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Keep SCORE on taxes

Federal & state tax changes impacting healthcare

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Disclaimer

The information provided herein is educational in nature and is based on authorities that are subject to change. You should contact your tax adviser regarding application of the information provided to your specific facts and circumstances.

Your presenters

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Agenda

- Top issues regarding financial statement reporting of income tax
- Tax consequences of COVID19 Relief
  - Expenses paid from PPP Loans
  - Medicare Advances
  - Healthcare Provider Relief
- Year end tax planning tips and considerations

Top issues regarding financial statement reporting of income tax

CARES Act – Accounting for Income Tax Considerations

- **ASC 740-10-35-4**
  - Deferred tax liabilities and assets shall be adjusted for the effect of a change in tax laws or rates. A change in tax laws or rates may also require a reevaluation of a valuation allowance for deferred tax assets.

- **ASC 740-10-45-15**
  - When deferred tax accounts are adjusted as required by paragraph 740-10-35-4 for the effect of a change in tax laws or rates, the effect shall be included in income from continuing operations for the period that includes the enactment date.

CARES Act – Accounting for Income Tax Considerations

Special areas of (re)consideration:

- Qualified Improvement Property (QIP)
- The CARES Act restores the 15 year depreciation period and eligibility for bonus depreciation for QIP retroactively to enactment of the TCJA.
  - Taxpayers correcting depreciation for QIP would need to adjust their payable and DTA/DTL accordingly

- State Conformity to Federal Income Tax Changes
- Not all states automatically adopt federal income tax law changes
- State Income Tax provisions need to reflect state law of the taxing jurisdiction

CARES Act – Accounting for Income Tax Considerations

Special areas of (re)consideration:

- CARES Act temporarily restores NOL carrybacks eliminated by TCJA
- TCJA added a limitation on the deductibility of business interest expense to 30% of Adjusted Taxable Income (ATI)
- CARES Act increases deduction to 50% of Adjusted Taxable Income
- CARES Act also allows use of 2019 ATI in computing 2020 limitation
- ***Companies that have NOL DTA need to consider previously established valuation allowances, or rate (21% v 34/35% in carryback year)***
- ***Companies that used 30% for the 2019 provision, and filed the 2019 return using 50% would have a return to provision adjustment to adjust the payable and/or the interest expense carryover.***
- ***Companies that used 30% for the 2019 provision, and filed their 2019 returns using 30% could be amended, and the payable/interest expense carryover adjusted accordingly.***

Tax consequences of COVID19 Relief

Tax consequences from PPP loans

- Paycheck Protection Program (PPP)
  - Loans to qualifying business to cover payroll, rent, and other related business expenses
    - Does not give rise to cancellation of indebtedness income
    - Lenders advised not to issue 1099-C

    - Expenses paid with PPP funds
      - IRC265 – expenses paid with tax-exempt income are non-deductible
        - Contrary to congressional intent (PPP non-taxable funding)
        - Bipartisan support – but will take legislative changes (stalled)

Tax consequences from PPP loans

- Loans not forgiven as of 12/31/2020
  - Expenses: non-deductible in 2020, or 2021 when loan forgiven?
  - Rev Rul 2020-27
    - Expectation is loans will be forgiven – no 2020 deduction
    - Subsequent to 12/31/2020 loans is not forgiven
    - Deduct on 2020
    - Amend and deduct on 2020
    - Correct on the 2021 return

Tax consequences Provider Relief Fund Payments

- Provider Relief Fund – supports healthcare providers during pandemic
- Assist providers with lost revenue
- For Profit recipients
  - Section 511 Internal Revenue Code
  - Taxable - if the payment reimburses the provider for expenses or lost revenue

- https://www.hhs.gov/sites/default/files/provider-relief-fund-general-distribution-faqs.pdf

Tax consequences Medicare Advance Program

- CARES Act – provide economic boost to the financial strain on healthcare providers
- Accelerated Medicare and Medicaid payments
- Repayments withheld from future reimbursements
- Loan or advance fees for services?
- Funds provided under this program represent advances on payments for future services
- Medicare will be repaid through reduced future reimbursements
- GAAP guidance indicates entities should treat as a liability

Tax consequences Medicare Advance Program

- Per Coronavirus Relief Fund FAQ (updated 10/19/2020)
- FAQ 52 If governments use Fund payments as described in the Guidance to establish a loan program to support businesses, would those funds be considered gross income taxable to a business receiving the loan under the Code?
- A. Generally, the receipt of loan proceeds is not included in gross income. However, if the government forgives all or a portion of the loan, the amount of the loan that is forgiven is generally included in gross income of the business and is taxable unless an exclusion in section 108 of the Code or other Federal law applies.
- Because the Medicare Advance Program is designed to be advances that are repaid, advances under this program are properly considered a loan for federal income tax purposes.

