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Tax News & Views Health Care Edition

IRS denies exempt status to ACO

In LTR 201615022, the Internal Revenue Service (IRS) denied exemption under Internal Revenue Code Section 501(c)(3) to an accountable care organization (ACO). The IRS held that the ACO was not operated exclusively for exempt purposes within the meaning of Section 501(c)(3). The IRS also held that the ACO was not operated primarily for a public purpose, but rather operated for the benefit of private interests.

Background

The ACO was organized as a nonprofit corporation to "promote and support, directly or indirectly, the interests and purposes" of a health care system. The health care system is a nonprofit health care corporation recognized as tax exempt under Section 501(c)(3) and classified as a public charity under Section 509(a)(1).

The ACO was formed by the system to serve as the legal and operational vehicle for achieving clinical care integration, coordination, and accountability among both employed and independent physicians practicing throughout the health care system affiliated facilities. The ACO applied for exemption requesting a determination as a supporting organization under Section 509(a)(3).

The ACO does not participate in the Medicare Shared Savings Program (MSSP). The ACO does not engage in the direct delivery of medical care or provide health services to the general public. The ACO formed a clinically integrated network of health care providers by entering into participation agreements with providers who meet eligibility and performance standards. The network participants include physicians employed by the health care system, as well as those from independent practice groups who are members of the medical staff at the health care system affiliated facilities. The network participants also include physicians practicing at nonaffiliated hospitals. Approximately half of the participating physicians are in independent practices or affiliated with unrelated hospitals or health systems.

The ACO acts as a representative for all participating providers in the negotiation and execution of certain agreements with third-party payers. These agreements link rewards and penalties for participants to their achievement of certain performance measures in order to incentivize changes in participant behavior with regard to reducing the cost of health care, improving quality of care, and improving population health.

IRS denial of exempt status

In its decision, the IRS states that in order to qualify for exemption under Section 501(c)(3), an organization must be organized and operated exclusively for one or more charitable purposes. Exempt charitable purposes include, among others, relief of the poor and distressed and the lessening of the burdens of government. In order for an activity to be considered "lessening the burden of government," the government must consider the activity to be its burden. In Notice 2011-20, congress established the MSSP to be conducted through ACOs to promote quality improvements and cost savings in health care. Participation in the MSSP by an ACO will generally further the charitable purpose of lessening the burdens of government. However, the law does not provide any indication that the government considers non-MSSP related ACO activities to be its burden.

The IRS notes that the ACO does not participate in the MSSP. The IRS also notes that the ACO is not engaged primarily in assisting the Medicare or Medicaid population, which could further the charitable purpose of relieving the poor and distressed. Rather, a substantial activity of the ACO is the negotiation of payer agreements on behalf of the health care provider participants, approximately half of which are not employed by the related health care system. The IRS states that negotiating with private health insurers on behalf of unrelated health care providers is not a charitable activity. The IRS references Notice 2011-20 which states, "negotiating with private health insurers on behalf of unrelated parties generally is not a charitable activity, regardless of whether the agreement negotiated is a program aimed at achieving cost savings in health care delivery." Such negotiation of payer agreements on behalf of the nonaffiliated physicians only indirectly benefits the community as a whole. These activities are primarily beneficial to the unrelated physicians, hospitals, and other health care providers. The presence of this substantial nonexempt activity destroys exemption under Section 501(c)(3). Therefore, the IRS concluded that the ACO does not qualify for exemption.

Find it Fast

IRS issues 2015 Data Book

The IRS recently released the 2015 Data Book which is a report describing activities conducted by the IRS during fiscal year 2015 (October 1, 2014, through September 30, 2015.) It provides information on returns filed and taxes collected, enforcement, taxpayer assistance, the IRS budget and workforce, and other selected activities. The Data Book also includes a section on tax-exempt activities and describes the number of tax-exempt organizations, the number of approvals of applications for tax-exempt status, and the volume of tax-exempt guidance and regulatory activity. Highlights from the Data Book include the following:

- In FY15, there were more than $1.7 million organizations recognized by the IRS as exempt from taxation.
- In FY15, the IRS closed 101,962 applications for tax-exempt status. Of those, the IRS approved tax-exempt status for 95,372 organizations. The majority of these applications were for organizations requesting tax-exempt status under Section 501(c)(3) as a religious, charitable, or similar organization.
- The number of tax returns filed by tax-exempt organizations rose by 7.7% between FY14 and FY15.
- The IRS processed 787,339 returns of tax-exempt organizations in calendar year 2014 and examined 6,392 tax exempt entity and related taxable returns in FY15.

