



Tax Compliance Primer



Things We Are Seeing

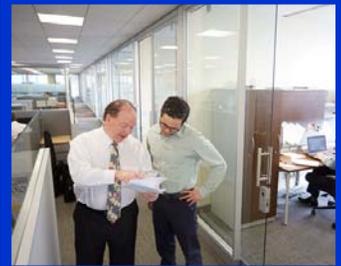
Big Thinking. Personal Focus.



The Ever Changing Form 990



What's New?

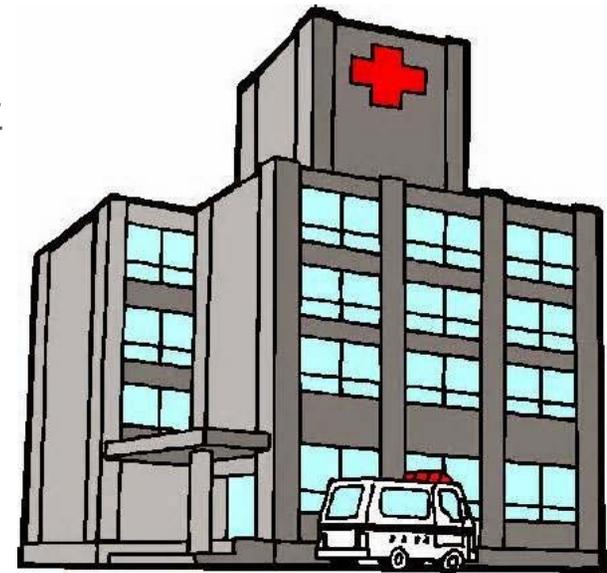


- All 2016 990 Forms and Schedules have been released
 - Instructions for some forms are still missing, including the core Form 990 instructions
- Initial Impressions
 - Minimal changes for most 2016 forms
 - Most revisions are minor grammatical changes
 - Schedule H saw the most significant revision
 - Impressions could change (especially with the Core 990 Form when instructions come out)
- Schedule L Relief

Schedule H Changes



- In 2015, the IRS took up hospital reporting, making several significant changes to Schedule H.
 - This trend continues in 2016
- Instructions for Schedule H are not out yet, but the 2016 form shows changes to:
 - Part V – Community Health Needs Assessment, Financial Assistance Policy, Billing & Collections
 - See questions 3(i), 16, 16(g), 16(i), 18(c), 19(c), 20, 22
 - IRS appears focused on
 - results and impact over actions taken by the organization
 - Consumer protection



What the Recent Presidential Election May Mean for the Nonprofit Sector



Key Individual Taxation Proposals from President-Elect Trump



- Reducing the number of tax brackets from 7 (10/15/25/28/33/35/39.6%) to 3 (12/25/33%)
- Increase the standard deduction to \$15,000 for single filers and \$30,000 for married couples filing jointly (over double the current amounts)
- Capping itemized deductions at \$100,000 for single filers and \$200,000 for married couples filing jointly
- Eliminating personal exemption; head of household filing status
- Repeal the 3.8% net investment income tax on passive income
- Repeal the federal and estate gift tax
- Eliminate the Alternative Minimum Tax
- Repeal the Affordable Care Act

Possible Impact of the President-Elect's Proposals

- UNCERTAINTY!
- Tax Policy Center Comments*
 - By reducing marginal tax rates, the after-tax cost of charitable giving increases.
 - Ex: A 39.6% taxpayer who contributes \$100, after-tax cost is roughly \$60 because the taxpayer paid \$39.60 in taxes. Reducing the top marginal rate to 33% means the after-tax cost is now \$67 to the taxpayer.

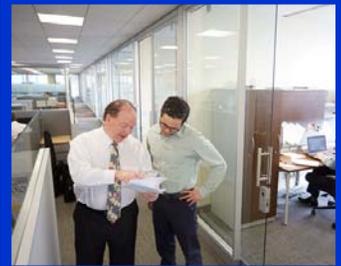
* Lu, Chenxi, Stallworth, Phillip, Steurele, C. Eugene, *Both Clinton and Trump would reduce tax incentives for charitable giving*, TaxVox, Nov. 4, 2016, <http://www.taxpolicycenter.org/taxvox/both-clinton-and-trump-would-reduce-tax-incentives-charitable-giving>

Possible Impact of the President-Elect's Proposals

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 - By reducing marginal tax rates, the after-tax cost of charitable giving increases.
 - Charitable contributions are an itemized deduction. Raising the standard deduction to \$15,000/\$30,000 would result in 60% fewer taxpayers opting to itemize, eliminating the tax incentive to make charitable contributions.

