

## Tax News & Views Health Care Edition

### IRS releases 2014 draft Form 990, Schedule L for transactions with interested persons

The Internal Revenue Service (IRS) has released the 2014 draft [Schedule L, Transactions with Interested Persons](#), and [instructions](#). The majority of the changes to Schedule L relate to the definition of "interested persons." In prior years, the definition of "interested persons" has varied depending on the transaction type. However, for 2014 the IRS has unified the definition of "interested person" for all loan, grant, or business transactions reportable in Part II-IV. Once finalized, the revised Schedule L will be applicable for hospital organizations for tax year 2014. The definitional changes may require organizations to update their interested person questionnaires when gathering information for the 2014 tax year. Significant changes to the 2014 Schedule L include the following:

#### Definition of "interested person"

For purposes of Parts I, excess business transactions, the definition of interested persons remains the same as prior years. An interested person is a disqualified person under Section 4958.

For purposes of Parts II-IV, loans, grants; or business transactions, the definition of interested persons has been unified and updated. The definition has been expanded now to include:

1. The creator or founder of the organization and his or her family members,
2. Substantial contributors reported in Schedule B and their family members (expanded to Parts II and IV), and
3. Thirty-five percent controlled entities of any of the above (expanded to Part II).

The definition of interested persons has been contracted now to exclude:

1. Highest compensated employees and disqualified persons (removed from Part II):
2. Contributing employers and sponsoring organizations of VEBAs (removed from Part II):
3. Entity of which a current or former officer, director, trustee, or key employee, or any family member thereof, was serving as a director, officer, or trustee, or partner, member, or shareholder with a direct or indirect ownership interest in a professional corporation or entity treated as a publicly traded partnership in excess of 5% (removed from Part IV): and

4. Nonstock organizations more than 35% controlled by other interested persons (removed from Part IV).

#### Reasonable efforts

The "reasonable efforts" definition now applies to all four parts of Schedule L, where in the past it only applied to Parts III and IV. The reasonable efforts exception states that the organization is not required to provide information about a transaction if it is unable to secure sufficient information to conclude that the transaction is reportable after making a reasonable effort to obtain such information. An example of a reasonable effort is for the organization to distribute a questionnaire annually to each person that it believes may be an interested person and have information relevant to determining whether a transaction is reportable.

#### Other changes

The instructions for Part I clarify that the organization should identify in Part V the names of the organization manager(s), if any, that knowingly participated in an excess benefit transaction.

The instructions for Part II clarify that "loans" include payments made pursuant to a split-dollar life insurance arrangement that are treated as loans under Regulations Section 1.7872-15.

The instructions for Part IV identify a new reporting exception for transactions with publicly traded corporations in the ordinary course of an organization's business, on the same terms as are generally offered to the public (or more favorable for the filing organization).

#### Draft 2014 Form 990 and instructions released

The IRS has released the 2014 draft [Form 990, Return of Organization Exempt From Income Tax](#) and [instructions](#). The Form 990 is used by tax-exempt organizations, nonexempt charitable trusts, and Section 527 political organizations to provide the IRS with information regarding the organization's activities for the tax year. Significant changes to the draft 2014 Form 990 include the following:

- The instructions for Part VII, Section A, *Compensation of Officers, Directors, Trustees, Key Employees, and Highest Compensated Employees*, clarify that reportable compensation should not be treated as deferred if deferred from the calendar year ending with or within



#### Find it Fast

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[IRS issues guidance for tax-exempt bond financed facilities](#)

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the tax year to a date that is not more than 2 ½ months after the end of the calendar year ending with or within the tax year.

