Part III. Administrative, Procedural, and Miscellaneous

Request for Comments Regarding Additional Requirements for Tax-Exempt Hospitals

Notice 2010–39

Section 1. PURPOSE AND BACKGROUND

This notice solicits comments regarding the application of certain requirements imposed by new section 501(r), added to the Internal Revenue Code (Code) by section 9007(a) of the Patient Protection and Affordable Care Act (Affordable Care Act), enacted March 23, 2010, Pub. L. No. 111-148.[1] Section 501(r) affects hospital organizations that are currently described in section 501(c)(3) of the Code as exempt from Federal income taxation.

New section 501(r)(1) imposes four additional requirements, described in Sections 2, 3, 4, and 5 of this notice, that organizations described in section 501(r)(2) ("hospital organizations") must satisfy to be described in section 501(c)(3). The Affordable Care Act did not otherwise affect the substantive standards for tax exemption that hospitals are required to meet under section 501(c)(3).

Section 501(r)(2) provides that the additional requirements of section 501(r) apply to: (1) an organization that operates a facility required by a State to be licensed, registered, or similarly recognized as a hospital; and (2) any other organization that the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under section 501(c)(3). Section 501(r) applies to hospital organizations on a facility-by-facility basis. Accordingly, if a hospital organization operates more than one hospital facility, the organization is required to meet the additional requirements of section 501(r) separately with respect to each facility.

The Affordable Care Act also added new section 4959, which imposes an excise tax for failures to meet certain of the new section 501(r) requirements, and added reporting requirements under section 6033(b) related to sections 501(r) and 4959.

Section 2. COMMUNITY HEALTH NEEDS ASSESSMENT

Section 501(r)(3) requires a hospital organization to conduct a community health needs assessment (CHNA) every three years and adopt an implementation strategy to meet the community health needs identified through such assessment. The CHNA must (1) take into account input from persons who represent the broad interests of the community served by the hospital facility, including those with special knowledge of or expertise in public health and (2) be made widely available to the public. Section 501(r)(3)(B).

The Joint Committee on Taxation's Technical Explanation of the Affordable Care Act (Technical Explanation) states that the CHNA "may be based on current information collected by a public health agency or non-profit organizations and may be conducted together with one or more organizations, including related organizations." Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the "Reconciliation Act of 2010," as amended, in combination with the "Patient Protection and Affordable Care Act"* (JCX–18–10), at 81, March 21, 2010.

Section 6033(b)(15)(A) requires hospital organizations to include in their annual information return (*i.e.*, Form 990) a description of how the organization is addressing the needs identified in each CHNA conducted under section 501(r)(3) and a description of any needs that are not being addressed, along with the reasons why the needs are not being addressed.

Section 4959 imposes a $50,000 excise tax on a hospital organization that fails to meet the CHNA requirements of section 501(r)(3). Section 6033(b)(10), as amended, requires hospital organizations to report the amount of the excise tax imposed on the organization under section 4959.

Section 3. FINANCIAL ASSISTANCE POLICY

Section 501(r)(4) requires a hospital organization to establish a financial assistance policy and a policy relating to emergency medical care.

Specifically, section 501(r)(4)(A) requires a hospital organization to have a written financial assistance policy that includes the following:

i. eligibility criteria for financial assistance, and whether such assistance includes free or discounted care;
ii. the basis for calculating amounts charged to patients;
iii. the method for applying for financial assistance;
iv. in the case of an organization which does not have a separate billing and collections policy, the actions the organization may take in the event of nonpayment, including collections action and reporting to credit agencies; and
v. measures to widely publicize the policy within the community to be served by the organization.

Section 501(r)(4)(B) requires a hospital organization to have a written policy requiring the organization to provide, without discrimination, care for emergency medical conditions (within the meaning of section 1867 of the Social Security Act (42 U.S.C. 1395dd)) to individuals regardless of their eligibility under the financial assistance policy described in section 501(r)(4)(A). The Technical Explanation states that "[t]he policy must prevent discrimination in the provision of emergency medical treatment, including denial of service, against those eligible for financial assistance under the facility's financial assistance policy or those eligible for government assistance." Technical Explanation at 82.

Section 4. LIMITATION ON CHARGES

Section 501(r)(5) requires a hospital organization to limit amounts charged for emergency or other medically necessary

[1] A related bill, the Health Care Education Affordability Reconciliation Act of 2010 (H.R. 4872) (the "Reconciliation Act"), was signed into law on March 30, 2010 (Pub. L. No. 111–152). The Reconciliation Act amends the Affordable Care Act and related laws.

care that is provided to individuals eligible for assistance under the organization's financial assistance policy to not more than the amounts generally billed to individuals who have insurance covering such care. Section 501(r)(5) also prohibits the use of gross charges.