Year end tax planning ideas

- Focus on: Method changes that accelerate losses
  - Take advantage of the 5 year carryback (Corp rates 34/35%)
- Areas to consider
  - Qualified improvement property
  - Significant commercial property additions
  - 163(j) Interest Expense changes
  - 165(i) Disaster loss acceleration
    - Facility closure
    - Property abandonment (including leasehold improvements)
    - Termination payments
    - Transaction termination/abandonment

Thank you

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Agenda

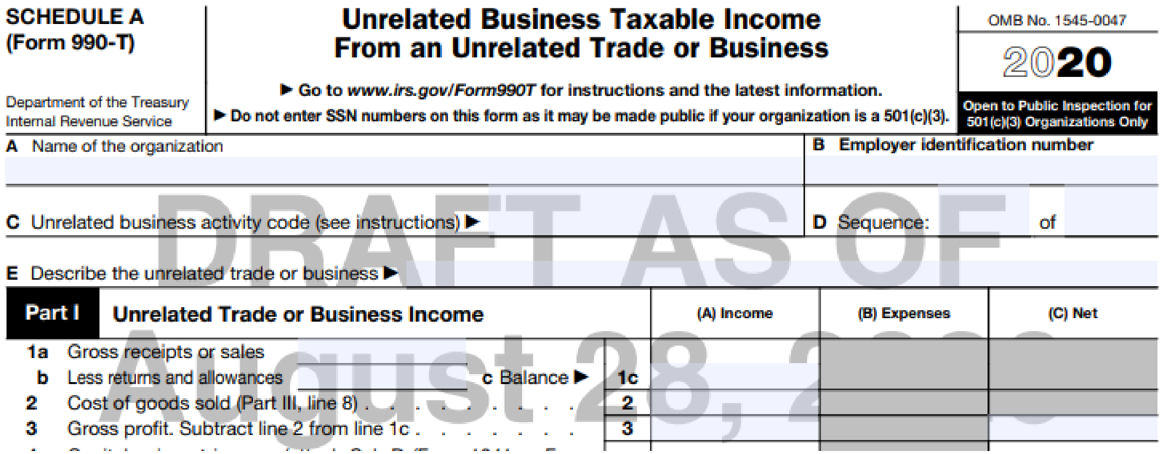
- Changes for 2020 Tax Forms
- Update on Oversight of Hospitals' Tax-Exempt Status
- Tax Reform
  - Overview
  - Section 512(a)(7) - Disallowed Fringe Benefit Expenses
  - Section 512(a)(6) - Unrelated Business Taxable Income Siloing
  - Section 4960 - Excise tax on excess compensation
- Covid-19 Relief Provisions
  - Overview
  - Employee Payroll Retention Credit
  - Employer Social Security Payroll Tax Deferral
  - NOL Carryback

Changes for 2020 Tax Forms

- The IRS has released the 2020 draft Form 990 and 990-T.
  - 990 – No substantial changes to the core form.
  - Despite there not being any substantial changes, in preparing the 2020 return, organizations should consider any programs or significant undertakings in response to COVID-19 and how those activities should be incorporated in the return.
    - For example, the narratives in Part III for program service accomplishments AND/OR the impact for hospitals on Schedule H.

Changes for 2020 Tax Forms

- 990-T – Although the 2018 Form 990-T was updated for the silo-ing provision and introduced Schedule M, the 2020 Form 990-T has been further updated with silo-ing in mind and for the upcoming mandatory e-filing.
    - Total UBTI now be calculated on page 1.
    - New Schedule A to replace Schedule M for all activity silos.