- In Part XI, *Reconciliation of Net Assets*, new instructions are provided for lines 5, 6, and 8. Line 5 directs filing organizations to report the net unrealized gains or losses on investments reported in the organization's audited financial statements (or other financial statements). This amount represents the change in market value of investments that were not sold or exchanged during the tax year. Line 6 directs filing organizations to report the value of services or use of facilities donated to the organization (net of services or use of facilities donated by the organization) reported as income or expense in the financial statements. Line 8 directs filing organizations to report the net prior-period adjustments during the tax year reported in the financial statements. Prior-period adjustments are corrections of errors in financial statements of prior years, or changes in accounting principles applied to such years. The errors may include math errors, mistakes in applying accounting principles, or oversight or misuse of facts that existed at the time the financial statements were prepared.
- In Appendix E, *Group Returns—Reporting Information on Behalf of the Group*, new instructions are provided for group returns with Section 509(a)(3) supporting organizations. In particular, the instructions provide guidance regarding Schedule A, Part IV through VI, which must be completed if any Section 509(a)(3) organizations are among the subordinates in the group return.

### IRS issues guidance for tax-exempt bond financed facilities

The IRS recently issued [Notice 2014-67](#), private business use of tax-exempt bond financed facilities, for hospitals or health care organizations participating in the Medicare Shared Savings Program (MSSP). The notice provides interim guidance for determining whether a state or local government entity or an organization described in Section 501(c)(3) ("qualified user") that benefits from tax-exempt bond financing will be considered to have private business use of its bond-financed facilities as a result of its participation in the MSSP through an "accountable care organization" (ACO). The MSSP was established to promote accountability for care of Medicare beneficiaries, improve the coordination of Medicare fee-for-service items and services, and encourage investment in infrastructure and redesigned care processes for high-quality and efficient service delivery. Groups of health care service providers and suppliers that have established a mechanism for shared governance and that meet specific criteria are eligible to participate as ACOs under the program. Various groups of service providers and supplies may form an ACO, including (i) physicians and other health care practitioners (ACO professionals) in a group practice, (ii) a network of individual practices, (iii) a partnership or joint venture

arrangement between hospitals and ACO professionals, and (iv) a hospital employing ACO professionals.

As stated in the notice, the IRS recognizes that governmental persons and 501(c)(3) organizations typically will be participating in the MSSP through ACOs with nongovernmental persons. In addition, the ACO may be structured in a variety of forms, including a nonprofit membership corporation, a for-profit corporation, a partnership, or an LLC. Participants in the ACO may be using a tax-exempt bond-financed facility in the delivery of health care services. Tax-exempt bondholders are limited in the amount of private business use that is allowed for each bond-financed facility. Since the ACO may include participants that are nongovernmental persons, participation in the ACO should be structured so as not to result in private business use of the facility. In addition, any Section 501(c)(3) organization using a facility financed with tax-exempt bonds should structure its participation in an ACO so that its participation neither jeopardizes its 501(c)(3) status nor causes it to be engaged in an unrelated trade or business.

The IRS notice provides that the participation of a "qualified user" in the MSSP through an ACO in itself will not result in private business use of the tax-exempt bond financed facility if all of the following six conditions are met:

- The terms of participation in the MSSP through the ACO are set forth in advance in a written agreement negotiated at arm's length.
- The Centers for Medicare & Medicaid Services has accepted the ACO into the MSSP.
- The qualified user's share of economic benefits derived from the ACO is proportional to the benefits or contributions the qualified user provides to the ACO.
- The qualified user's share of the ACO's losses does not exceed the share of ACO economic benefits to which the qualified user is entitled.
- All contracts and transactions entered into by the qualified user with the ACO and other ACO participants are at fair market value.
- The qualified user does not contribute or transfer the bond-financed property to the ACO unless the ACO is an entity that is a governmental person or a 501(c)(3) organization.

The notice also provides guidance on management contracts with nongovernmental persons to provide health care services at bond-financed facilities that will take into account the quality performance standards and Medicare fee-for-service expenditures relevant to participation in the MSSP. A qualified user should structure its management contracts with respect to such facilities to avoid private business use. The notice provides examples of permitted productivity rewards and, the types of permissible arrangements that do not result in private business use.

