



Tax News & Views

Health care edition

IRS publishes priority guidance plan

On September 29, 2023, the IRS and Treasury released the [2023-2024 priority guidance plan](#). One new guidance item is included in the list (item 4, discussed further below). The 10 guidance items are:

1. Guidance revising Revenue Procedure 80-27 regarding group exemption letters. Notice 2020-36 was published on May 18, 2020.
2. Final regulations on Internal Revenue Code (IRC) section 509(a)(3) supporting organizations. Proposed regulations were published on February 19, 2016.
3. Regulations under IRC section 512 regarding the allocation of expenses in computing unrelated business taxable income and addressing how changes made to IRC section 172 net operating losses by section 2303(b) of the CARES Act apply for purposes of IRC section 512(a)(6).

Find it Fast

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4. Guidance addressing the SECURE 2.0 Act changes relating to IRC section 529.
 5. Guidance under IRC section 4941 regarding a private foundation's investment in a partnership in which disqualified persons are also partners.
 6. Regulations under IRC section 4966 regarding donor advised funds, including excise taxes on sponsoring organizations and fund management.
 7. Regulations under IRC section 4967 regarding prohibited benefits, including excise taxes on donors, donor advisors, related persons, and fund management.
 8. Regulations under IRC section 4958 regarding donor advised funds and supporting organizations.
 9. Guidance regarding the public-support computation with respect to distributions from donor advised funds.
 10. Regulations designating an appropriate high-level Treasury official under IRC section 7611. Proposed regulations were published on August 5, 2009.
3. Congress should require hospitals to determine whether a patient is eligible for such assistance and provide it, regardless of whether the patient proactively requests information on financial assistance programs or charity care.
 4. Lawmakers should impose further restrictions on non-profit hospitals engaging in the kinds of extraordinary debt collection processes
 5. Congress should define the community engagement necessary to justify a hospital's non-profit status.
 6. Congress should require non-profit hospitals to specifically address the needs raised by community members, which could be achieved in part by encouraging partnerships with other community resources or health care providers to ensure patients can access free or discounted services.
 7. The IRS could address the administrative gaps by increasing transparency in the reporting of community benefit data would be crucial in identifying the scope of the problem and how to adequately address it.

Senate Committee releases reporting regarding tax-exempt hospitals

Sen. Bernie Sanders (I-VT), chairman of the Senate Health, Education, Labor and Pensions (HELP) Committee, issued a [report](#) on October 10, 2023 describing how non-profit hospital systems are failing to provide sufficient levels of charity care while collecting the benefits of tax exemptions and providing significant compensation packages to senior executives.

The report highlights that in 2020, the nation's 2,978 non-profit hospitals received an estimated \$28 billion in federal, state, and local tax benefits as a result of not paying taxes, however, only spent an estimated \$16 billion on charity care, or about 57 percent of the value of their tax breaks in the same year. Sanders further argues that hospitals have made information about their charity care programs difficult to access and have aggressively tried to collect from patients who were likely eligible for charity care.

The report spotlights 16 of the largest non-profit hospital systems that each take in more than \$3 billion in revenue annually, noting that specific health care systems deliver insufficient charity care while providing extensive executive compensation packages and solicit money from all patients irrespective of whether they were entitled to free or discounted care.

Sanders calls on Congress and the IRS to hold non-profit hospitals accountable for tax benefits and their moral obligations to serve as pillars of accessible health care in their communities through a series of recommendations:

1. Congress should take steps to ensure that hospitals are offering charity care at levels consistent with the tax breaks they receive. Tax breaks could be limited to the value of community benefits the hospital provides.
2. Congress should establish clear, enforceable standards for non-profit hospital financial assistance programs.

This issue has sparked bipartisan interest, as Ranking Member Sen. Bill Cassidy (R-LA.), met with other senators in August to examine hospital compliance with tax-exempt requirements. In a letter to the Treasury Inspector General for Tax Administration, bipartisan HELP committee members expressed how certain nonprofit hospitals may be taking advantage of this overly broad definition of 'community benefit' and engaging in practices that are not in the best interest of the patient.

The American Hospital Association issued their own [report](#) on October 10th expressing how tax-exempt hospitals continue to provide a comprehensive range of benefits, programs and essential services that provided nearly \$130 billion in total benefits to their communities in 2020 alone.

Treasury releases final regulations regarding supporting organizations

On October 13, 2023, the Treasury released [final regulations](#) that provide guidance with respect to supporting organizations. The final regulations are effective October 16, 2023 and finalize the proposed regulations published on February 19, 2016, which are a result of changes to the law provided by the Pension Protection Act of 2006. Under the final regulations, persons who control a Type I or Type III supported organization are prohibited from making gifts or contributions such supported organizations.

All supporting organizations must pass an organizational test, an operational test, a control test and a relationship test. Supporting organizations are classified as either Type I, Type II or Type III depending on how the relationship test is satisfied. All Type III supporting organizations are required to fulfill a notification requirement and responsiveness test. Type III supporting organizations are further delineated into functionally integrated and non-functionally integrated supporting organizations depending

on how they satisfy the integral part test. The final regulations adopt, with some changes, the requirements for Type III supporting organizations noted within the proposed regulations including the responsiveness test, the integral part test (including rules for supporting organizations that support more than one governmental organization), and distribution requirements of Type III non-functionally integrated supporting organizations.

A supporting organization that is the parent of a supported organization is deemed to be functionally integrated, and therefore meeting the requirements of the final regulations, if the supporting

organization exercises a substantial degree of direction over the policies, programs, and activities of the supported organization (such as, for example, coordinating the activities of the supported organizations and engaging in overall planning, policy development, budgeting, and resource allocation). Further, a majority of the officers, directors, or trustees of the supported organization must be appointed or elected, directly or indirectly, by the governing body, members of the governing body, or officers (acting in their official capacities) of the supporting organization.

Did you know?

SECURE Act 2.0 – Potential opportunity for matching contributions on student loan payments

On December 29, 2022 President Biden signed into law the Consolidated Appropriations Act of 2023. Included in the legislation was a division consisting of comprehensive changes to employer-sponsored retirement plans and IRAs referred to as “SECURE 2.0 Act of 2022” (herein referred to as “the Act”). The Act, includes a special provision (discussed further below) to allow employers to make contributions to tax-favored retirement plans on behalf employees making student loan payments. At the time it was passed, there was a moratorium on the obligation to repay student loans. The current moratorium on the obligation to repay student loans has expired, effective October 1, 2023, leading to a resumption of student loan payments. The resumption of the student loan payments may cause some individual plan participants to reduce, or even eliminate, retirement plan contributions as a way of obtaining funds necessary to make payments, leading to a loss of future retirement savings accumulations. An employer’s decision to offer a student loan match program in their retirement plan, now possible as a result of the Act, will mitigate this implication and help employees continue to accumulate retirement savings while they repay their loans.

Latest on Tax law changes

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Tax Operations

Prepare for impact: Insights to prepare for OECD Pillar Two

Nov 2 | 2 p.m. ET | 18 GMT

The Organization for Economic Co-operation and Development (OECD) Pillar Two reporting requirements will change the way businesses pay tax globally and may create significant data and reporting challenges for organizations. Participants will analyze the complexities of OECD Pillar Two reporting requirements, along with considerations for an integrated approach to process and data management.

Register



International Tax

Transfer pricing and M&A: What's new and how to prepare for the future

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

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Register



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