Did you know?

IRS provides guidance on mid-year changes to safe harbor plans under 401(k) and 403(b)

The IRS recently released Notice 2016-16 which provides guidance on midyear changes to a safe harbor plan under Sections 409(k) and 401(m). The notice provides that a midyear change either to a safe harbor plan or to a plan's safe harbor notice does not violate the safe harbor rules merely because it is a midyear change, provided that applicable notice and election opportunity conditions are satisfied and the midyear change is not a prohibited midyear change, as described in the notice. The guidance in the notice applies on similar terms to Section 403(b) plans that apply the Section 401(m) safe harbor rules pursuant to Section 403(b)(12).

IRS guidance on employer shared responsibility provisions

Two provisions of the Affordable Care Act apply only to applicable large employers (ALEs): the employer shared responsibility provisions and the employer information reporting provisions for offers of minimum essential coverage. Whether an employer is considered an ALE generally depends on the annual number of full-time employees. A new IRS web page provides additional guidance and examples for employers to use in determining their status as an ALE.

Deloitte Thoughtware

Deloitte Center for Health Solutions. The source for health care insights: The Deloitte Center for Health Solutions (DCHS) is the research division of Deloitte's Life Sciences and Health Care practice. The goal of DCHS is to inform stakeholders across the health care system about emerging trends, challenges, and opportunities.

Health Care Current. Weekly insights to keep you informed and ahead. This weekly series explores breaking news and developments in the US health care industry; examines key issues facing life sciences and health care companies; and provides updates and insights on policy, regulatory, and legislative changes.

Deloitte Dbriefs

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.

Global Mobility, Talent, & Rewards

Global inclusion: How mobilizing a diverse workforce can drive business performance *May 4 2:00 PM ET*

As the global business and talent landscape undergoes transformation, a values-driven approach to unleashing human potential can drive strong business results. How can integration of diversity and inclusion (D&I) with global mobility benefit your organization? Learn how integration of D&I with global mobility can help your organization make diverse global moves, reach and grow new talent, and advance the D&I agenda globally.

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Technology Executives

Right-speed IT: Shifting gears for the digital era *May 5 2:00 PM ET*

The digital era requires IT organizations to meet evolving business demands while continuing to drive efficient, reliable, secure, predictable results around existing assets. The business of IT needs to evolve in a similar way, embracing alternative organization and delivery models. Explore ways to transform IT to support the demands of tomorrow's digital businesses.

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Health Sciences

Patient centricity: A new life sciences model for improved outcomes *May 10 1:00 PM ET*

Life sciences companies are changing business models and developing new technologies and solutions to become more patient-centered and outcomes-focused. How are improved clinical education, therapy administration, and medication adherence, along with use of digital tools, leading to better patient engagement? Learn how changes in technology and the health care ecosystem are empowering consumers and redefining how life sciences companies interact with them.

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HR Executives

The rise of teams: A new paradigm for organizational structure *May 11 2:00 PM ET*

In fast-moving global markets disrupted by digitalization, companies are struggling to innovate rapidly, adapt products and services, and stay close to local customers. Are traditional organizational structures keeping pace? Explore this focus area of Deloitte's 2016 Global Human Capital Trends report and learn how to leverage the rise of teams.

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Tax Operations

Global tax compliance and reporting: The evolution of operating models *May 19 2:00 PM ET*

More multinational businesses are migrating their global tax compliance and reporting to shared services, global business services, or outsourcing models. What factors should tax executives weigh in their decisions? Learn about the latest developments in global tax compliance and reporting and steps you can take to keep pace.

