

## Part III - Administrative, Procedural, and Miscellaneous

### Reliance on Proposed Regulations for Tax-exempt Hospitals

Notice 2014-2

#### **SECTION 1. PURPOSE**

This notice confirms that tax-exempt hospital organizations can rely on proposed regulations under § 501(r) contained in notices of proposed rulemaking published on June 26, 2012, and April 5, 2013, pending the publication of final regulations or other applicable guidance.

#### **SECTION 2. BACKGROUND**

Section 9007 of the Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added §§ 501(r) and 4959 to the Internal Revenue Code and amended § 6033(b) of the Code. These provisions affect organizations that operate one or more hospital facilities and that are exempt or are seeking exemption from federal income tax because they are described in § 501(c)(3) of the Code (“hospital organizations”). Section 501(r)(1) provides that a hospital organization will not be treated as described in § 501(c)(3) unless the organization meets the requirements of § 501(r)(3) through (r)(6).

The statutory requirements of § 501(r) (except for § 501(r)(3)) are effective for a hospital organization's first taxable year beginning after March 23, 2010. The effective date for § 501(r)(3) is a hospital organization's first taxable year beginning after March 23, 2012.

On June 26, 2012, the Department of the Treasury (“Treasury Department”) and the Internal Revenue Service (IRS) published a notice of proposed rulemaking in the Federal Register (REG-130266-11, 2012-32 I.R.B. 126, 77 FR 38148) (“2012 proposed regulations”) that contains proposed regulations regarding the requirements of § 501(r)(4), (r)(5), and (r)(6). In addition, § 1.501(r)-1 of the 2012 proposed regulations contains definitions of “hospital organization,” “hospital facility,” and other key terms used in the regulations. The preamble of the 2012 proposed regulations provides that taxpayers may rely on the 2012 proposed regulations until final or temporary regulations are issued.

On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the Federal Register (REG-106499-12, 2013-21 I.R.B. 1111, 78 FR 20523) (“2013 proposed regulations”) that contains proposed regulations regarding the community health needs assessment (CHNA) requirements of § 501(r)(3) and the related reporting obligations under § 6033 and excise tax under § 4959. In addition, the 2013 proposed regulations provide guidance on the consequences for failing to meet any of the § 501(r) requirements. The 2013 proposed regulations also make minor amendments to the definitions of “hospital facility” and “hospital organization” contained in the 2012 proposed regulations and note that the definitions and concepts contained

in the 2012 proposed regulations generally apply for purposes of the 2013 proposed regulations. The 2013 proposed regulations provide that a hospital facility may rely on § 1.501(r)-3 of the 2013 proposed regulations for any CHNA conducted or implementation strategy adopted on or before the date that is six months after the date those proposed regulations are published as final or temporary regulations in the Federal Register.

A hospital organization must comply with the statutory requirements of § 501(r), which are already in effect. The 2012 and 2013 proposed regulations and other interim guidance represent, in the view of the Treasury Department and the IRS, a reasonable interpretation of the statute. However, hospital organizations will not be required to comply with the 2012 and 2013 proposed regulations until such regulations are published as final or temporary regulations.

### **SECTION 3. RELIANCE**

Because the preamble to the 2013 proposed regulations did not expressly mention whether taxpayers could rely on sections other than § 1.501(r)-3 pending the publication of final or temporary regulations, some commenters have asked whether they can rely currently on the other sections of the 2013 proposed regulations. The Treasury Department and the IRS confirm that tax-exempt organizations may rely on all of the provisions of both the 2012 and 2013 proposed regulations pending the publication of final or temporary regulations or other applicable guidance. In addition, organizations may rely on § 1.501(r)-3 of the 2013 proposed regulations for any CHNA conducted or

implementation strategy adopted on or before the date that is six months after final or temporary regulations are published.

The 2013 proposed regulations make minor amendments to the definitions of “hospital facility” and “hospital organization” contained in the 2012 proposed regulations. Tax-exempt hospital organizations may rely on either the definitions in the 2012 proposed regulations or the amended definitions in the 2013 proposed regulations until final or temporary regulations or other applicable guidance are published. Thus, for example, in accordance with the definition of “hospital facility” in § 1.501(r)-1(b)(15) of the 2012 proposed regulations, a hospital organization may, but is not required to, treat multiple buildings operated under a single state license as a single hospital facility. In addition, organizations may rely on the definition of what it means to be “operating a hospital facility” in § 1.501(r)-1(c)(2) of the 2013 proposed regulations – including the exceptions provided in § 1.501(r)-1(c)(2)(i) and (ii) for certain tax-exempt organizations that are partners in partnerships that operate hospital facilities – to determine whether an organization “operates” a hospital facility and is, therefore, subject to the requirements of § 501(r). Organizations may rely on the two exceptions provided in § 1.501(r)-1(c)(2)(i) and (ii) of the 2013 proposed regulations for purposes of the 2013 Form 990, *Return of Organization Exempt from Income Tax*, and Schedule H, *Hospitals*, of the Form 990, notwithstanding the fact that the instructions to the 2013 Form 990 and Schedule H do not mention these exceptions.

#### **SECTION 4. DRAFTING INFORMATION**

The principal authors of this notice are Garrett Gluth of the Tax Exempt and Government Entities Division of the IRS and Amber Mackenzie of the Office of Division Counsel/Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in developing this notice. For further information regarding this notice, contact Mr. Gluth at (202) 317-8413 or Ms. Mackenzie at (202) 317-5800 (not toll-free numbers).