24th Annual Health Sciences Tax Conference

Keeping up with the Form 990

December 8, 2014
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Agenda

- 2013 Form 990 significant changes
- 2014 Form 990 significant changes
- ACT UBTI recommendations
- Camp tax reform proposals related to Form 990
- Supporting organizations
2013 Form 990 significant changes
2013 Form 990 significant changes

- Form 990
  - General instructions
    - No electronic filing for a short-period return (unless initial or final box checked)
    - Specific method of reporting Form 990-N change in accounting period
    - §481(a) adjustment (change in accounting method) must be reported in Pts. VIII-XI and Schedule D
  - Heading instructions
    - Documentation needed to support name change
    - Use Form 8822-B to report address change after Form 990 is filed
    - Documentation to attach upon termination, dissolution, merger or revocation
2013 Form 990 significant changes

- **Form 990**
  - **Part IV**
    - Line 2 – A public charity can exclude from Schedule B contributors that fall below the greater of $5,000/2% threshold only if it checks the box on Schedule A, Part II, Line 13, 16a or 16b.
    - Line 25b – Answer **yes** to report that it became aware, prior to filing the return, of an excess benefit transaction with a disqualified person in a prior year.
    - Line 26 – An organization must file Schedule L, Part II if it reported any amounts on Part X, Lines 5, 6 or 22.
  - **Part VI** – Line 3 – amount of compensation from a management company to interested persons should be reported in Schedule O.
  - **Part VII** – Director’s compensation for non-director independent contractor services to the organization and related organizations must be reported in Section A.
  - **Part VII** – Compensation from a management company to an officer, director, trustee, key employee or highest-compensated employee is generally not reportable in Section A.
2013 Form 990 significant changes

- **Form 990**
  - **Part VIII**
    - Line 1 – Discounts on services cannot be reported as contributions.
    - Line 10b – Cost of donated goods may be included at fair market value at time of acquisition.
  - **Part IX, Line 11** – Expense payments and reimbursements to contractors should not be reported on Line 11 if distinguishable from fees paid for services.
- **Glossary**
  - Contributions include neither donations of services nor discounts provided on sales of goods in the ordinary course of business
  - New definition of “domestic individual”
  - When a voluntary employee beneficiary association (VEBA) should be reported as a “related organization” by its contributing employers and sponsoring organizations that file Form 990
2013 Form 990 significant changes

- **Form 990**
  - Appendix D (Public Inspection of Returns) – Public inspection and disclosure requirements apply to both original and amended returns.
  - Appendix E (Group Returns)
    - How to determine whether a diversion of a subordinate’s assets meets the 5%/$250,000 threshold for Part VI, Line 5
    - When to report business transactions between subordinates and their interested persons in Schedule L, Part IV
  - Appendix F (Disregarded Entities/Joint Ventures)
    - When to treat a single-member limited liability company (LLC) as a disregarded entity of its sole member/owner
2013 Form 990 significant changes

Schedule A

- Requirements for functionally integrated and non-functionally integrated Type III supporting organizations, including the transition rules for how these organizations can meet the integral part test for tax year 2013.
- Type III non-functionally integrated supporting organizations must value non-exempt use assets for the 2013 tax year in accordance with Reg. 1.509(a)-4T(i)(8).

Schedule D

- Part IV – Filers should explain credit counseling, debt management, credit repair or debt negotiation services in Part XIII.
- Part VIII – It was revised to require a description of each program-related investment on a separate line.
2013 Form 990 significant changes

- **Schedule F**
  - Investments in foreign corporations traded on US exchanges are not reported.
  - The Russian region is now named “Russia and Neighboring States.”
  - No explanation is required for the method used to estimate the number of recipients reported in Part III, column (c).
  - Forms 3520, 3520-A and 5713 should not be attached to Form 990.
- **Schedule G**
  - Part III, Line 9 – Report states in which gaming activity participants are solicited.
2013 Form 990 significant changes

Schedule H

- Part I, line 7 – Restricted grants received for community benefit must be reported as direct offsetting revenue in column (d).
- Part I, line 7i and Worksheet 8 were revised to allow reporting of restricted grants from a related organization.
- Part I – Financial assistance does not include self-pay or prompt-pay discounts.
- Part V, Sec. A – The state license number for each hospital facility must be listed.
- Hospital organization must complete Part V, Sec. C for each facility completing Part V, Sec. B.
- Part V, Sec B, line 12 should be checked if the hospital facility considered residency as a factor in calculating amounts charged to patients.
2013 Form 990 significant changes

- **Schedule I** – new definitions of domestic organizations, governments and individuals
- **Schedule J**
  - Organization may check a box in Line 3 if it relied on a compensation consultant that used a method described in that box.
  - Severance payment reportable on Part I, line 4a includes a payment pursuant to a separation agreement entered into by the parties.
  - What information must be reported for unrelated organizations that provided compensation to officers, directors, trustees, key employees and highest-compensated employees.
- **Schedule K**
  - Part III, Line 7 – when a qualified 501(c)(3) bond issue will meet the private security or payment test
  - Part III, Lines 8a-c – new instructions regarding the sale or disposition of bond-financed property
2013 Form 990 significant changes

