

Tax News & Views Health Care Edition

IRS releases draft forms for employer and insurer Affordable Care Act information reporting

As a result of the Patient Protection and Affordable Care Act of 2010 (ACA), employers and health insurers will be required to provide information to the Internal Revenue Service (IRS) and covered individuals regarding health insurance coverage.

Internal revenue code (IRC) section 6056 requires applicable large employers, generally employers with at least 50 full-time employees, to report to the IRS information about the health care coverage, if any, they offered to full-time employees. IRC section 6055 requires anyone that provides minimum essential health insurance coverage during a calendar year to disclose certain information.

On July 24, 2014, the IRS released drafts of the following forms (collectively, the "Draft Forms"):

- [Form 1095-B, Health Coverage](#)
- [Form 1095-C, Employer-Provided Health Insurance Offer and Coverage](#)
- Draft transmittal forms: [Form 1094-B, Transmittal of Health Coverage Information Returns](#), and [Form 1094-C, Transmittal of Employer-Provided Health Insurance Offer and Coverage Information Returns](#)

Final regulations under IRC sections 6055 and 6056 were issued in March, but many employers and software vendors have been waiting for these Draft Forms to move forward with their planning.

These Draft Forms, issued pursuant to sections 6055 and 6056, provide the IRS and covered individuals with information necessary to determine whether the individuals have obtained minimum essential coverage as required under section 5000A (the so-called "individual mandate") and whether applicable large employers have complied with section 4980H (the so-called "employer mandate"). They also provide the IRS and covered individuals with

information necessary to determine whether the individuals are eligible for premium tax credits under section 36B to help them afford health coverage purchased through an exchange.

Forms 1095-B and 1095-C generally are due in early 2016, reporting information for 2015. Along with the Draft Forms, the IRS issued a statement indicating that draft instructions are expected next month and that final forms and instructions will be released by the end of this year.

On July 24, 2014, the IRS also released draft 2014 Form 1040, U.S. Individual Income Tax Return, which includes a new line 61 that will be used to report compliance with section 5000A (the so-called "individual mandate").

For additional information regarding ACA provisions or information reporting, contact a Deloitte Tax professional.

Nonprofit hospital's lab testing services for nonpatients are not UBI

In [TAM 201428030](#), the IRS concluded that a tax-exempt hospital's performance of laboratory testing for the patients of private physicians located in the local and surrounding communities is not an unrelated trade or business within the meaning of IRC section 513.

The IRS has recognized the hospital as an exempt organization described in section 170(b)(1)(A)(iii). The hospital is dedicated to improving the health status of various rural communities in its state by enhancing preventive and primary care and by providing health education. The hospital is committed to improving access to care and providing services to the underserved. The U.S. Department of Health and Human Services designates the rural communities served by the hospital as a "medically underserved population." The hospital operates a full-service medical laboratory onsite that is open 24 hours a day, seven days a week, 365 days a year. One of the laboratory's three pathologists is available at all times



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to provide feedback to physicians. A majority of the lab testing services are provided to hospital patients. Additionally, the lab provides testing services for patients of private physicians, which are not hospital patients. The lab also provides emergency testing for private physicians at all hours of the day.

The private physicians generally have admitting privileges at the hospital. They typically draw the samples in their private offices, which are then picked up by a hospital employee. The hospital does not advertise its laboratory testing services. Private physicians generally learn of such services by talking to other physicians.

There are no full-service, commercial or noncommercial, laboratories in the community or any surrounding community. The nearest full-service, commercial testing lab is located miles away. The commercial lab generally picks up samples only once a day, after the close of business hours. The commercial lab may complete routine tests by the following morning, however less commonly ordered tests may be batched for processing later.

According to the hospital, the private physicians believe the hospital's testing services are more adequate for their patients than the commercial lab's services. Physicians view the substantial difference in laboratory turnaround times between the hospital and commercial lab as a critical distinction that may have important medical consequences for their patients.

