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Caution – 2011 Form 990, Schedule R Requires Disclosure of All Contributing Employers to a VEBA

In recent years, the IRS has greatly expanded the information that tax-exempt organizations are required to report on Form 990. A little-noticed change to the 2011 Form 990, Schedule R Instructions threatens to impose immense burdens on multiemployer and multiple employer VEBAs. Specifically, it now lists separately "Contributing Employer of a VEBA" as a related entity that must be reported on Schedule R, which is open to public inspection. This term is broadly defined as an employer that makes a contribution or contributions to the VEBA during the tax year. Previously, IRS only required disclosure of a "sponsoring organizations of a VEBA," which was limited to an organization that contributes 10% or more of the contributions or payments made to a VEBA during the year.

For large multiemployer and multiple employer VEBAs, this "clarification" results in significant burdens on the plan sponsor to gather, compile, and report this additional information. Specifically, at a minimum, the following information for each contributing employer is required to be disclosed:

- Name, address, and EIN
- Primary activity
- Legal domicile (state or foreign country)
- Direct controlling entity (if any)
- Tax filing status (e.g., C Corp, S Corp, partnership, taxable trust)
- Compensation data for any paid VEBA trustees

Although the long-standing IRS regulations may support gathering this level of detail, it is unclear whether the benefits of this additional disclosure outweigh the burdens imposed on gathering and maintaining this additional level of disclosure. Moreover, the level of due diligence necessary to gather and maintain this additional disclosure is also unclear, but as there are penalties associated with an incomplete Form 990 (e.g., up to \$50,000 for the organization and up to \$5,000 for responsible persons, and possible fines and imprisonment for willful failure/fraudulent returns), plan sponsors are struggling to take reasonable steps to comply.

If this impacts you, please let us know if you are interested in joining a comment letter group that would seek to retain the prior Form 990 Instructions and forego this additional level of disclosure, which raises privacy concerns for participating employers, and is an unwelcome expense in these economically difficult times.