- **Schedule L**
  - Part III – 35% controlled entities may be controlled by family members of officer, director, trustee and key employee
  - Part IV – when a foreign organization may be treated as a 501(c)(3) charity
  - Part IV – investment management or service fees, but not the value of investments, reportable as business transaction amounts

- **Schedule N**
  - What documentation must be attached to Form 990 upon liquidation, termination, dissolution or merger

- **Schedule R**
  - When a VEBA is reported as a related organization by its contributing employers and sponsoring organizations that file Form 990
  - Part IV, column (e) – does not need to be completed for 4947(a)(2) split-interest trusts
2013 Form 990-T significant changes

- Part I – added discussion of passive loss and at-risk limitations for certain filers
- Part I, line 4a – added discussion of rules for recognition of gain/loss upon certain property received from a taxable subsidiary
2014 Form 990 significant changes
2014 Form 990-EZ significant changes

► Form 990-EZ has minor cosmetic changes, plus:
  ► Heading, Item B – replaced “Terminated” with “Final return/terminated”
  ► Part V, lines 40b-d – added Section 501(c)(29) organizations
  ► Probably no substantial changes are anticipated for a few years. The IRS may look to add more questions to compensate for loss of information in the new 1023-EZ application process.
2014 Form 990 significant changes

- Core form – minor cosmetic changes, plus:
  - Heading, Item B – replaced “Terminated” with “Final return/terminated”
  - Part IV, line 22 – replaced “other assistance to individuals in the United States” with “other assistance to or for domestic individuals”
  - Part IV, line 25a – added “501(c)(29) organizations”
  - Part V, line 8 – asks if a donor-advised fund maintained by a sponsoring organization has excess business holdings (2013 includes supporting organization in this question)
2014 Form 990 significant changes

- Form 990 Schedule A – significant changes!
  - Part I – reformatted, moved some questions to new Part IV
  - Parts II and III – no changes
  - Part IV – **new** (two pages)!
    - Listed by name in governing documents of supported org
    - Supporting a 501(c)(4), (5) or (6)
    - Supporting foreign activities
    - Substitution or adding of supported organizations
    - Transactions with disqualified persons
    - Sections specific to Type I, II, III
    - Functionally integrated integral part test
2014 Form 990 significant changes

- Sec. 501(c)(3), Sec. 509(a)(3) supporting organization (SO) must meet four tests:
  - Organizational test – purposes, powers and beneficiaries
  - Operational test – permissible beneficiaries and activities
  - Control test – disqualified persons
  - Relationship test
    - Type I
    - Type II
    - Type III
      - Functionally integrated
      - Non-functionally integrated
2014 Form 990 significant changes

- Form 990, Schedule A – significant changes!
  - Type I – complete Sections A and B

Schedule A (Form 990 or 990-EZ) 2014

Part IV Supporting Organizations
(Complete only if you checked a box on line 11 of Part I. If you checked 11a of Part I, complete Sections A and B. If you checked 11b of Part I, complete Sections A and C. If you checked 11c of Part I, complete Sections A, D, and E. If you checked 11d of Part I, complete Sections A and D, and complete Part V.)

Section A. All Supporting Organizations

Section B. Type I Supporting Organizations

1. Did the directors, trustees, or membership of one or more supported organizations have the power to regularly appoint or elect at least a majority of the organization's directors or trustees at all times during the tax year? If "No," describe in Part VI how the supported organization(s) effectively operated, supervised, or controlled the organization's activities. If the organization had more than one supported organization, describe how the powers to appoint and/or remove directors or trustees were allocated among the supported organizations and what conditions or restrictions, if any, applied to such powers during the tax year.

2. Did the organization operate for the benefit of any supported organization other than the supported organization(s) that operated, supervised, or controlled the supporting organization? If "Yes," explain in Part VI how providing such benefit carried out the purposes of the supported organization(s) that operated, supervised, or controlled the supporting organization.
2014 Form 990 significant changes

- Form 990, Schedule A – significant changes!
  - Type II – complete Sections A and C

<table>
<thead>
<tr>
<th>Section C. Type II Supporting Organizations</th>
<th>Yes</th>
<th>No</th>
</tr>
</thead>
<tbody>
<tr>
<td>1   Were a majority of the organization’s directors or trustees during the tax year also a majority of the directors or trustees of each of the organization’s supported organization(s)? If &quot;No,&quot; describe in Part VI how control or management of the supporting organization was vested in the same persons that controlled or managed the supported organization(s).</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2014 Form 990 significant changes

- Form 990, Schedule A – significant changes!
  - Type III functionally integrated (FI) – complete Sections A, D and E