In its analysis, the IRS referenced Revenue Ruling 85-110 which provides that the provision of diagnostic laboratory testing to a private physician's patients (who are not hospital patients) normally constitutes an unrelated trade or business. However, the ruling also provides an exception if other labs are not available within a reasonable distance from the area served by the hospital or are clearly unable or inadequate to conduct tests needed. In such unique circumstances, a hospital's testing services to nonpatients may further its exempt function of promoting community health.

In the TAM, the IRS pointed to the communities' status as a "medically underserved population" and the rural location of the communities. The IRS also acknowledged that the hospital lab was able to conduct and deliver test results considerably faster than the commercial lab. Based on the unique circumstances of the hospital and relying on Revenue Ruling 85-110, the IRS held that the hospital's lab services to nonpatients in the local and surrounding communities further its exempt purpose and revenues are not considered unrelated business income.

Exemption denied to organization formed to support medical school residency program

In [LTR 201433016](#), the IRS denied tax-exempt status under section 501(c)(3) to a nonprofit corporation ("Taxpayer") organized to support the work of department faculty of a medical school in providing teaching, research, and medical services at medical and educational facilities.

The primary purpose of the department is to train family medicine physicians through a three-year residency program, sponsored by a tax-exempt hospital and the medical school. Board-certified physicians, all with medical school faculty appointments, train the resident physicians working at the hospital and an outpatient clinic. Such training at the clinic is provided by faculty physicians under a professional services agreement, which was assigned to Taxpayer. The hospital is responsible for all patient billings for physician services.

Under the professional services agreement, the hospital pays Taxpayer a fixed fee for the teaching and training services provided by the faculty physicians at the outpatient clinic. Taxpayer then allocates the fees to the faculty physicians, in part to provide salary equity among the faculty. Taxpayer has no formal relationship with the faculty physicians working at the clinic; the physicians are all treated as independent contractors. In addition, Taxpayer provides administrative support to other unrelated tax-exempt organizations for a fee.

Taxpayer has no members and is not controlled by the hospital or medical school.

To qualify as an exempt organization under section 501(c)(3), an organization must engage primarily in activities that accomplish one or more exempt purposes and no part of the net earnings may inure to the benefit of any private individual. Under certain facts and circumstances, a faculty group practice organization may qualify for exemption on the grounds that its activities constitute an integral part of the exempt activities of its parent medical school and affiliated teaching hospital.

However, the IRS held that Taxpayer did not constitute an integral part of the medical school or hospital. The faculty physicians were not members or employees of Taxpayer. Neither the medical school nor the hospital controlled Taxpayer. In essence, Taxpayer's role was to receive fees from the hospital and distribute such fees to the faculty physicians, which was nothing more than an administrative duty. Additionally, the IRS stated that the making of such "equity" payments to employees of another organization would appear to constitute private inurement. The administrative support services provided to unrelated

tax-exempt organizations also did not constitute a basis for exemption, as these services were similar to a commercial trade or business carried on for profit and did not further exempt purposes. The IRS concluded that Taxpayer was not engaged in activities that further exempt purposes and allowed net earnings to inure to individuals; therefore, exemption was denied.

Did you know?

IRS released revised Form 2848, Power of Attorney and Declaration of Representation

The IRS has released a revised Form 2848, [Power of Attorney and Declaration of Representation](#). Taxpayers may use Form 2848 to authorize an individual as a representative of the taxpayer before the IRS. A number of changes were made to the revised form. Form 2848 now provides space for the information and signatures of up to four representatives. Registered tax return preparers and unenrolled return preparers must provide a valid PTIN to represent a taxpayer before the IRS. The Form 2848 is no longer eligible for electronic filing. The form instructions also reflect new fax numbers to fax Form 2848 to the IRS.

