Legislative Notes

Submitted by Richard P. Solomon, CFRE

IRS revokes nonprofit status from hospital under the ACA's 501(r) requirements for first time (from Fierce Healthcare, 8.21.17) by Paige Minemyer

The Internal Revenue Service has revoked the nonprofit status of a hospital for the first time since new charity care reporting requirements went into effect late last year.

The name of the hospital is redacted from the text of the tax status letter (PDF). The letter is dated Feb. 14 but was released on the IRS website earlier this month. An IRS spokeswoman also declined to name the hospital, according to an article from the Healthcare Financial Management Association (HFMA).

The IRS deemed the hospital "egregious" for its failure to meet the requirements, concluding that it had "neither the will, the resources, nor the staff to follow through" with them. The reason for the revocation, according to the letter, is that the hospital did not make its community health needs assessment widely available to the public online, though it offered physical copies on request.

"The hospital indicated to the IRS that it might have acted on some of the recommendations included in the Implementation Strategy Report, but that a separate written implementation policy was neither drafted nor adopted," according to the letter.

The hospital responded by saying that, as a small rural facility, it lacked the staff needed to keep up with the 501(r) requirements. It also said it had no need for the tax exemption and indicated that it believes it missed out on certain payment arrangements because of its 501(c)(3) status.

The IRS reviewed 692 hospitals in fiscal 2016, which ended late last month, and of those, 166 were referred for a closer "field examination." The increased scrutiny is specific to 501(r) mandates included in the Affordable Care Act, which require hospitals to formulate clear written financial assistance policies for patients and make reasonable efforts to determine whether patients are eligible for assistance prior to taking any collection actions.

The IRS is supposed to review each hospital every three years.

Although some industry experts are concerned that other hospitals may be vulnerable to IRS enforcement under the new requirements, Jan Smith, a tax senior manager in Crowe Horwath's Healthcare practice, told the HFMA it's unlikely many hospitals will lose their nonprofit status.

"If hospitals are making a good-faith effort to comply, I would be surprised if the IRS would revoke their tax status at this stage of 501(r) examinations," Smith told the association.

AFP Calls on Senate Finance Committee to Approve Charitable Giving Incentives (from AFP, 7.19.17)

The Association of Fundraising Professionals (AFP) has submitted recommendations to the Senate Finance Committee to strengthen philanthropy in America by creating a universal charitable deduction and expanding the IRA Rollover provision.

In June, Senate Finance Committee Chair Orrin Hatch (R-Utah) asked for comments and ideas from various "stakeholder groups" regarding tax reform. With reform potentially having a huge impact on charitable giving, AFP highlighted two provisions in its comments that will further incentivize Americans to support their favorite charities.

The first proposal is the universal charitable deduction, which would allow all taxpayers, regardless of whether or not they itemize their taxes, to take a deduction for their charitable giving during the year.

"Enacting the universal charitable deduction is critical as Congress considers tax reform because several of the more popular tax provisions being debated would negatively impact charitable giving," said Jason Lee, interim president and CEO of AFP.

AFP's comments pointed to research from Independent Sector and the Lilly Family School of Philanthropy at Indiana University showing how different reform proposals would decrease giving. Expanding the number of taxpayers who can take the standard deduction would reduce giving by almost $11 billion a year. Adding another proposal, reducing the highest marginal tax rate to 35 percent, brings the reduction in giving every year to $13 billion.

However, including the universal charitable deduction with the other two provisions results in overall giving increasing by almost $5 billion annually. "The powerful effect of the universal charitable deduction is enough to overcome any losses in giving through the other two provisions," wrote Lee in AFP's comments. He also noted that if the universal charitable deduction were approved by itself—without the other two provisions—giving would increase by over $12 billion a year.

The second proposal AFP recommended concerns enhancements to the existing IRA Rollover. Made permanent in 2015, the rollover allows taxpayers age 70½ or older to transfer ("roll over") funds directly from their IRAs to charitable organizations and not be taxed on the amount (up to $100,000).

AFP recommends removing the $100,000 cap on rollovers from an IRA; allowing rollovers to occur when a donor is age 59½ or older; and permitting the creation of planned gifts through a rollover.

"There are trillions of dollars in IRA assets right now, many of them in excess of what individuals need for retirement," said Lee. "Expanding what donors can do with the rollover—and in particular, allowing the creation of planned gifts with these funds—could unlock billions of dollars in additional charitable giving every year."

In its comments, AFP noted that Americans remain strongly supportive of philanthropy and especially the charitable deduction. A survey of voters by Independent Sector in 2016 found that 75 percent wanted to see the charitable deduction expanded, and 79 percent believed that all taxpayers should be able to take advantage of the charitable deduction.

"America's experience and history with philanthropy is unique among the nations of the world—and charitable giving incentives are unique in that they encourage people to give their money away for a good cause," said Lee. "Whether it's the charitable deduction or the IRA Rollover, these incentives involve a selfless, generous motivation: giving to a cause that might never directly benefit the donor personally, but improves countless communities across the country."