### Section D. All Type III Supporting Organizations

<p>| | | | | | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Did the organization provide to each of its supported organizations, by the last day of the fifth month of the organization’s tax year, (1) a written notice describing the type and amount of support provided during the prior tax year, (2) a copy of the Form 990 that was most recently filed as of the date of notification, and (3) copies of the organization’s governing documents in effect on the date of notification, to the extent not previously provided?</td>
<td>Yes</td>
<td>No</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Were any of the organization’s officers, directors, or trustees either (i) appointed or elected by the supported organization(s) or (ii) serving on the governing body of a supported organization? If &quot;No,&quot; explain in Part VI how the organization maintained a close and continuous working relationship with the supported organization(s).</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>By reason of the relationship described in (2), did the organization’s supported organizations have a significant voice in the organization’s investment policies and in directing the use of the organization’s income or assets at all times during the tax year? If &quot;Yes,&quot; describe in Part VI the role the organization’s supported organizations played in this regard.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
2014 Form 990 significant changes

Form 990, Schedule A – significant changes!

Type III functionally integrated (FI) – complete Sections A, D and E

Section E. Type III Functionally-Integrated Supporting Organizations

1. Check the box next to the method that the organization used to satisfy the Integral Part Test during the year (see instructions):
   a. The organization satisfied the Activities Test. Complete line 2 below.
   b. The organization is the parent of each of its supported organizations. Complete line 3 below.
   c. The organization supported a governmental entity. Describe in Part VI how you supported a government entity (see instructions).

2. Activities Test. Answer (a) and (b) below.
   a. Did substantially all of the organization’s activities during the tax year directly further the exempt purposes of the supported organization(s) to which the organization was responsive? If “Yes,” then in Part VI identify those supported organizations and explain how these activities directly furthered their exempt purposes, how the organization was responsive to those supported organizations, and how the organization determined that these activities constituted substantially all of its activities.
   b. Did the activities described in (a) constitute activities that, but for the organization’s involvement, one or more of the organization’s supported organization(s) would have been engaged in? If “Yes,” explain in Part VI the reasons for the organization’s position that its supported organization(s) would have engaged in these activities but for the organization’s involvement.

3. Parent of Supported Organizations. Answer (a) and (b) below.
   a. Did the organization have the power to regularly appoint or elect a majority of the officers, directors, or trustees of each of the supported organizations? Provide details in Part VI.
   b. Did the organization exercise a substantial degree of direction over the policies, programs, and activities of each of its supported organizations? If “Yes,” describe in Part VI the role played by the organization in this regard.
2014 Form 990 significant changes

- Form 990, Schedule A – Part V – **new** (two pages)!
  - Adjusted net income
  - Minimum asset amount
  - Distributable amount
  - Distributions
  - Distribution allocation
    - Excess distributions
    - Distributable amount
2014 Form 990 significant changes

- Form 990 Schedule A – significant changes!
  - Type III non-FI – complete Sections A and D, and Part V
### 2014 Form 990 significant changes

<table>
<thead>
<tr>
<th>Section D - Distributions</th>
<th>Current Year</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Amounts paid to supported organizations to accomplish exempt purposes</td>
</tr>
<tr>
<td>2</td>
<td>Amounts paid to perform activity that directly furthers exempt purposes of supported organizations, in excess of income from activity</td>
</tr>
<tr>
<td>3</td>
<td>Administrative expenses paid to accomplish exempt purposes of supported organizations</td>
</tr>
<tr>
<td>4</td>
<td>Amounts paid to acquire exempt use assets</td>
</tr>
<tr>
<td>5</td>
<td>Qualified self-ace amounts (if IRS approval required)</td>
</tr>
<tr>
<td>6</td>
<td>Other distributions reported in Part VI, see instructions.</td>
</tr>
<tr>
<td>7</td>
<td>Distributions to supportive organizations to which the organization is responsive (provide details in Part VI. See instructions.)</td>
</tr>
<tr>
<td>8</td>
<td>Distributable amount for 2014 from Section C, line 9</td>
</tr>
<tr>
<td>9</td>
<td>Line 8 amount divided by Line 9 amount</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Section E - Distribution Allocations (see instructions)</th>
<th>Excess Distributions</th>
<th>Underdistributions Pre-2014</th>
<th>Distributable Amount for 2014</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Distributable excess for 2014 from Section C, line 9</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Underdistributions, if any, for years prior to 2014 (reasonable cases require see instructions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3</td>
<td>Excess distributions carryover, if any, to 2014</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4</td>
<td>Distribution for 2014 not applied (see instructions)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>5</td>
<td>Remainder, subtract lines 3g, 3h, and 3i from 3f.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>6</td>
<td>Distributions for 2014 from Section D, line 7:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>7</td>
<td>a</td>
<td>Applied to underdistributions of prior years</td>
<td></td>
</tr>
<tr>
<td>8</td>
<td>b</td>
<td>Applied to 2014 distributable amount</td>
<td></td>
</tr>
<tr>
<td>9</td>
<td>c</td>
<td>Remainder, subtract lines 4a and 4b from 4.</td>
<td></td>
</tr>
<tr>
<td>10</td>
<td>d</td>
<td>Remaining underdistributions for years prior to 2014, if any, subtract lines 3g and 4a from line 2 (if amount greater than zero, see instructions).</td>
<td></td>
</tr>
<tr>
<td>11</td>
<td>e</td>
<td>Remaining underdistributions for 2014, subtract lines 3h and 4b from line 1 (if amount greater than zero, see instructions).</td>
<td></td>
</tr>
<tr>
<td>12</td>
<td>f</td>
<td>Excess distributions carryover to 2015. Add lines 5 and 4c.</td>
<td></td>
</tr>
<tr>
<td>13</td>
<td>g</td>
<td>Breakdown of line 7:</td>
<td></td>
</tr>
<tr>
<td>14</td>
<td>h</td>
<td>i</td>
<td>j</td>
</tr>
</tbody>
</table>
2014 Form 990 significant changes