* Lu, Chenxi, Stallworth, Phillip, Steurele, C. Euguene, *Both Clinton and Trump would reduce tax incentives for charitable giving*, TaxVox, Nov. 4, 2016, <http://www.taxpolicycenter.org/taxvox/both-clinton-and-trump-would-reduce-tax-incentives-charitable-giving>

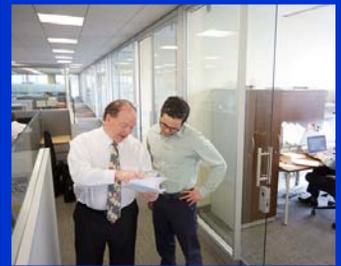
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 - By reducing marginal tax rates, the after-tax cost of charitable giving increases.
 - Raising the standard deduction to \$15,000/\$30,000 would result in 60% fewer taxpayers opting to itemize.
 - According to 2014 IRS data, taxpayers with over \$1 million in AGI itemized, on average, \$260,000 for state/local taxes and \$165,000 in charitable contributions. Capping itemized deductions at \$100,000/\$200,000 would essentially eliminate any incentive to make charitable contributions

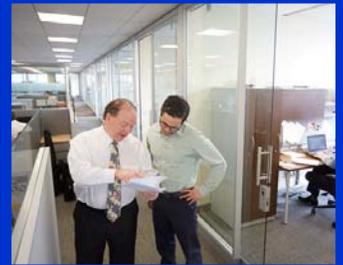
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 - Raising the standard deduction to \$15,000/\$30,000 would result in 60% fewer taxpayers opting to itemize.
 - Capping itemized deductions at \$100,000/\$200,000 would essentially eliminate any incentive to make charitable contributions
 - President-Elect Trump's tax cuts, however, do provide individuals with more pocket money to potentially give to charity.

* Lu, Chenxi, Stallworth, Phillip, Steurele, C. Euguene, *Both Clinton and Trump would reduce tax incentives for charitable giving*, TaxVox, Nov. 4, 2016, <http://www.taxpolicycenter.org/taxvox/both-clinton-and-trump-would-reduce-tax-incentives-charitable-giving>



CHARITY NAVIGATOR
Your Guide To Intelligent Giving

The Evolving Face of Accountability/Transparency



What Is Charity Navigator?

- Founded in 2001
- Mission: *Charity Navigator works to guide intelligent giving. By guiding intelligent giving, we aim to advance a more efficient and responsive philanthropic marketplace, in which givers and the charities they support work in tandem to overcome our nation's and the world's most persistent challenges.*
- 501(c)(3) non-profit organization



What Charities Are on Charity Navigator?

- Charity Navigator (“CN”) claims there are 1.57 million nonprofits registered in the U.S., and they have a page for every one of them
- CN doesn’t give an exact number of charities that it has analyzed, but claims those that they have analyzed account for roughly 50% of all donations in America (excluding houses of worship)



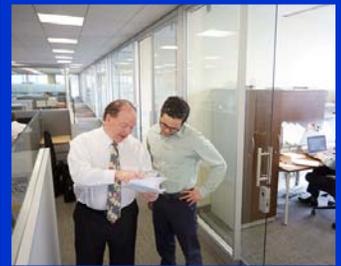
How Does Charity Navigator Rate Charities?



- Financial Health – Charities are evaluated based on 7 key metrics, and a composite score is given on a 0 to 100 scale (information is taken directly from the Form 990)
- Accountability & Transparency – Charities are evaluated on 17 metrics and a composite score is given on a 0 to 100 scale (information is taken directly from Form 990 and charity’s website)
- Results Reporting – Coming Soon



How Do I Get Rated by Charity Navigator?



- A Charity must:
 - Be registered as a 501(c)(3)
 - File a Form 990
 - Have 2 consecutive years of \$1 million in revenue
 - Have been in existence for 7 years
 - Be based in the U.S.
 - Have a minimum of \$500,000 in public support and be at least 40% of total revenue for 2 consecutive years
 - Allocate at least 1% of expenses to fundraising for 3 straight years
 - Allocate at least 1% of expenses to administrative expenses for 3 straight years
- If an organization meets these criteria, it can then “Vote” for itself to become rated. The more votes, the higher up in the queue for evaluation an organization moves.

