to offer three realities that need to be taken into account before we start assigning final grades to the Redesign Form and its results to date. First, the IRS should not change the form now, midstream, but instead focus on the few areas where it is clear that burden could be decreased and take advantage of the opportunity to better the form by getting those areas right. As set out in my recommendation, the first one, this is particularly urgent with respect to helping organizations and users of the form understand that the IRS's semantics and reporting requirements are not necessarily value-laden, especially in regards to reporting insider transactions and counting directors as "independent" or not.

Second, we should not conflate the fact that reporting organizations will be burdened by the resources required to complete this annual filing—that is a cost of exemption—with the fact that many organizations do not and will not have access to an accountant or other professional who is qualified to assist in preparing this filing. It is appropriate to keep the preparation challenge situated with filers at all times, regardless of whether they have access to competent paid or pro bono professionals.

And third, the Redesign Form does a great job of using the form's transparency factor and the certainty of public access by funders, whistleblowers, competitors, reporters, et cetera. The form sets out affirmative reporting responsibilities that I have seen promote far greater compliance and appreciation of tax mandates and charitable precepts than ever before. This is notably evident in the management of compensation and certain other governance arenas, as well as in portions of the form's most complicated schedule, the Schedule L, where filers are to disclose intersections with insiders. That disclosure responsibility has, as it should, generated valuable self-reflection by reporting organizations as to the motives and results obtained from such opportunities.

I can talk about the 990 for hours at a time, but I see my time is up. I look forward to answering any questions you may have. Thank you.

Chairman BOUSTANY. Thank you, Ms. Borenstein.
[The prepared statement of Ms. Borenstein follows:]