- Schedules B, C, D, G, I, K, N – minor cosmetic changes
- Schedule F – emphasizes that Forms 3520, 3520-A and 5713 are not to be filed with Form 990
- Schedules J and L – adds 501(c)(29) organizations
2014 Form 990 significant changes

- Schedule L (draft) “interested person” definition:
  - For Part I – no change
  - Disqualified persons under Code Section 4958
  - For Schedule L, Parts II-IV (expansion):
    - Persons listed in Part VII, Section A as current or former officers, directors, trustees or key employees (no change)
    - The creator or founder of the organization (NEW)
    - Substantial contributors reported in Schedule B (expanded to Parts II and IV)
    - Family members of any of the above
    - 35% controlled entities of any of the above (expanded to Part II)
2014 Form 990 significant changes

► “Interested person” for Schedule L (draft)-contraction:
  ► **Removed** (from Part II): highest compensated employees and their family members
  ► **Removed** (from Part II): contributing employers and sponsoring organizations of VEBAs
  ► **Removed** (from Part IV): entity of which a current or former officer, director, trustee, or key employee, or any family member thereof, was serving as a:
    ► Director, officer, or trustee; or
    ► Partner, member, or shareholder with a direct or indirect ownership interest in entity in excess of 5%
  ► **Removed** (from Parts III and IV) non-stock corporations more than 35% controlled by other interested persons
2014 Form 990 significant changes

Other 2014 Schedule L (draft) instructions changes:

► Uniform “reasonable efforts” definition that applies to all parts (not just Parts III and IV)

► Part I (excess benefit transactions): identify in Part V organization manager(s), if any, that knowingly participated in the excess benefit transaction

► Part II (loans): clarification that split-dollar life insurance arrangements described in Regs. 1.7872-15 are loans reportable in Part II

► Part IV (business transactions): new reporting exception for transactions with publicly traded corporations in the ordinary course of business, on the same terms as are generally offered to the public
2014 Form 990 significant changes

Schedule R

- Page 1, 3rd column – VEBA must report a contributing employer as a related organization; contributing employer should not report the VEBA as a related organization unless the VEBA is related to the contributing employer in some other capacity.

- Page 3, 1st column – Example 8 illustrates that a supported organization’s parent is not necessarily related to the supported organization’s supporting organization.

- Page 5, 3rd column, last paragraph – Transactions between the filing organization and its disregarded entities do not need to be reported in Part V, line 1.
2014 Form 990 significant changes

► Schedule H
  ► Part V, Section A, Heading – added “and if a group return, the name and employer identification number (EIN) of the subordinate hospital organization that operates the hospital facility”
  ► Part V, Section B, Heading – changed to “Line number of hospital facility, or line numbers of hospital facilities in a facility reporting group (From Part V, Section A)”
  ► Part V, Section B – added 2 new questions:
    ► 1. Was the hospital facility first licensed, registered or similarly recognized by a state as a hospital facility in the current taxable year or the immediately preceding taxable year?
    ► 2. Was the hospital facility acquired or placed into service as a tax-exempt hospital in the current taxable year or the immediately preceding taxable year?
2014 Form 990 significant changes

Schedule H

- Part V, Section B – added a new question: “Was the hospital facility’s community health needs assessment (CHNA) conducted with one or more organizations other than hospital facilities?”
- Part V, Section B, line 7c (old line 5c) – was changed to ask if a paper copy was made available for public inspection without charge at the hospital facility instead of available upon request from the hospital facility.
2014 Form 990 significant changes

► Schedule H
  ► Part V, Section B, former lines 6 and 7 replaced with:
    ► Did the hospital facility adopt an implementation strategy to meet the significant community health needs identified through its most recently conducted CHNA?
    ► Indicate the tax year the hospital facility last adopted an implementation strategy.
    ► Is the hospital facility’s most recently adopted implementation strategy posted on a website?
      ► If “Yes,” list url.
      ► If “No,” is the hospital facility’s most recently adopted implementation strategy attached to this return?
  ► Note that check boxes from former line 6 are eliminated.
2014 Form 990 significant changes

▶ Schedule H

▶ Part V, Section B, line 13 (former line 9) includes checkboxes to explain the eligibility criteria explained in the financial assistance policy (FAP) (similar to old lines 10-12, but eliminates state regulation box and includes underinsurance status instead of uninsured discount).