Who Does Charity Navigator Not Analyze?

- Because CN's ratings model is not a "good fit" for certain types of charities, CN does not rate:
 - Land Trusts
 - Hospitals and Hospital Foundations
 - Universities, Colleges, Private Elementary and Secondary Schools and their Foundations
 - Sorority and Fraternity Foundations
 - Community Foundations and Donor-Advised Funds



What Can Charity Navigator Do For Me?



- Charity Navigator allows each charity to assign an “approved representative by clicking the “Charity Login” button at the bottom of your page.
- The approved representative can
 - Update basic contact information
 - Leave a comment about the charity’s current rating
 - Update Accounting & Transparency information to help improve your score
- Future Enhancements
 - CN is planning to offer in “the not-too-distant future” the ability to provide supplemental information about your organization to help potential donors make better informed decisions about your organization.

What Is GuideStar?

- Founded in 1996
- Mission: *To revolutionize philanthropy by providing information that advances transparency, enables users to make better decisions, and encourages charitable giving*
- 501(c)(3) organization
- Not a watchdog or rating organization, but seeks to present “the information you want in an easy-to-understand format while remaining neutral”



What Can GuideStar Do For Me?

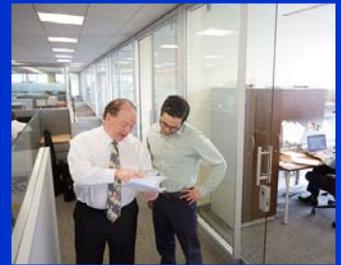


Charitable Solicitation Registration

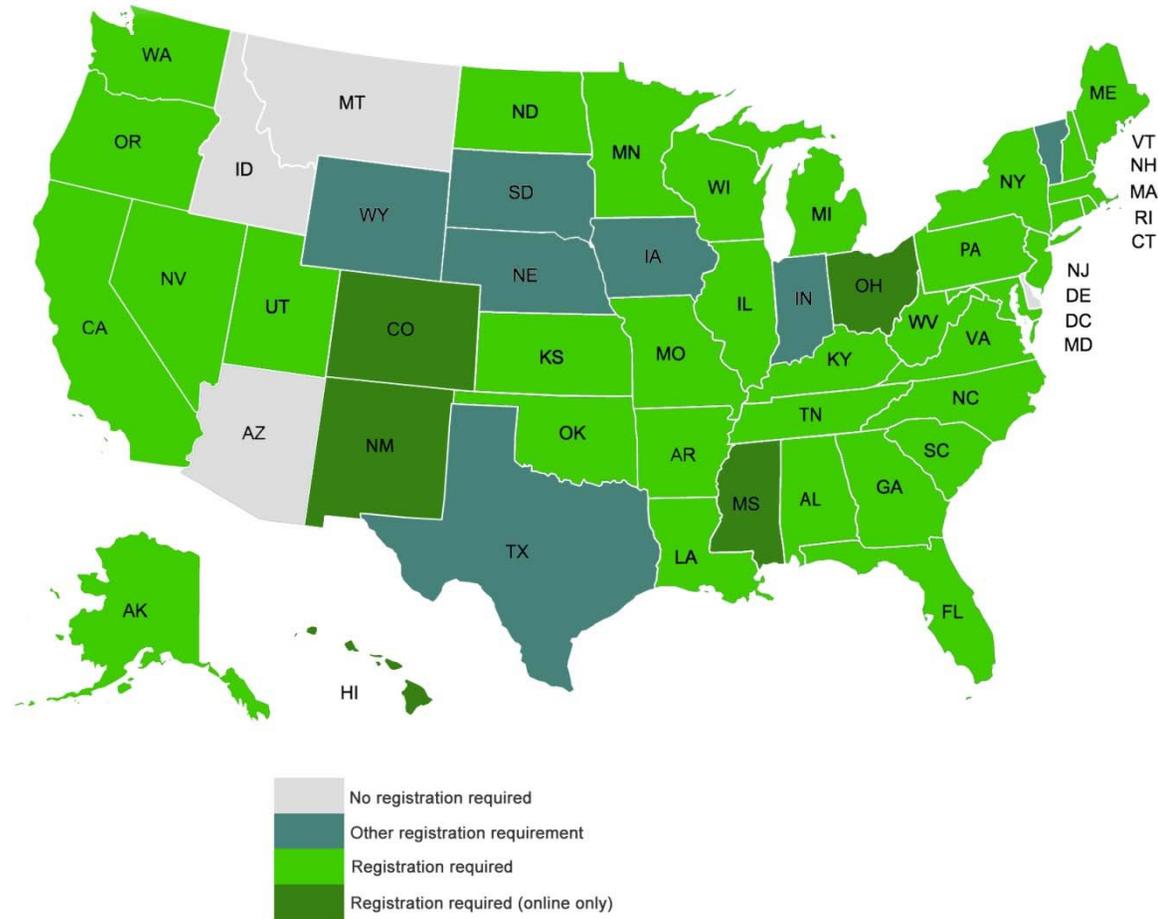


What Is Charitable Solicitation Registration?

- Most states have laws regulating solicitation for charitable purposes
- These states generally require registration with a state agency before an organization can solicit funds in the state
- Laws generally lack consistency from one state to the next