SCHEDULE A
(Form 990-T)
Department of the Treasury
Internal Revenue Service

Unrelated Business Taxable Income From an Unrelated Trade or Business

▶ Go to *www.irs.gov/Form990T* for instructions and the latest information.
▶ Do not enter SSN numbers on this form as it may be made public if your organization is a 501(c)(3).

OMB No. 1545-0047
2020
Open to Public Inspection for 501(c)(3) Organizations Only

A Name of the organization
B Employer identification number
C Unrelated business activity code (see instructions) ▶
D Sequence: of
E Describe the unrelated trade or business ▶

DRAFT AS OF August 28, 2020

Part I Unrelated Trade or Business Income		(A) Income	(B) Expenses	(C) Net
1a Gross receipts or sales				
b Less returns and allowances c Balance ▶	1c			
2 Cost of goods sold (Part III, line 8)	2			
3 Gross profit. Subtract line 2 from line 1c	3			

GAO Recommendations

1. Update Form 990, including Schedule H and instructions to ensure that the information demonstrating the community benefits a hospital is providing is clear and can be easily identified by Congress and the public.

2. Assess the benefits and costs, including the tax law implication, of requiring tax-exempt hospital organization to report community benefit expenses on Schedule H by individual facility rather than by collective organization.

3. Establish a well-documented process to identify hospital at risk for non-compliance with the community benefit standard that would ensure hospitals' community benefit activities are being consistently reviewed.

4. Establish specific audit codes for identifying potential noncompliance with the community benefit standard.

GAO Highlights

Highlights of GAO-20-679, a report to congressional requesters

September 2020

TAX ADMINISTRATION

Opportunities Exist to Improve Oversight of Hospitals' Tax-Exempt Status

Why GAO Did This Study

Slightly more than half of community hospitals in the United States are private, nonprofit organizations. IRS and the Department of the Treasury have recognized the promotion of health as a charitable purpose and have specified that nonprofit hospitals are eligible for a tax exemption. IRS has further stated that these hospitals can demonstrate their charitable purpose by providing services that benefit their communities as a whole.

In 2010, Congress and the President enacted PPACA, which established additional requirements for tax-exempt hospitals to meet to maintain their tax exemption.

GAO was asked to review IRS's implementation of requirements for tax-exempt hospitals. This report assesses IRS's (1) oversight of how tax-exempt hospitals provide community benefits, and (2) enforcement of PPACA requirements related to tax-exempt hospitals.

What GAO Recommends

GAO is making one matter for congressional consideration to specify in the IRC what services and activities Congress considers sufficient community benefit. GAO is also making four recommendations to IRS, including to establish a well-documented process to ensure hospitals' community benefit activities are being reviewed, and to create codes to track audit activity related to hospitals' community benefit activities. IRS agreed with GAO's recommendations.

View GAO-20-679. For more information, contact Jessica Lucas-Judy at (202) 512-9110 or lucasjudyj@gao.gov.

What GAO Found:

Nonprofit hospitals must satisfy three sets of requirements to obtain and maintain a nonprofit tax exemption (see figure).

Requirements for Nonprofit Hospitals to Obtain and Maintain a Tax-Exemption

ORGANIZATIONAL AND OPERATIONAL REQUIREMENTS
A hospital must be organized and operate to achieve a charitable purpose—the promotion of health for the benefit of the community.

COMMUNITY BENEFITS
Internal Revenue Service has identified six factors that demonstrate community benefit:
- Operate an emergency room open to all, regardless of ability to pay
- Maintain a board of directors drawn from the community
- Maintain an open medical staff policy
- Provide care to all patients able to pay, including those who do so through Medicare and Medicaid
- Use surplus funds to improve facilities, equipment, and patient care
- Use surplus funds to advance medical training, education, and research

PATIENT PROTECTION AND AFFORDABLE CARE ACT (PPACA) REQUIREMENTS
Hospitals must:
- Conduct a community health needs assessment
- Maintain a written financial assistance policy
- Set a limit on charges
- Set billing and collection limits

IRS must review each tax-exempt hospital's community benefit activities at least once every 3 years.

Source: GAO review of relevant laws and regulations. | GAO-20-679

While PPACA established requirements to better ensure hospitals are serving their communities, the law is unclear about what community benefit activities hospitals should be engaged in to justify their tax exemption. The Internal Revenue Service (IRS) identified factors that can demonstrate community benefits, but they are not requirements. IRS does not have authority to specify activities hospitals must undertake and makes determinations based on facts and circumstances. This lack of clarity makes IRS's oversight challenging. Congress could help by adding specificity to the Internal Revenue Code (IRC).