IRS Publication 4220, Applying for 501(c)(3) Tax-Exempt Status, has been revised

The IRS issued a revised Publication 4220, [Applying for 501\(c\)\(3\) Tax-Exempt Status](#), which presents general guidelines for organizations that seek tax-exempt status under section 501(c)(3) of the IRC. Content includes references to the statute, Treasury regulations, other IRS publications that explain the requirements for tax-exempt status, and IRS forms with instructions. In particular, the publication has been revised to present information regarding the streamlined application process and Form 1023-EZ.

Exempt organization tax statistics

The IRS Statistics of Income (SOI) recently released [tax statistics](#) for tax year 2010 for charities and other tax-exempt organizations. SOI conducts annual studies on nonprofit charitable and other tax-exempt organizations. Analysts derive estimates of tax-exempt sector financial activity from a sample of Forms 990 filed by these organizations. Highlights of the data include:

- The nonprofit sector has grown steadily and significantly over the years that SOI has conducted studies. Total expenses reported by nonprofits showed a cumulative real growth of 127 percent between Tax Years 1985 and 2010. Over the same period, cumulative growth in GDP measured 66 percent.
- For Tax Year 2010, over 269,000 charities exempt under section 501(c)(3) filed Forms 990 with the IRS reporting nearly \$3.0 trillion in assets and \$1.6 billion in revenue.
- Due to an increase in the threshold for filing, the number of Forms 990 and 990-EZ filed by charities dropped for the first time since such data have been collected.
- Despite this drop, total assets, revenue, and expenditures reported by charitable organizations continued to grow.

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.

Deloitte Dbriefs

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Financial executives

Finding Evidence in an Online World: Trends and Challenges in Computer Forensics September 29, 2:00 p.m. ET

Securing and analyzing electronic evidence is central to combating cyber intrusions, identity theft, and industrial espionage, as well as addressing civil investigations. Does your organization have the appropriate tools and processes in place to preserve, collect, and identify critical information? We'll discuss:

- How private sector companies can leverage computer forensics in suspected criminal and administrative matters
- How computer forensics can help identify vulnerabilities in your computer network and assess your exposure to losses from cyber intrusions
- Examples of how and where computer forensics has been used to prevent and defend against cyber events

Gain insight into ways that computer forensics can help protect you and your organization.

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Quarterly Accounting Roundup: An Update on Important Developments September 30, 2:00 p.m. ET

Do you know what issues the standard-setters and regulators have been addressing lately? We've been monitoring their projects and will discuss:

- Latest status on classification and measurement, impairment, and leases
- Accounting, standard setting, and reporting developments for the quarter
- Recent positions on accounting and reporting of the FASB, IASB, SEC, and PCAOB
- Other hot topics

Join us to hear about the latest developments.

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Human Resource executives

Performance Management: Replacing Rank and Yank with Feedback, Coaching, and Development September 10, 2:00 p.m. ET

Today's pervasive ranking- and ratings-based performance management is widely considered to be outdated and possibly even damaging. What could the next evolution of performance management look like? We'll discuss:

- Managers as coaches rather than evaluators — the imperative to separate feedback provided to employees from compensation decisions
- Decoupling compensation from evaluations to encourage coaching relationships and considerations for new parameters around compensation decisions
- Practical starting points, including leadership involvement, development of flexible performance conversations, improving feedback processes, simplified coaching and evaluation processes, and providing coaching to all employees

Explore ways to shift focus from employee evaluation to employee development and performance improvement.

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Technology executives

The Boardroom Imperative: Tackling Cyber Risk September 4, 2:00 p.m. ET

While emerging technologies are critical to many corporate strategies, they may also create significant risk. How can boards and the C-suite adjust their risk governance approach to not only embrace the cyber risk dimension, but also make it a driver for continued business performance? We'll discuss:

- The evolving nature and sophistication of today's security threats and limitations of a narrow defensive approach
- The need to transform traditional security programs to executive-led cyber risk management programs
- How technology executives can act as change agents, including enhancing cyber risk awareness and associated business impacts and building advanced cyber risk defense capabilities

Explore strategies to broaden the organization's approach to cyber threat management.

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