- Requirements can be as minimal as registering with the proper state agency, but can also be as extensive as filing periodic financial reports or registering consultants/paid solicitors

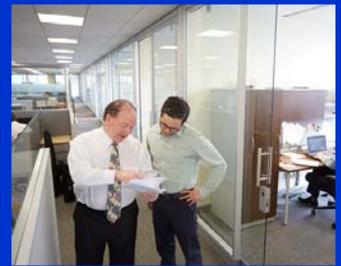


States Requiring Charitable Solicitation Registration



*image taken from Affinity Fundraising Registration website on November 28, 2016
 (<http://www.fundraisingregistration.com/images/stories/state/Registration-States-Graphic.jpg>) as linked to by NASCO

Multistate Registration and Filing Portal



- At the present time, all states requiring charitable solicitation registration require separate filings
- The National Association of State Charities Officials (NASCO) and the National Association of Attorneys General (NAAG) have undertaken the MRFP project (Formerly the Unified Registration Statement) to create a single online portal to permit nonprofits to comply with charitable solicitation registration requirements
- Currently in a pilot phase with 13 states participating

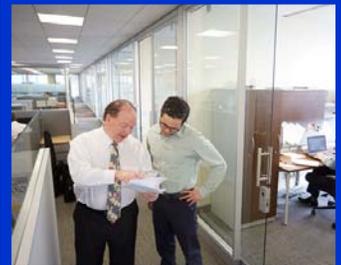


White-Collar Changes to the Fair Labor Standards Act

WHITECOLLAR



Renewed Focus on “White-Collar” Overtime and Minimum Wage Exemptions

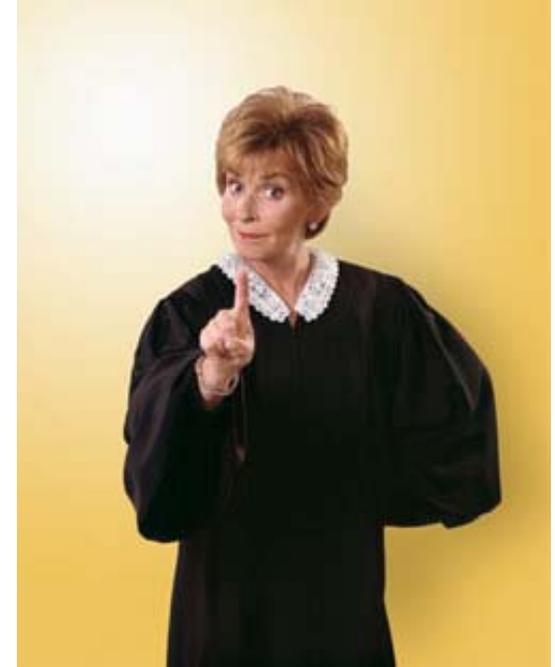


- In May 2016, the Wage and Hour Division of the Department of Labor released its Final Rule updating exemptions from minimum wage and overtime pay for “white collar” workers
- Under the FLSA, there are 3 “tests” for determining whether workers employed as “executive, administrative, or professional employees” are exempt from minimum wage or overtime requirements:
 - The “Salary Basis Test”
 - The “Salary Level Test”
 - The “Duties Test”
- Important: Compensation alone does not automatically mean an employee is exempt, and “white-collar” workers’ specific job duties AND earnings must meet all the regulation’s requirements.