While IRS is required to review hospitals' community benefit activities at least once every 3 years, it does not have a well-documented process to ensure that those activities are being reviewed. IRS referred almost 1,000 hospitals to its audit division for potential PPACA violations from 2015 through 2019. However, IRS could not identify if any of these referrals related to community benefits. GAO's analysis of IRS data identified 30 hospitals that reported no spending on community benefits in 2016, indicating potential noncompliance with providing community benefits. A well-documented process, such as clear instructions for addressing community benefits in the PPACA reviews or risk-based methods for selecting cases, would help IRS ensure it is effectively reviewing hospitals' community benefit activities.

Further, according to IRS officials, hospitals with little to no community benefit expenses would indicate potential noncompliance. However, IRS was unable to provide evidence that it conducts reviews related to hospitals' community benefits because it does not have codes to track such audits.

United States Government Accountability Office

As a result…..expect more scrutiny of hospital tax exempt status and increased IRS audit activity.

Take the initiative to act now….

✓Analyze and confirm your hospital(s) can demonstrate and easily identify the community benefit factors, so that they are visible to Congress and the public.

✓Be prepared to report community benefit expenses on Schedule H by individual facility, rather than a collective filing organization.

✓Challenge and document how your organization justifies its tax-exempt status.

✓Consider independent mock audit to identify gaps and take any necessary steps to resolve proactively – don't wait for the IRS.

Tax Reform

Tax Cuts and Jobs Act: Major Provisions Impacting Exempt Organizations

- Public Law 115-97 (the “2017 Tax Act”) was enacted including provisions impacting exempt organizations….including, but not limited to, the following:

Section 512(a)(7)	UBTI increased by di… …wed fringe benefit expenses [REPEALED!]
Section 512(a)(6)	“Silo-ing” of Unrelated Business Income Activities
Section 4960	Excise Tax on Excess Compensation
Section 172(a)	Section 172(a) amended to limit … …ductions post 2017 to 80% and eliminate NOL carry… …ck. [Temporarily Restored]
Section 4968	Excise tax on investment income of educational institutions

UBTI - Disallowed Fringe Benefit Expenses

Section 512(a)(7)

- Required an increase in unrelated business income by amounts incurred by the organization in providing fringe benefits to its employees. "Parking Tax"
- Effective Date: Expenses incurred after December 31, 2017. *Repealed December 20, 2019*
- Guidance - How To Claim a Refund or Credit of UBI for QTF
- Impacted Filings: Forms 990-T
  - 2017 (partial periods for fiscal year filers)
  - 2018
  - 2019 Estimated Tax Payments
- Other Considerations & Planning
  - Refund Status
  - Deadline for Amending
  - Coupled Affect of Other Provisions

