

IRS Focuses on Tax Exempt Health Care Organizations

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As all of you are aware (if not, you should be), the IRS has redesigned Form 990 to include a number of additional reporting requirements that will impact tax exempt health care organizations. The new form has been available for some time now, but many organizations may not have focused on the new Form 990 as closely as they should have. Luckily, calendar year filers have until May 15, 2009, to submit their returns. When organizations finally get around to looking at the new Form 990, however, they will realize that all the questions actually pertain to the 2008 tax year.

So what are some of the surprises in store for filers of the new Form 990?

For starters, does your organization realize that Schedule J will require all organizations to report any payment of traveling expenses for board members' spouses as well as reporting it on either a Form 1099 or a W-2 as compensation or income to the board members? It doesn't end there; the IRS also wants to know about any gross-up amounts, first-class or charter travel, and athletic or social club membership dues paid on behalf of officers, board members, and selected individuals affiliated with the organization. In essence, the new Schedule J asks all those questions regarding details that organizations may not want the public to know about—but just in case you forgot, the entire Form 990 is open to the public, either when requested directly or by accessing www.guidestar.org, which publishes the forms after they are filed with the IRS.

Schedule H is another item of interest to health care organizations, because it must be completed by all hospitals that file Form 990. On Schedule H, the IRS focuses on questions such as: Does the organization have a charity care

policy? Does the organization prepare an annual community benefit report? And if so, is it made available to the public?

Some additional hot issues worth watching include FIN 48 footnote, joint ventures, especially between for-profit and tax-exempt entities, political activities/lobbying (of special importance, since this is an election year), bonds, governance (board compensation, governance policies, and compensation approval process), and compensation (including benefits and perquisites), excess benefit, loans, and grants or assistance to insiders, as well as charity care and community benefit.

If you are not yet familiar with the redesigned Form 990, you can access the form and instructions at <http://www.irs.gov/charities/article/0,,id=185561,00.html>.

The basis for the changes imposed by the IRS seems to be rooted in concerns that some health care organizations may not be living up to their obligations to provide charity care, community benefit and otherwise use tax-exempt assets in furtherance of their charitable purpose. In addition, Senator Chuck Grassley of Iowa is in hot pursuit of tax-exempt organizations that because of uncommon practices,

end up in the national press. On October 14, the Wall Street Journal published an article regarding some nonprofit hospital systems that are closing inner-city facilities while spending billions on suburban expansions. Thankfully, no Washington State hospital was mentioned. I expect that each of the hospital systems mentioned in the article will receive a letter from the Senate Finance Committee, on which Senator Grassley is the ranking member.

It is important to keep in mind that any organization whose governance and compliance is taken seriously is an organization that (1) is less likely to be audited by the IRS and (2) if audited, will probably be assessed less in taxes, interest, and penalties because it has the prerequisite policies in place, and the abuse is not flagrant or encour-

aged. My advice is to do everything possible to avoid an audit by the IRS, because even if the IRS does not assess any additional taxes or find any violations, the time and expense of responding to the audit is often astronomical.

What can you do to protect your health care organization? Make sure that you have established and adhered to the following policies: executive compensation, conflicts of interest, investments, fundraising, document retention and destruction, ethics, and whistleblower. If your organization proactively addresses each of these policies, it may be able to persuade the IRS to limit any adverse tax consequences. Remember, the policies themselves are only guidelines, and unless there is education of staff and officers, as well as sufficient resources, authority, and access

made available to implement and operate the policies, they are useless. If any policy is violated, it is especially important to take prompt and appropriate action, both to deter future violations and to foster a sense of unity. Therefore it is equally important that any such policy be taken seriously enough to be integrated into your organization's overall compliance program. Finally, no compliance program will ever become successful unless it comes from the top and is consistently practiced at ALL levels.

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