Renewed Focus on “White-Collar” Overtime and Minimum Wage Exemptions - Continued



- The new rule states that executive, administrative, and professional employees must earn an annual salary of at least \$47,476 to be considered exempt from overtime rules
- The DOL has been quick to point out, however, that *“The salary level is not a minimum wage requirement, and no employer is required to pay an employee the salary specified in the regulations, unless the employer is claiming an applicable white collar exemption”**
- New rule was to become effective December 1, 2016
- Federal Court Judge issued a temporary nationwide injunction on November 22, 2016 halting implementation of the new rule, pending a judicial challenge from 22 states, the U.S. Chamber of Commerce, and other business groups.



Disclosure: Judge Judy was not the actual judge issuing injunction

*U.S. Dept. of Labor, Wage and Hour Division, *Guidance for Private Employers ON Changes to the White Collar Exemptions in the Overtime Final Rule*, <https://www.dol.gov/whd/overtime/final2016/general-guidance.pdf> (May 18, 2016).

Exemption Tests Based on New Rule

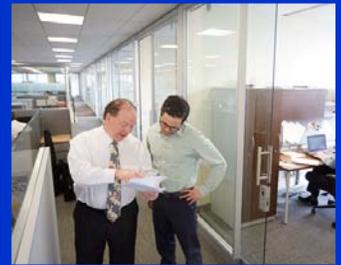
Basic Requirements for Claiming a White Collar Exemption under the Standard Duties Test

	EXECUTIVE	ADMINISTRATIVE	PROFESSIONAL
Salary Basis Test	<ul style="list-style-type: none"> Employee must be paid on a salary basis 	<ul style="list-style-type: none"> Employee must be paid on a salary or fee basis 	<ul style="list-style-type: none"> Employee must be paid on a salary or fee basis
Standard Salary Level Test	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) 	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) Special salary level for certain academic administrative personnel 	<ul style="list-style-type: none"> \$913 per week (\$47,476 per year for a full-year worker) Salary level test does not apply to doctors, lawyers, or teachers
Standard Duties Test	<ul style="list-style-type: none"> The employee's "primary duty" must be managing the enterprise, or managing a customarily recognized department or subdivision of the enterprise (and managing 2 full-time employees as well). Additional requirements provided in 29 CFR 541 Subpart B 	<ul style="list-style-type: none"> The employee's "primary duty" must include the exercise of discretion and independent judgment with respect to matters of significance. Additional requirements provided in 29 CFR 541 Subpart C 	<ul style="list-style-type: none"> The employee's "primary duty" must be to primarily perform work that either requires advanced knowledge in a field of science or learning or that requires invention, imagination, originality or talent in a recognized field of artistic or creative endeavor. Additional requirements provided in 29 CFR 541 Subpart D

*U.S. Dept. of Labor, Wage and Hour Division, *Guidance for Private Employers ON Changes to the White Collar Exemptions in the Overtime Final Rule*, <https://www.dol.gov/whd/overtime/final2016/general-guidance.pdf> (May 18, 2016).

So What's Next?

- The rule as it existed before the May amendment continues in full force
- The temporary injunction blocks the implementation of the new rule, but depending on the court case, the rule could still be implemented
- A renewed focus on the “white-collar” overtime rule and minimum wage exemptions could increase the number of lawsuits in this area

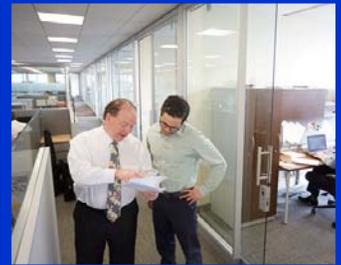




Higher Education Update

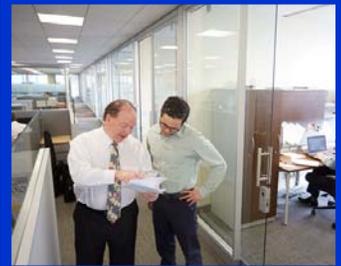


Latest 1098-T Developments - Background



- Education institutions report qualified tuition expenses on Form 1098-T
- Prior to the 2015 PATH Act, education institutions could either report payments received for the calendar year in Box 1 or amounts billed during a calendar year in Box 2 of Form 1098-T
- The PATH Act eliminated the Box 2 option for amounts billed and now only permits the institution to report payments received for a calendar year.