The Technical Explanation states that "[i]t is intended that amounts billed to those who qualify for financial assistance may be based on either the best, or an average of the three best, negotiated commercial rates, or Medicare rates." Technical Explanation at 82.

Section 5. BILLING AND COLLECTION

Section 501(r)(6) requires a hospital organization to forego extraordinary collection actions against an individual before the organization has made reasonable efforts to determine whether the individual is eligible for assistance under the hospital organization's financial assistance policy.

The Technical Explanation states that "extraordinary collections include lawsuits, liens on residences, arrests, body attachments, or other similar collection processes." Technical Explanation at 82. The Technical Explanation also states that "[i]t is intended that for this purpose, 'reasonable efforts' includes notification by the hospital of its financial assistance policy upon admission and in written and oral communications with the patient regarding the patient's bill, including invoices and telephone calls, before collection action or reporting to credit agencies is initiated." Technical Explanation at 82.

Section 6. EFFECTIVE DATES

Section 501(r) (except for section 501(r)(3)), section 6033(b)(10), and section 6033(b)(15) apply to taxable years beginning after March 23, 2010, the date of enactment of the Affordable Care Act. The CHNA requirements of section 501(r)(3) are effective for taxable years beginning after March 23, 2012. The section 4959 excise tax for failure to satisfy section 501(r)(3) is effective for failures occurring after the date of enactment.

Section 7. REQUEST FOR COMMENTS

The IRS and the Department of Treasury request comments regarding the requirements for hospital organizations described in this notice, including in particular the need, if any, for guidance regarding such requirements. Comments are specifically requested regarding appropriate requirements for a CHNA, and what constitutes "reasonable efforts" to determine eligibility for assistance under a financial assistance policy for purposes of the billing and collection requirements under section 501(r)(6). In addition, comments are requested regarding section 501(r)(2)(B)(ii), which provides that an organization that operates more than one hospital facility "shall not be treated as described in [section 501(c)(3)] with respect to any such facility for which such requirements are not separately met," including the tax consequences of a failure with respect to some, but not all, facilities and the proper tax treatment in future periods in such a case.

Comments should refer to Notice 2010–39 and be submitted by July 22, 2010, to:

Internal Revenue Service
CC:PA:LPD:PR (Notice 2010–39)
Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions may be hand delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to:

Courier's Desk
Internal Revenue Service
1111 Constitution Ave., N.W.
Washington, DC 20224
Attn: CC:PA:LPD:PR
(Notice 2010–39)

Alternatively, taxpayers may submit comments electronically to *notice.comments@irscounsel.treas.gov*. Please include "Notice 2010–39" in the subject line of any electronic communications.

All comments will be available for public inspection and copying.

Section 8. DRAFTING INFORMATION

The principal author of this notice is Garrett Gluth of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this notice, contact Mr. Gluth at (202) 283–9485 (not a toll-free call).

Prevention of Over-Withholding and U.S. Tax Avoidance With Respect to Certain Substitute Dividend Payments

Notice 2010–46

I. SUMMARY AND MODIFICATION AND WITHDRAWAL OF NOTICE 97–66

A. Background

On October 14, 1997, final regulations were published in the Federal Register (T.D. 8735, 1997–2 C.B. 72, 62 FR 53498 (1997)) (the "final regulations") that source substitute interest and substitute dividend payments made pursuant to a securities lending transaction described in § 1058 of the Internal Revenue Code ("Code") or a substantially similar transaction or a sale-repurchase transaction (a "Securities Lending Transaction") by reference to the income that would be earned with respect to the underlying transferred debt security or stock. The final regulations also provide that substitute interest and dividend payments that are from sources within the United States under the regulations are characterized as interest and dividends for purposes of determining the fixed or determinable annual or periodical income of nonresident alien individuals and foreign corporations subject to tax under §§ 871(a), 881, 4948(a) and Chapter 3 of the Code and for purposes of granting tax treaty benefits with respect to interest and dividends. As promulgated, the final regulations were made applicable in all respects for substitute interest payments (as defined in § 1.861–2(a)(7)) and substitute dividend payments (as defined in § 1.861–3(a)(6)) made after November 13, 1997.

Some taxpayers expressed concern that the total U.S. gross-basis tax paid with respect to a series of Securities Lending Transactions (that is, a chain of related Securities Lending Transactions with respect to identical securities) could be excessive under the final regulations. For example, a