



Tax News & Views

Health care edition

Bipartisan Group of Senators Requests Investigation of Tax-Exempt Hospitals

In a [letter](#) dated August 7, 2023, United States Senators Elizabeth Warren (D-Mass), Chuck Grassley (R-Iowa), Raphael Warnock (D-Ga.), and Bill Cassidy (R-La.) requested that Treasury and the Internal Revenue Service (IRS) increase oversight of tax-exempt hospitals. Citing the increasing amount of medical debt held by individuals and families, the Senators note that the amount of community benefit provided by hospital organizations does not match the amount of tax benefits received by these hospitals. The challenge is that the criteria the IRS provides for determining what constitutes community benefit is not clear. Specifically, the Senators requested that the IRS and Treasury provide the following:

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1. Provide a list of the most commonly reported community benefit activities that qualified a nonprofit hospital for tax exemptions in FY2021 and FY2022. Please categorize by charity care, unreimbursed costs of Medicaid, community health improvement activities, professional development, other.
2. Describe the updates the IRS has made since September 2020 to the instructions to Form 990 Schedule H to modify how community benefit information is identified and provided.
 - a. Describe the rationale for these updates to Form 990 Schedule H.
 - b. Describe how these updates to Form 990 Schedule H have improved clarity in reviewing community benefit information
 - c. What additional updates did IRS consider in its review of Form 990?
3. How many hospitals did IRS identify as “at risk” for noncompliance with the community benefit standard since Spring 2021 when IRS implemented several of GAO’s recommendations related to establishing a well-documented process to identify hospitals “at risk” for noncompliance?
 - a. Describe how these changes impacted the effectiveness of reviewing hospitals’ community benefit activities.
4. Provide a list of the nonprofit hospitals that the IRS referred to its audit division for potential Patient Protection and Affordable Care Act (ACA) violations from FY2019 to FY2022.
 - a. How many of these hospitals were referred because of noncompliance issues related to the community benefit standard?
 - b. How many nonprofit hospitals reported no spending on community benefits in 2022?
5. Provide a list of nonprofit hospitals that lost their tax-exemption due to noncompliance with the community benefit standard since the full implementation of the ACA on January 1, 2014.
6. Provide a list of nonprofit hospitals that had their IRS Form 990 rejected for failing to meet requirements related to community benefit reporting.
7. Provide a list of nonprofit hospitals that failed to file an annual Form 990 with the IRS between FY2019 to FY2022.
 - a. How many of these nonprofit hospitals were issued penalties for this failure?
 - b. How many of these nonprofit hospitals had their tax-exempt status revoked?
8. What other challenges does IRS faces in its ability to oversee tax-exempt hospitals?

Health Benefits Organization Denied Tax-Exempt Status

In [Denial 202331004](#), the organization intended to purchase assets and operations from a for-profit business and provide pharmacy benefits at significantly lower cost to individuals and small groups, including low-income, high risk, medically underserved and the elderly. Pharmacy Benefit Managers (PBM) are intermediary organizations between insurance providers and pharmaceutical manufacturers, with the goal of improving the reduction of inappropriate use of prescription drugs and reducing costs. This particular PBM organization requested tax-exempt status as a social welfare organization under Internal Revenue Code (IRC) section 501(c)(4). The IRS denied the organization’s request for tax-exempt status, citing that:

- The organization’s primary activity was carrying on a business in a manner similar to organizations operated for profit;
- The organization does not negotiate to provide the products below cost to a charitable sector or otherwise, but rather provide the same products and services as other PBMs at lower costs, which are then passed on to the end consumer;
- The organization has not demonstrated how assuming the business arrangements of its intended for-profit predecessor organization will further social welfare purposes, or how the continuing license, rental and other arrangements does not provide inurement to the founder who will retain ownership of your for-profit predecessor, even if the licenses and other arrangements are provided at fair market value; and
- The benefits of more affordable drug prices may incidentally redound to society, but such “public-spirited but privately-devoted” endeavors are not “social welfare” within the meaning of IRC section 501(c)(4).

Income and FICA Sourcing for Restricted Stock Units

On July 7, 2023, the IRS released [Chief Counsel Advice 202327014](#) (“CCA”). This CCA addresses the Federal Income Tax Withholding and Federal Insurance Contributions Act, consisting of both social security and Medicare taxes, applicable to restricted stock units granted by a U.S. based corporation and employer to its common law employees for personal services performed initially within the U.S. and later outside the U.S. as a common law employee of a controlled foreign corporation. Given the global nature of many U.S. companies, it is not uncommon for employees to perform services for a U.S. employer within the U.S. and outside the U.S. for the U.S. employer, or, one of its subsidiaries. The CCA addresses the relevant sourcing, withholding, and reporting obligations applicable to certain wages paid to U.S. citizens and residents.

Did you know?

IRS Publishes Four New Technical Guides

The Exempt Organizations and Government Entities division of the IRS has published **four new technical guides**:

1. Disqualifying and Non-Exempt Activities – Trade or Business Activities – IRC section 501(c)(3)
2. Labor, Agricultural, and Horticultural Organizations – IRC section 501(c)(5)
3. Qualified Tuition Program – IRC section 529
4. Excise Taxes – Excess Benefit Transactions – IRC section 4958

IRS Employee Retention Credit Resources

The IRS recently released Employee Retention Credit (ERC) **FAQs** that provide general information about eligibility, claiming the credit, and recordkeeping, as well as **warning signs** for misleading scams involving the ERC.

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.

Upcoming Conferences & D-Briefs

Deloitte Dbriefs are live webcasts that give you valuable insights on important developments affecting your business. Register for the following webcasts or view archived recordings by clicking on the respective hyperlinked button below.



Multistate Tax

Managing property tax priorities in an evolving market

Sept 19 | 1 p.m. ET | 17 GMT

Property tax represents a substantial expense for many companies. Hence, it is essential to properly evaluate business activities and develop a plan to help reduce assessments and exposure, and identify potential exemptions and tax saving opportunities. Participants will be better able to identify potential tax savings opportunities and deliver value through effective planning that can have an impact on above-the-line savings.

Register



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