Latest 1098-T Developments



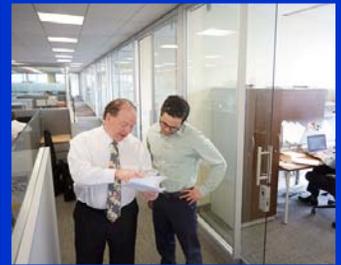
- In May 2016, the IRS released Internal Revenue Bulletin: 2016-20
 - The IRS stated it was contacted by numerous education institutions about the impossibility of complying with the new reporting requirements in such a short period of time.
 - As a result the IRS stated it would not penalize education institution's for reporting under the amount billed option for 2016
- In November 2016, the IRS announced that it was extending the relief from Penalty to the 2017 calendar year as well.

Congressional Focus on Endowments



- In 2008, both the Senate Finance Committee and IRS sent communications to hundreds of colleges and universities seeking, among other things, more information about their endowments
- In 2015/2016, Congress again returned its focus to college and university endowments, when it began investigating the escalating cost of secondary education.
- In an October 2015, House Ways and Means Subcommittee meeting, questions were raised on whether institutions of higher learning were making sufficient use of their endowments.

CRS Report: “College and University Endowments: Overview and Tax Policy Options”

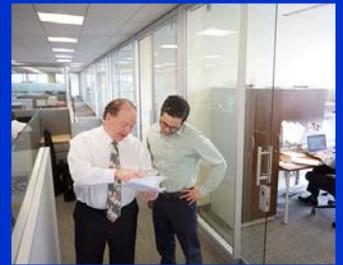


- In December 2015, the Congressional Research Service published a report addressing four specific tax reform options:
 - Imposition of a payout requirement similar to the distribution requirement currently imposed on private foundations;
 - Imposition of a tax on endowments or endowment earnings;
 - Limitation on charitable deductions for gifts to endowments; and
 - Changing the current taxation policies with respect to certain offshore investments
- The CRS report also suggested that tax policy could be changed to encourage additional endowment spending, though no specific recommendation was made
- Finally, the CRS report noted that if endowments were taxed consistent with the highest corporate tax rate of 35%, FY 2014 could have generated \$16.2 billion.

2016 Developments



- In February, the Senate Committee on Finance and House Ways and Means Committee sent a joint letter to all colleges and universities with endowments in excess of \$1 billion, requesting information about endowment management, spending, and donors.
- In September the House Ways and Means Committee held a hearing exploring college affordability. At the hearing the subcommittee indicated it was very interested in obtaining greater transparency with respect to college endowments and suggested the Form 990 might be the proper vehicle to gain such insight.



Foreign Reporting of Alternative Investments



Foreign Reporting of Alternative Investments



- As nonprofits look for more sustainable forms of funding, many organizations have been turning to alternative investments such as hedge funds, private equity funds, or commodity funds to name a few.
- These investments bring unique considerations such as unique reporting requirements and exposure to unrelated business income
- With alternative investment also comes foreign investment and additional filing requirements that nonprofits need to be aware of as they move forward with these alternative sources of funding.

IRS Required Forms



- Form 926
 - Purpose: Return by a U.S. Transferor of Property to a Foreign Corporation, to report any exchanges or transfers of property to a foreign corporation
 - Penalty: 10% of the FMV of the property at the time of transfer, up to a maximum \$100,000 unless transferor intentionally failed to file
- Form 8865
 - Purpose: Used to report control of certain foreign partnerships, transfers or foreign partnerships, or acquisitions/dispositions/changes in foreign partnership interest
 - Penalty: Based on category of the filer, but generally \$10,000 plus a late filing penalty of \$10,000 for every 30 days after the IRS has mailed a notice of failure, up to a maximum \$50,000.



IRS Required Forms - Continued



- Form 8621
 - Purpose: Informational return filed by a shareholder of a passive foreign investment company or qualified electing fund. Both direct and indirect shareholders may have a filing requirement
 - Penalty: None. But a failure to file an 8621 tolls the running of the statute of limitations for the appropriate tax year until the form is filed.

- Form 5471
 - Purpose: Certain U.S. citizens and residents who are officers, directors, or shareholders in certain foreign corporations must file this form and related schedules
 - Penalty: Depends on category of filer, but generally an individual will be assessed 5% of the tax required and an additional 5% for each month failure to file continues, up to a maximum 25%. For business organizations the penalty is \$10,000 plus a late filing penalty of \$10,000 for every 30 days after the IRS has mailed a notice of failure, up to a maximum \$50,000. Additionally, 10% reduction in foreign tax credits may also be imposed.

Questions???

