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IRS ISSUES GUIDANCE FOR CHNA EXCISE TAX FILING

On August 15, 2013, the Internal Revenue Service ("IRS") published temporary and proposed regulations that provide guidance to tax-exempt hospital organizations regarding the reporting of failures to meet the community health needs assessment ("CHNA") requirements for any taxable year and the corresponding payment of the $50,000 excise tax ("CHNA Excise Tax Regulations").

BACKGROUND

Under Section 501(r)(3) of the Internal Revenue Code ("Code"), which was enacted as part of the Patient Protection and Affordable Care Act of 2010 ("ACA"), tax-exempt hospital organizations are required to (i) periodically conduct a community needs assessment; (ii) establish a financial assistance policy; (iii) limit charges for emergency or other necessary care; and (iv) refrain from engaging in extraordinary collection efforts. Since 2010, the IRS has established guidelines for compliance with Code Section 501(r), including the CHNA requirements, through various notices and proposed regulations. On July 7, 2011, the IRS issued Notice 2011-52, which outlined anticipated regulatory provisions for the implementation and administration of the CHNA requirements. The IRS then published proposed regulations ("Proposed Regulations") on April 5, 2013 that expanded upon and provided clarification of the CHNA requirements, as well as provided guidance on the imposition of penalties for failing to comply with Code Section 501(r)(3). Summary articles of prior CHNA guidance are available here: July 11, 2011 and April 16, 2013.

While the Proposed Regulations outlined how to comply with the CHNA requirements, the Proposed Regulations did not provide any guidance to hospital organizations as to how they should report non-compliance with the CHNA requirements to the IRS, how to submit the required excise tax or the deadlines for such reporting and payment of excise tax. In the CHNA Excise Tax Regulations, the IRS addresses the reporting and excise tax payment aspects associated with the CHNA requirements.

THE CHNA EXCISE TAX REGULATIONS

Under the ACA, a hospital organization seeking to become or remain tax-exempt as a charitable organization described in Code Section 501(c)(3) must comply with the requirements of Code Section 501(r), including the Code Section 501(r)(3) requirement to conduct a CHNA at least once every three years and to adopt an implementation strategy to meet the community health needs identified in the assessment. These requirements are effective for tax years beginning after March 23, 2012.

Under Code Section 4959, if a hospital organization does not meet the CHNA requirements in any taxable year, it is subject to a $50,000 excise tax. A hospital organization fails to meet the requirements for a given tax year if the hospital organization has not conducted a CHNA and adopted an implementation strategy during the three-year period consisting of that tax year and the two prior tax years. Notably, the Proposed Regulations provide a one-time transition rule that allows a hospital organization to be deemed compliant if the implementation strategy is adopted on or before the fifteenth day of the fifth month following the close of its first taxable year beginning after March 23, 2012. For example, if a hospital organization operating on a calendar tax year fails to conduct a CHNA by December 31, 2013 and fails to adopt an implementation strategy by May 15, 2014, and the hospital organization also did not conduct a CHNA and adopt an implementation strategy in 2011 or 2012, it would be subject to the $50,000 excise tax under Code Section 4959. The same hospital organization would again be subject to the excise tax for its 2014 tax year if it fails to conduct a CHNA and adopt an implementation strategy in 2014 (for failure to meet the CHNA requirements during its 2012, 2013 and 2014 tax years).

Under the CHNA Excise Tax Regulations, hospital organizations failing to meet the CHNA requirements must file Form 4720, Return of Certain Excise Taxes, by the fifteenth day of the fifth month after the end of the taxable year in which they incurred the tax. The excise tax payment is due upon filing Form 4720. For example, a calendar year hospital organization failing to meet the CHNA requirements by December 31, 2013 would have to file Form 4720 and pay the $50,000 excise tax by May 15, 2014.

CONCLUSION/PRACTICAL TAKEAWAYS

In light of the recent CHNA Excise Tax Regulations, a hospital organization should evaluate its compliance with the CHNA requirements of Code Section 501(r)(3), and the more detailed Proposed Regulations (which have not been finalized but will likely not change significantly when finalized), in order to avoid the $50,000 excise tax or inadvertently jeopardize its 501(c)(3) status.

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For more information about other Code Section 501(r) compliance requirements, please see our four-part article series: Part I (Overview), Part II (Financial Assistance Policies), Part III (Limitations on Charges) and Part IV (Billing and Collection).

If your organization would like assistance in evaluating the CHNA Excise Tax Regulations, the CHNA requirements of the Proposed Regulations or other aspects of Code Section 501(r), please contact:

- Jeff Carmichael at 317-977-1443 or jcarmichael@hallrender.com;
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