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Governance, Risk, & Compliance

Cleaning up intercompany accounting: Driving efficiency while managing risk *May 26 2:00 PM ET*

Improper or insufficient intercompany accounting (ICA) issues are increasingly behind problems that have serious financial consequences for businesses. How can financial executives clean up the mess? Learn ways to achieve transparent, efficient, and controlled ICA.

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Global Mobility, Talent, & Rewards

Business travelers: Using data analytics to aid in assessing tax compliance risk *June 1 2:00 PM ET*

Business travelers can trigger tax obligations in various countries and states. Is your company prepared to defend itself during a compliance audit? Can your company execute required tax withholding and reporting for business travelers without asking employees for their whereabouts?

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Business Strategy & Tax

The Internet of Things: Why finance and tax need to stay connected *June 6 2:00 PM ET*

Many companies are embracing Internet of Things (IoT) strategies and embedding sensors and communications capabilities into their products and services. When everything is connected, not only is operations affected, but the impact ripples throughout an organization. What should financial executives know about the finance and tax implications of IoT?

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Insurance

Human capital trends in insurance: Is there unrealized value to be tapped? *June 7 2:00 PM ET*

Regulations, new innovations, and shifting customer expectations are changing the insurance industry at a record pace. What are associated human capital challenges that could prevent companies from successfully adapting new business models to meet these changes?

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Multistate Tax

State tax nexus: Are they going too far? *June 7 2:00 PM ET*

More states are aggressively asserting state income tax jurisdiction over out-of-state businesses. What recent developments should you consider?

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Financial Reporting for Taxes

Business transactions, their tax accounting challenges, and other financial reporting updates *June 13 2:00 PM ET*

What financial reporting matters may be important for your company as you approach various transactions?

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Health Sciences

Bending the cost curve for health care providers: When traditional approaches aren't enough *June 14 1:00 PM ET*

Optimizing supply chain and revenue cycles, managing labor costs, and improving clinical efficiency have traditionally been effective ways for health plans to improve margins, but they don't truly bend the cost curve. How are forward-looking health systems taking a more critical look at their structures and operating models to reinvent their approach?

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Tax Controversy

Tax refund claims: A window into the Joint Committee on Taxation's review process *June 16 2:00 PM ET*

The Joint Committee on Taxation (Joint Committee) is a nonpartisan congressional committee involved in the tax legislative process. What critical role does it play in the review of tax refunds and why is it important to you?

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Driving Enterprise Value

Finance analytics demystified: Unlocking the value of data-driven decision-making *June 22 3:00 PM ET*

Finance functions are increasingly expected to use analytics effectively given recent technical advances in data warehousing, processing, and visualization. So why, even with new tools, do some finance organizations fail to realize meaningful benefits?

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Financial Reporting

Quarterly accounting roundup: An update on important developments *June 28 2:00 PM ET*

Do you know what issues the standard-setters and regulators have been addressing lately?

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Contacts

Please contact your local Deloitte Tax LLP provider for more information on our services.

Fran Bedard — Nashville
fbedard@deloitte.com
+1 615 259 1811

Lori Boyce — Detroit
lboyce@deloitte.com
+1 313 396 3324

Jeff Frank — Indianapolis
jdfrank@deloitte.com
+1 317 656 6921

William Homer — Philadelphia
whomer@deloitte.com
+1 215 299 4642

Christine Kawecki — Jericho
ckawecki@deloitte.com
+1 516 918 7138

Joan McMahon — San Francisco
jmcmahon@deloitte.com
+1 415 783 5568

Kristina Rasmussen — Minneapolis
krasmussen@deloitte.com
+1 612 397 4178

Mary Rauschenberg — Chicago and Washington National Tax
mrauschenberg@deloitte.com
+1 312 486 9544

Steve Rovner — Tampa
srovner@deloitte.com
+1 813 273 8355

John W. Sadoff, Jr. — Atlanta
jsadoff@deloitte.com
+1 704 887 1810

Jim Sowar — Cincinnati
jsowar@deloitte.com
+1 513 784 7242