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Tax News & Views
Health care edition

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Tax-Exempt Status under IRC Section 501(c)(4) Denied to Accountable Care Organization

In a Memorandum Opinion filed May 16, 2023, the Tax Court upheld an Internal Revenue Service ("IRS") determination denying request for tax-exempt status as a social welfare organization under section 501(c)(4) to an accountable care organization ("ACO"). The ACO in question was organized as a nonprofit corporation under Texas state law, organized and controlled by its sole member that was tax-exempt under IRC section 501(c)(3). The ACO coordinates care for participating patients, some of which are enrolled in Medicare and others covered by commercial health insurance plans. The ACO coordinates with a related physician's network, of which the medical providers in the network contract with the ACO to provide care for patients in exchange for a share of the payments the ACO receives under its shared savings programs. For this particular ACO, it was noted that 18% of the patients whose care was coordinated by the ACO as of November 2019 were beneficiaries participating in the ACO through the Medicare

Shared Savings Program (MSSP) administered by the Centers for Medicare & Medicaid Services (CMS) and 82% of patients were covered by private insurance companies. The IRS initially concluded, and the Tax Court upheld, that the ACO does not qualify as an organization described under section 501(c)(4) because the ACO failed to show how the activities it conducts under its non-MSSP contracts serve the public. Instead it was determined that the ACO primarily benefits the insurance companies and healthcare providers that the ACO contracts with. As such, the ACO is not considered by the IRS nor Tax Courts to operate exclusively for the promotion of social welfare under section 501(c)(4).

Tax-Exempt Status under IRC Section 501(c)(3) Denied to Organization Providing Healthcare Services

The IRS released Denial Letter 202318021 on May 5, 2023 denying tax-exempt status under IRC section 501(c)(3) to a health care organization. The organization's governing documents indicated it was organized exclusively for purpose of providing membership-based health care sharing services and that upon dissolution the organization's assets would be distributed to a 501(c)(3) organization. The organization's tax-exempt application and response to additional requests further described that the organization would provide an array of health care services to its members, including member-to-member health care sharing, education of members on how healthcare works and how to access quality care, and access to telehealth services, and that the organization would partner with various physicians and other health care providers to provide such services. While the organization expected to receive some gifts, grants, and contributions, the majority of the organization's revenues would be from membership fees. Further, the organization expected expenditures to include disbursements for benefit of members and also certain overhead costs and other program service costs. The IRS ultimately determined that the organization did not meet the operational test as described in Treasury Regulation section 1.501(c)(3)-1(c), highlighting that the organization's primary interest was private in conferring benefits to subscribing members, rather than serving the public or members of a charitable class. The IRS further noted that the organization did not provide any direct medical care, but only arranged healthcare services for subscribing members for a fee similar to a commercial trade or business.

U.S. House Ways and Means Subcommittee on Oversight Meeting on Tax-Exempt Hospitals

There has been a range of recent coverage and questioning of the tax-exempt status of nonprofit hospitals, and on April 26, 2023, the Subcommittee on Oversight of the House Ways and Means Committee ("Subcommittee") held a hearing that focused on the tax-exempt status of nonprofit hospitals and the community benefits provided by those hospitals. The hearing testimony and Q&A portion explained that the community benefit standard for tax-exempt hospitals does not have specific requirements. The hearing included witness testimony that raised concern about the level of community benefit provided by tax-exempt hospitals, with some arguing that the level of community benefit provided is inadequate especially in comparison to the value of tax-exemption. Conversely, certain witnesses expressed the view that tax-exempt hospitals provide valuable and vital services to help those in need in their communities which meets and exceeds the requirements or expectations for their tax-exempt status.

In the midst of various perspectives and insights, the witnesses appeared to be in consensus that the current Schedule H of Form 990, used annually to report the policies and activities of nonprofit hospitals, including community benefits the hospital provides, could be updated to make it easier for various stakeholders to capture comprehensive, consistent, and comparative detail on tax-exempt hospitals and their community benefit activities going forward. The hearing witnesses were also in agreement that there should be more emphasis on social determinants of health in evaluating the community benefit provided by hospitals.

You can view a recording of the Subcommittee hearing and read copies of witness statements here.