▶ Part V, Section B, line 15 (former line 13) includes new checkboxes indicating how the hospital facility’s FAP or FAP application form explained the method for applying for financial aid.
Schedule H

15. Explained the method for applying for financial assistance? (If “Yes,” indicate how the hospital facility’s FAP or FAP application form (including accompanying instructions) explained the method for applying for financial assistance (check all that apply):

a. Described the information the hospital facility may require an individual to provide as part of his or her application
b. Described the supporting documentation the hospital facility may require an individual to submit as part of his or her application
c. Provided the contact information of hospital facility staff who can provide an individual with information about the FAP and FAP application process
d. Provided the contact information of nonprofit organizations or government agencies that may be sources of assistance with FAP applications
e. Other (describe in Section C)
2014 Form 990 significant changes

Schedule H

Part V, Section B, line 16 (former line 14) replaced checkboxes with the following:

<table>
<thead>
<tr>
<th></th>
<th>Included measures to publicize the policy within the community served by the hospital facility?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>If “Yes,” indicate how the hospital facility publicized the policy (check all that apply):</td>
</tr>
<tr>
<td>a</td>
<td>The FAP was widely available on a website (list url):</td>
</tr>
<tr>
<td>b</td>
<td>The FAP application form was widely available on a website (list url):</td>
</tr>
<tr>
<td>c</td>
<td>A plain language summary of the FAP was widely available on a website (list url):</td>
</tr>
<tr>
<td>d</td>
<td>The FAP was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
</tr>
<tr>
<td>e</td>
<td>The FAP application form was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
</tr>
<tr>
<td>f</td>
<td>A plain language summary of the FAP was available upon request and without charge (in public locations in the hospital facility and by mail)</td>
</tr>
<tr>
<td>g</td>
<td>Notice of availability of the FAP was conspicuously displayed throughout the hospital facility</td>
</tr>
<tr>
<td>h</td>
<td>Notified members of the community who are most likely to require financial assistance about availability of the FAP</td>
</tr>
<tr>
<td>i</td>
<td>Other (describe in Section C)</td>
</tr>
</tbody>
</table>
2014 Form 990 significant changes

Schedule H

Part V, Section B, line 18 (former line 16) replaced checkboxes with the following:

18 Check all of the following actions against an individual that were permitted under the hospital facility’s policies during the tax year before making reasonable efforts to determine the individual’s eligibility under the facility’s FAP:

- [ ] Reporting to credit agency(ies)
- [ ] Selling an individual’s debt to another party
- [ ] Actions that require a legal or judicial process
- [ ] Other similar actions (describe in Section C)
- [ ] None of these actions or other similar actions were permitted

Note that the checkboxes for liens, lawsuits and body attachments were collapsed into a single checkbox.
2014 Form 990 significant changes

► Schedule H

► Part V, Section B, line 19 (former line 17) replaced checkboxes with the following:

19 Did the hospital facility or other authorized party perform any of the following actions during the tax year before making reasonable efforts to determine the individual's eligibility under the facility's FAP? . . . . .

If “Yes,” check all actions in which the hospital facility or a third party engaged:

a □ Reporting to credit agency(ies)
b □ Selling an individual's debt to another party
c □ Actions that require a legal or judicial process
d □ Other similar actions (describe in Section C)

► Note that the checkboxes for liens, lawsuits and body attachments were collapsed into a single checkbox.
2014 Form 990 significant changes

- **Schedule H**
  - Part V, Section B, line 20 (former line 18) replaced checkboxes with the following:

<table>
<thead>
<tr>
<th>20</th>
<th>Indicate which efforts the hospital facility or other authorized party made before initiating any of the actions listed (whether or not checked) in line 18 (check all that apply):</th>
</tr>
</thead>
<tbody>
<tr>
<td>a</td>
<td>☐ Notified individuals of the financial assistance policy on admission</td>
</tr>
<tr>
<td>b</td>
<td>☐ Notified individuals of the financial assistance policy prior to discharge</td>
</tr>
<tr>
<td>c</td>
<td>☐ Notified individuals of the financial assistance policy in communications with the individuals regarding the individuals' bills</td>
</tr>
<tr>
<td>d</td>
<td>☐ Documented its determination of whether individuals were eligible for financial assistance under the hospital facility’s financial assistance policy</td>
</tr>
<tr>
<td>e</td>
<td>☐ Other (describe in Section C)</td>
</tr>
<tr>
<td>f</td>
<td>☐ None of these efforts were made</td>
</tr>
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Advisory Committee on Tax Exempt and Government Entities (ACT) UBTI recommendations
ACT recommendations