The notice specifically addresses the rules regarding private business use for ACOs that are participating in the MSSP. However, not all ACOs are designed to participate in the MSSP. The notice does not address how the private business use rules would be applied to such ACOs that are not participating in the MSSP. The question still remains as to whether participation in a non-MSSP ACO would create private business use and if so, how such private business use would be calculated.

#### Did you know?

##### **Charitable donation of large number of items**

IRS [CCA 201443019](#) provides guidance regarding a charitable donation of a large number of items. In regard to a donor treated as a dealer, the CCA notes that under Section 170(e)(1), the amount of any charitable contribution of property is reduced by the amount of gain that would not be long-term capital gain if the property were sold at its fair market value. Therefore, if the contribution were a sale that would have resulted in ordinary income (such as the sale of property held by the donor primarily for sale to customers in the ordinary course of business), then the amount of the deductible charitable contribution would generally be limited to the less of the donor's basis or fair market value. The CCA also states that when determining fair market value for a large number of items, the determination of value may take into account bulk sales, which may reflect a discount based on volume.

##### **Medical device excise tax applicable to leased device**

IRS [PLR 201443016](#) addresses the application of the medical device excise tax under Section 4191 to a medical device leased directly to end users. Under the lease agreement, title of the medical device transfers from the manufacturer to the end user. As such, the lease is treated as a sale and the manufacturer must pay tax on each lease payment with respect to the device.

##### **Social Security wage base increases to \$118,500 for 2015**

The Social Security Administration has announced the 2015 wage base will be \$118,500 up from \$117,000 in 2014. The wage base represents the maximum amount of earnings subject to both the employer and employee share of the Social Security tax for the year.

#### Deloitte Thoughtware

##### **Health Reform**

The health reform bills (HR3590 and HR4872) are now law and will trigger sweeping changes and disruptions—some rather quickly and some over many years. The industry is asking, “What now?” At Deloitte, we continue to explore and debate the specific questions facing the industry, and we look forward to helping our clients find and implement the appropriate answers for their organizations. To learn more, visit [Health Care Solutions](#) on the Deloitte website.

##### **Health Care Regulation**

With quality in the spotlight on a national level, hospitals across the country are renewing their commitment to confirming that their services meet the core measures for quality set by the government and that internal controls are in place to help determine that the collection and reporting of quality data is accurate, complete, and compliant with government reporting requirements. The financial and operational impacts of regulation and legislative oversight in the life sciences and health care industries are pervasive and constantly changing. *@Regulatory* is a monthly publication that apprises readers of the latest regulatory, legislative, and other public policy developments affecting life sciences and health care organizations. Visit [@Regulatory](#) on the Deloitte website.

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***State Transfer Pricing: Are You Prepared for Increased Scrutiny?*** November 12, 2014, 2:00 PM ET

Pricing of intercompany transactions is not just an international tax issue. State tax authorities are also increasingly focused on transfer pricing tax enforcement.

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### International Tax

***Global Tax and Treasury Strategy: A New Approach for Pursuing and Retaining Value in a Fast-Changing World*** November 20, 2014, 2:00 PM ET

A new approach for developing global tax and treasury strategy is evolving as a result of internal and external changes. What should you know?

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***Understanding the Potential Value of Federal, Foreign, and State Credits and Incentives*** November 4, 2014, 2:00 PM ET

Keeping abreast of developments associated with federal, foreign, and state credits and incentives can be challenging for any business. What are some recent changes that could affect the applicability of these credits and incentives, and how can your business potentially benefit from them?

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***International Assignments and Corporate Tax: Expanded Enforcement May Cost You*** November 10, 2014, 2:00 PM ET

Individual and employment taxes are nothing new for businesses with internationally mobile workforces, but there may be corporate tax issues as well. In particular, aggressive tax enforcement initiatives by some foreign tax authorities may take you by surprise, creating potential additional costs to your company.

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