

ALERT

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IRS Revokes Hospital's IRC 501(c)(3) Status for Failure to Comply with Requirements Imposed Under IRC 501(r)

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The Internal Revenue Service (the “IRS”) recently revoked the Internal Revenue Code (“IRC”) Section 501(c)(3) status of a hospital for failing to comply with IRC 501(r). Private Letter Ruling 201731014. IRC 501(r), enacted as part of the Patient Protection and Affordable Care Act (the “Affordable Care Act”), imposes requirements on certain hospitals that have IRC 501(c)(3) status. If the requirements are not met, then the hospital may be subject to excise taxes, taxation on certain income and ultimately, the IRC 501(c)(3) status of the hospital may be revoked.

The IRC 501(r) requirements generally include: (i) a community health needs assessment (“CHNA”) at least once every three years, and a corresponding implementation strategy; (ii) establishing written financial assistance and emergency medical care policies; (iii) limits on amounts charged for emergency and other medically necessary care provided to individuals who are eligible for assistance under the financial assistance policy; and (iv) making “reasonable efforts” to determine if an individual is eligible for assistance under the financial assistance policy prior to engaging in “extraordinary collection actions.”

In this particular ruling, the hospital was a “dual-status” entity, meaning that it had tax-exempt status due to IRC 501(c)(3) classification and qualification as a “governmental unit” or an “affiliate of a governmental unit.” Due to its “governmental unit” status, the hospital was not required to file Form 990s. During an Affordable Care Act audit, the IRS found that the hospital failed to meet the CHNA requirements of IRC 501(r) by failing to (i) conduct a CHNA at least once every three years; (ii) make the CHNA widely available to the public; and (iii) adopt an implementation strategy.

During the audit, the hospital admitted that the CHNA it had conducted in the past was done with the intent to comply with certain Medicare requirements, not the requirements under IRC 501(r). The hospital stated that as a small rural facility it lacked the resources to fully comply with IRC 501(r). The hospital also indicated that because it was a “dual-status” entity, it did not find it necessary for its purposes to maintain IRC 501(c)(3) status, since it already had the status of a “governmental unit.” The IRS, after considering the facts and circumstances, including the hospital’s declaration that it lacked the “will” to comply with IRC 501(r), found the failures to be both egregious and “willful” and consequently, revoked the IRC 501(c)(3) status of the hospital.

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Hospitals that have IRC 501(c)(3) status should be on alert that the IRS is conducting audits to ensure compliance under IRC 501(r). The IRS stated in its “Tax Exempt and Government Entities FY 2017 Work Plan” that the IRS is continuing to audit hospitals to determine compliance with 501(r). The IRS identified the following areas of concern: (i) a lack of a community health needs assessment; (ii) lack of financial assistance and/or emergency medical care policies; and (iii) issues with billing and collection requirements.

Although the hospital in this ruling did not find it necessary to maintain its IRC 501(c)(3) status, and thus its “dual-status,” many hospitals will not come to the same conclusion. Hospitals that are “dual-status” entities that want to maintain their IRC 501(c)(3) status must keep in mind, that although the “dual-status” hospital may not be required to file a Form 990, which includes IRC 501(r) reporting on the Form 990, it still must comply with the requirements set forth in IRC 501(r). See Treasury Decision 9708. Schenck Price Smith & King, LLP is available to assist with compliance under IRC 501(r) and 501(c)(3) generally.

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