- Colleges and universities final report
- Significant underreporting of unrelated business taxable income (UBTI)
- Increased focus on UBTI
- Annual project for 2014
  - Review existing rules, regulations and reporting to find reasons for significant underreporting of UBTI
  - Recommend specific changes as to the reporting of UBTI
  - Recommend additional guidance to the sector and revenue agents
ACT recommendations

ACT recommendation (1)
- Open a regulation project to:
  - Formalize the commensurate test – profits from a substantial commercial activity will not preclude exemption under IRC 501(c)(3) as long as the organization’s income and financial resources are used commensurate in scope with its charitable purpose
  - Reject commerciality test – used to determine when certain business activity conducted by a 501(c)(3) organization will preclude tax exemption and what constitutes unrelated business-generating taxable income

ACT recommendation (2)
- Provide formal guidance on:
  - Proper methods for allocating indirect costs where facilities and/or personnel are used to carry on exempt activities and to conduct unrelated trade or business
    - Safe-harbor method
    - Identify allocation methods that are per se unreasonable
ACT recommendations

► ACT recommendation (3)
  ► Publish revenue ruling on UBI
    ► Provide categories of activities that are considered related and unrelated
    ► Guidance on the use of losses
    ► Examples of various situations, such as facility rentals and dual-use properties
  ► ACT has put forth a proposed revenue ruling

► ACT recommendation (4)
  ► Formalize and adopt a new Form 990T
    ► Web-based
    ► Activity-by-activity reporting on Checklist A
      ► Will contain links to educational materials
      ► Will contain activity-specific worksheets
  ► Part I – Revenues and expenses
  ► Part II – Signature
  ► Part III – Tax Computation and payments
  ► Part IV – Other information regarding UBI
  ► Worksheets – advertising, debt-financed rental
ACT recommendations

- ACT recommendation (5)
  - Leverage use of electronic database and web-based resources
    - Enhance the exempt organization’s (EO) update listserv
    - Require electronic email address on 1023 and 990
    - Establish EO box linked to nonprofit organizations
    - Establish EO tax professionals webpage
    - Enhance current A-Z index on IRS site and improve file-naming conventions
Camp tax reform proposals related to Form 990
Introduction

- Some proposals affect tax-exempt organizations.
- Other proposals affect donors to tax-exempt organizations.
Outline of certain proposals related to Form 990

► UBTI
► Penalties
► Tax administration and compliance
Unrelated business taxable income

- Royalties from licensing names or logos
- Losses from separate businesses
- Research income
- Specific deduction
- Qualified sponsorship payments
Camp proposal – UBTI, royalties from licensing names or logos

► **Currently:** Royalties earned by an EO from licensing its name or logo are not subject to UBTI.

► **Proposal:** Royalties and income earned by an EO from the sale or licensing of its name or logo (including any related trademark or copyright) would be subject to UBTI.

► **Implications:**
  ► Some EOs derive substantial royalty income from licensing their name or logo. This proposal would cause this income to be subject to federal income tax.
  ► For those states that follow federal income tax law, this income would also be subject to state income tax.
Camp proposal – UBTI, losses from separate businesses

Currently: UBTI is determined on a combined basis for all unrelated businesses carried on by an EO.
- Losses incurred by an EO’s unrelated businesses may offset the taxable income of the EO’s other unrelated businesses.

Proposal: UBTI would be calculated separately for each unrelated business carried on by an EO.
- UBTI from each separate unrelated business could not be less than zero.
- The EO’s net UBTI would be the combination of all these separately calculated amounts.
Camp proposal – UBTI, losses from separate businesses

Currently: An EO may carry back or carry forward its net operating losses (NOLs) from unrelated businesses to offset the EO’s combined net UBTI.

Proposal: An NOL from an unrelated business could offset the taxable income of only the same unrelated business.

- NOL carryforwards from tax years before the effective date of the new law would not be subject to this segregation rule.
- NOLs in tax years beginning on or after the effective date of the new law that are carried back to an earlier tax year would be subject to this segregation rule.
Camp proposal – UBTI, losses from separate businesses

Implications:

- Losses incurred by an EO’s unrelated business could not offset the taxable income of the EO’s different unrelated business.
- Combined UBTI from each unrelated business could not be less than zero.
- Accurate expense allocations and meticulous recordkeeping of each unrelated business would be necessary to account for utilization of NOLs from each unrelated business.
- The IRS may revise Form 990-T to require detailed information for each unrelated business of an EO.
- NOLs from each unrelated business would have to be identified as originating in pre- or post-enactment NOLs.
  - NOL carrybacks from each unrelated business originating in post-enactment years could only be carried back to the pre-enactment taxable income of the same unrelated business.
Currently: Certain types of income from research conducted by an EO are tax-exempt:

- Research performed for the US (including agencies and instrumentalities) or any state (or political subdivision)
- Research performed by a college, university or hospital
- Any research performed by an organization operated primarily for the purposes of carrying on fundamental research, the results of which are freely available to the general public

Proposal: For organizations in the third category, only research income from such research that is made freely available to the general public would be tax-exempt.