Treasury and IRS Release Additional Guidance for Certain Provisions of IRA and CHIPS Act

On June 14, 2023, Treasury and the IRS issued temporary regulations (T.D. 9975) setting forth mandatory information and registration requirements for taxpayers planning to elect to receive a direct payment in lieu of certain tax credits under the Inflation Reduction Act of 2022 (P.L. 117-169) (IRA) and the CHIPS Act of 2022 (P.L. 117-167). These temporary regulations also set forth mandatory information and registration requirements for taxpayers planning to make an election to transfer certain Federal income tax credits.

In addition, Treasury and the IRS issued proposed regulations addressing the section 6417 elective direct payments (REG-101607-23), the section 6418 transfer of certain credits (REG-101610-23), and the elective payment of the advanced manufacturing investment credit (REG-105595-23).

Notably, the section 6417 regulations provide certain clarifications for the definition of an 'applicable entity' under IRC section 6417(d)(1) for purposes of certain credits available for 'direct-pay,' and explains that for purposes of section 6417 the annual tax return for which the credit should be claimed is Form 990-T for organizations with unrelated business income tax or proxy tax under section 6033(e) and for any taxpayer that is not normally required to file an annual tax return with the IRS.

The proposed regulations under sections 6417 and 6418 are generally proposed to apply to taxable years ending on or after the date final regulations are published in the Federal Register. Taxpayers and other entities may rely on the proposed regulations for taxable years beginning after December 31, 2022, and before the date final regulations are published in the Federal Register, provided they follow the proposed regulations in their entirety and in a consistent manner.

Did you know?

IRS Memorandum Indicates Many NIL Collectives Will Not be Tax-Exempt
On June 9, 2023, the IRS released Memorandum 2023-004 to address whether developing paid name, image, and likeness (NIL) opportunities for collegiate student-athletes furthers an exempt purpose under IRC section 501(c)(3). The memorandum explains the view of the IRS is that many organizations that develop paid NIL opportunities for student-athletes will not qualify for tax-exempt status under IRC section 501(c)(3) because the private benefits they provide to student-athletes are more than incidental to any exempt purpose furthered by that activity.

Latest on Tax law changes
The Tax News & Views: Capitol Hills briefings provides articles and podcasts on the latest developments with tax legislation on capitol hill.

Deloitte Dbriefs

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Transfer Pricing

Update on advance pricing agreements and mutual agreement procedure

June 16 | 1 p.m. ET | 17 GMT

Transfer pricing controversies still abound. When might multinational businesses consider APAs and MAP to help mitigate transfer pricing risk and what is changing in the US APA and MAP landscape? In this Dbriefs webcast, participants will hear from the acting director of the APMA Program. Participants will be able to explain recent changes to the programs and the circumstances under which either APA or MAP can be beneficial to companies.

Register

International Tax

Global minimum tax (Pillar Two) with Oracle's TRCS—the how and what!

June 20 | 2 p.m. ET | 18 GMT

Pillar Two, the key components of which are commonly referred to as the "global minimum tax," introduces a minimum effective tax rate of 15%. This changes the way multinational enterprises (MNEs) pay tax globally and creates significant data and reporting challenges. We will demo Oracle Tax Reporting Cloud Service (TRCS), one of the technology solution providers, for what you may expect when it comes to compliance and technology. Participants will interpret Pillar Two concepts and rules and how they may affect existing tax reporting processes.

Register

Tax Accounting & Provisions

Financial accounting and reporting for income taxes: Mid-year update

June 21 | 1 p.m. ET | 17 GMT

As we progress through the quarters, there are a number of developments that companies should be considering for both interim and year-end tax accounting purposes. Now is the time to think about how your organization will plan for these changes and the related impact on income tax reporting. Participants will review some of the insights into accounting for income taxes and the latest developments affecting financial reporting for taxes.

Register

International Tax

Tax-aligned value chains in a post-Pillar Two world

June 22 | 1 p.m. ET | 17 GMT

How does the changing global tax environment impact current tax-aligned supply chains? In this webcast, we'll cover areas of corporate value and the integration of both business goals and tax planning. How does the changing global tax environment impact current tax-aligned supply chains? In this webcast, we'll cover areas of corporate value and the integration of both business goals and tax planning.

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