Implications: An EO whose primary exempt purpose is performing fundamental research would be taxed on income from any such research that is not made freely available to the general public.
Camp proposal – UBTI, specific deduction

- **Currently:** An EO may deduct $1,000 against its UBTI.
- **Proposal:** An EO would be able to deduct $10,000 against its UBTI.
- **Implications:** EOs that carry on one or more unrelated businesses with aggregate revenue of up to $10,000 may not have to file a Form 990-T for that UBTI.
Currently: “Qualified sponsorship payments” received by an EO are not included in UBTI.

- A “qualified sponsorship payment” is any payment made by a business sponsor to an EO for which the business does not receive a “substantial return benefit” (SRB) from the EO.
- A SRB does not include either:
  - The use or acknowledgment of the business’s name or logo (or product lines)

Or

- Advertising of such sponsor’s products or services

Proposal:

- Any use or acknowledgment that refers to any of the sponsor’s product lines would be a SRB.

- Thus, the sponsorship payment the EO receives would be advertising income, a per se unrelated business.
Camp proposal – UBTI, qualified sponsorship payments

**Proposal:**

- For an EO that receives more than $25,000 of qualified sponsorship payments for an event, a sponsor’s payments would not be exempt “qualified sponsorship payments” unless any use or acknowledgment of a sponsor’s name or logo only appears with, and in substantially the same manner as, the names of at least two donors to the event.
  - Thus, a single business could not be listed as an exclusive sponsor of an event that generates more than $25,000 in qualified sponsorship payments.
  - Such sponsorship payments would be advertising income taxable as UBTI.

**Implications:** EOs would need to review and perhaps modify their agreements with sponsors to ensure that payments would qualify as exempt.
Camp proposals – penalties

- Information return penalties
- Prohibited tax shelter disclosure penalty
- Accuracy-related penalty
Camp proposals – information return penalties

- **Currently**: Failure to file a return, include information required or show the correct information on a return: $100 per day; $50,000 maximum ($20/$10,000 for organizations with $1 million or less gross receipts)
- **Proposal**: Increase to $200 per day ($40 for organizations with $1 million or less gross receipts)
- **Currently**: An EO manager who fails to respond to a written demand from the IRS to file an information return by a certain date: $10 per day; $5,000 maximum
- **Proposal**: Increase to $20 per day
Camp proposals – information return penalties

► **Currently:** An EO manager or other person who fails to allow for the public inspection of an EO’s three most recent annual returns and other publicly available documents: $20 per day; $10,000 maximum

► **Proposal:** Increase to $40 per day

► **Currently:** A person who fails to allow the public inspection of an EO’s exemption application materials or notice materials: $20 per day; no maximum

► **Proposal:** Increase to $40 per day

► **Currently:** Failure of a tax-exempt trust to file a return: $10 per day; $5,000 maximum

► **Proposal:** Increase to $20 per day
Camp proposals – information return penalties

- **Currently:** An EO that was exempt in any of the five years preceding a liquidation, dissolution, termination or substantial contraction and fails to file a final return: $10 per day; $5,000 maximum
- **Proposal:** Increase to $20 per day

- **Currently:** An EO manager’s failure to respond to a written IRS demand to comply with these requirements: $10 per day; $5,000 maximum
- **Proposal:** Increase to $20 per day

- **Currently:** An EO’s failure to file the required disclosure of its participation in any prohibited tax shelter transaction and the identity of any other known party to such transaction: $100 per day
- **Proposal:** Increase to $200 per day
Camp proposals – tax administration and compliance – electronic filing

► **Currently:** Very small EOs must file Form 990-N electronically and very large EOs must file Form 990 or Form 990-PF electronically. Other EOs are not required to file their Form 990s electronically.

► **Proposal:** All EOs, regardless of their size, would have to file their Form 990s electronically.
Supporting organizations
Supporting organizations (SOs)

Organizational test

An SO’s articles of organization (governing instrument) must:

- Limit its **purposes** to one or more “tax-exempt” purposes
- Not expressly empower it to engage in activities that do not further these purposes
- State the **specified** public charities on behalf of which it is to be operated
- Not expressly empower it to support or benefit any organization other than the ones specified
Supporting organizations

- Operational test
  - An SO must engage solely in activities that support or benefit the specified public charities.
  - Permissible beneficiaries can include:
    - Another SO that supports the specified supported organization(s)
    - State colleges and universities that are government-instrumentalities – Sec. 511(a)(2)(B)
    - Members of the charitable class benefited by the specified supported organization(s)
- Permissible activities
  - Making payments to or for the use of, or providing services or facilities for, the specified supported organization(s)
  - Providing funding or services directly to these organization(s)
  - Purchasing goods or services on behalf of these organization(s)
Supporting organizations

- **Control test**
  - A supporting organization must not be controlled, directly or indirectly, by “disqualified persons.”
  - Disqualified persons include “substantial contributors.”
  - Disqualified persons include individuals and organizations “related” to a disqualified person by blood, marriage or control.

- **Relationship test – Type I, Operated, supervised or controlled by**
  - Substantial degree of direction by one or more supported organizations over the policies, programs and activities of the SO
  - Comparable to a parent – subsidiary relationship
  - Established by the fact that a majority of officers, directors or trustees of the SO are elected or appointed by the governing body, members of the governing body, officers acting in their official capacity or the membership of one or more supported organization(s)
Supporting organizations

- Relationship test – Type II, *Supervised or controlled in connection with*
  - Presence of common supervision or control by the persons supervising or controlling both the SO and the supported organization(s) to ensure that the SO will be responsive to the needs and requirements of the supported organization(s)
  - Control or management of the SO must be by the same individuals who control or manage the supported organization(s)
    - Usually, overlap consists of directors/trustees
    - But instead, overlap may consist of principal officers
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - The SO must be responsive to and significantly involved in the operations of the supported organization(s)
  - The SO must meet three requirements:
    - Responsiveness test
      - To ensure that the SO is responsive to the needs of the supported organization(s) by requiring the supported organization to have the ability to influence the activities of the SO
    - Integral part test
      - To ensure that the SO maintains a significant involvement in the operations of one or more supported organization(s), and that the supported organization(s) are dependent on the SO for the type of support it provides
    - Notification requirement
      - The SO must provide annually to each supported organization:
        - Written notice to a principal officer of each supported organization describing the amount and type of support the SO provided to that supported organization
        - A copy of the SO’s Form 990 most recently filed as of the notification date
        - A copy of the SO’s governing documents
- Due date
  - Last day of the fifth month following the close of the SO’s taxable year
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - Responsiveness test*
    - One or more officers, directors or trustees of the SO are **elected or appointed by** the supported organization
      Or
    - One or more members of the supported organization(s)’s governing body are also officers, directors or trustees of the SO
      Or
    - The officers, directors or trustees of the SO **maintain a close continuous working relationship** with the officers, directors or trustees of the supported organization
      And
    - Because of one of the above, the officers, directors or trustees of the supported organization have a **significant voice** in the SO’s:
      - Investment policies
      - Timing of grants
      - Manner of making grants
      - Selection of grant recipients

* The IRS will issue proposed regulations that a non-functionally integrated SO must meet this test as to each of its supported organizations.
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - Integral part test
    - Functionally integrated (FI)
    - Non-functionally integrated (NFI)
  - Key distinction
    - An NFI Type III SO must:
      - Make annual minimum distributions to its supported organization(s)
      - Meet an “attentiveness” requirement
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - Integral part test – FI Type III SO
    - Substantially all of the SO’s activities directly further the exempt purposes of its supported organization(s) by performing the functions of, or carrying out the purposes of, these supported organization(s), **and** but for the involvement of the SO, the supported organization(s) would normally have performed these activities
    Or
    - The SO is the parent of each of its supported organization(s)
      - For example: Super parent of health care system
    Or
    - The SO supports a governmental supported organization*
      - The SO supports a governmental entity to which it meets the “responsiveness test”
      - The SO’s activities, for or on behalf of the governmental entity, perform its functions or carry out its purposes, **and** but for the involvement of the SO, the entity would normally have performed these activities itself.

* Per Notice 2014-4 (Transitional Rule)
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - Integral part test – NFI Type III SO
  - Must comply with:
    - Distribution requirement
    - Attentiveness requirement
  - Distribution requirement
    - An NFI Type III SO must make annual distributions to or for the use of one or more of its supported organization(s) equal to the *greater* of:
      - 85% of the SO’s adjusted net income for the immediately preceding taxable year, or
      - 3.5% of the fair market value of the SO’s nonexempt-use assets for the immediately preceding taxable year
Supporting organizations

- Relationship test – Type III, *Operated in connection with*
  - Attentiveness requirement
  - An NFI Type III SO must distribute at least 1/3 of its annual distributable amount to one or more of its supported organizations that are “attentive” to the operations of the SO, and to which the SO is “responsive.”
  - To establish that a supported organization is attentive to the operations of the SO, the SO must either:
    - Provide at least 10% of the supported organization’s total support it received during its previous taxable year
      - Or
    - Provide support necessary to avoid the interruption of the carrying on of a substantial function or activity of the supported organization
      - Or
    - Provide an amount of support that, based on “all the pertinent factors,” is a sufficient part of the supported organization’s total support
Questions?
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