Unrelated Business Taxable Income Siloing

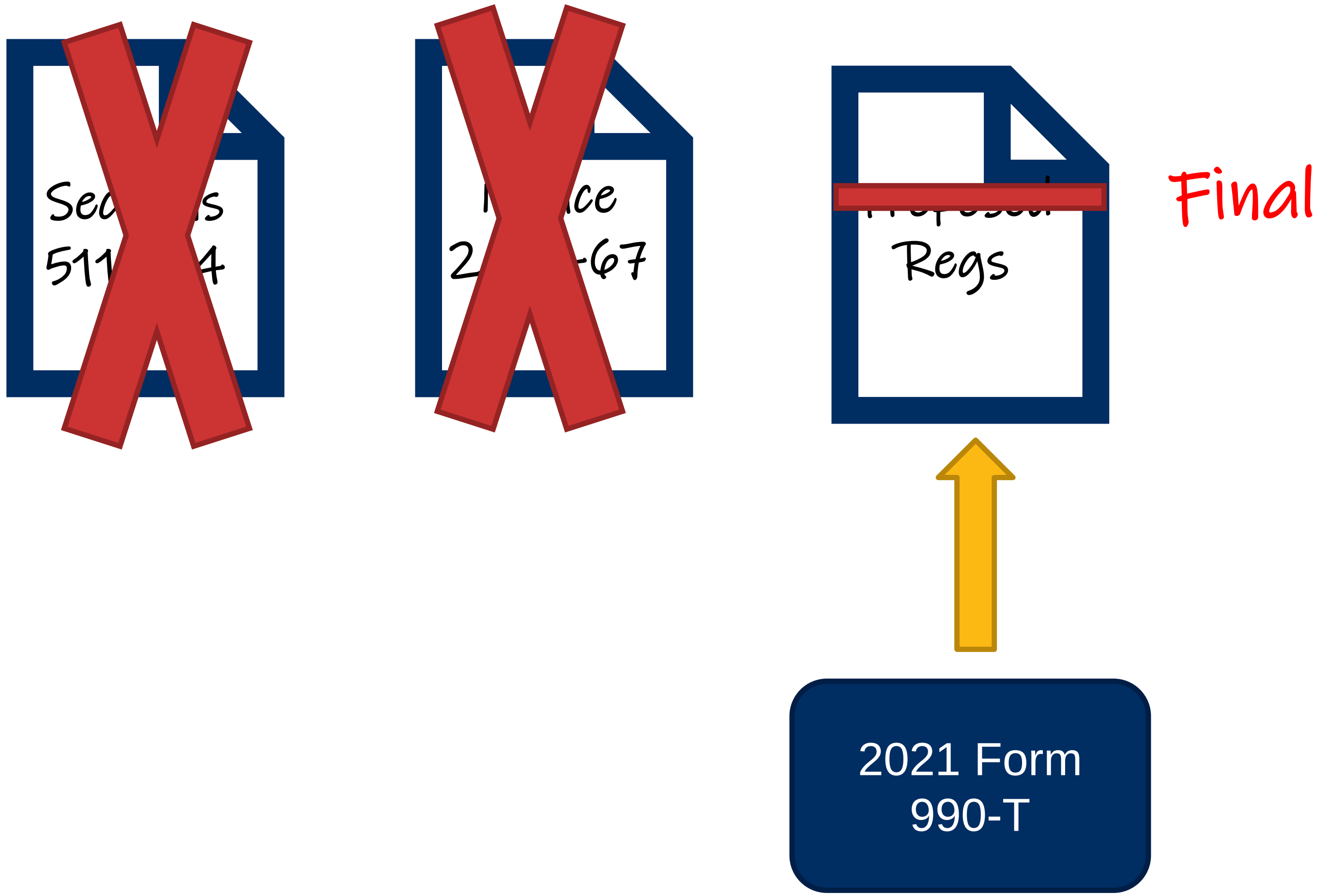
Section 512(a)(6)

- Requires an exempt organization with more than one unrelated trade or business to compute UBTI separately with respect to each unrelated trade or business.
- Effective Date: Tax years beginning after December 31, 2017
- Guidance:
  - Notice 2018-67 – August 2018
  - Proposed Regulations – April 2020
  - Final Regulations – November 2020
- Impacted Filings: Forms 990-T
  - 2018 (Revised Form 990-T, Schedule M)
  - 2019
  - 2020 (Revised Form 990-T, Schedule A)

Unrelated Business Taxable Income Siloing

Section 512(a)(6)

- Other Considerations & Planning
  - Regulations Finalized – Impact



Final Section 512(a)(6) Regulations

- Issued November 20, 2020
- Retain the use of the 2-digit NAICS codes
- Retain the 2% de minimis test threshold for QPIs
- Retain the “Participation Test” – formerly the “Control Test”
    i. Directly holds no more than 20 percent of the capital interest; AND
    ii. Does not have control over the partnership.

Final Section 512(a)(6) Regulations (Cont.)

- Gross to Gross Method not permitted in allocating expenses among related and unrelated activities unless:
  - No price difference exists between good or services provided in related and unrelated activities or
  - Adjustments are made to account for price differences.

- Charitable Contributions, Pre-2018 NOLs & Specific Deduction
  - Provide these are the only deductions allowed after arriving at total UBTI.

Unrelated Business Taxable Income Siloing

Final Section 512(a)(6) Regulations (Cont.)

- NOLs
  - Retain that Pre-2018 NOLs must be utilized before Post-2017 NOLs

  - Pre-2018 NOLs are taken against the total UBTI in a manner that allows for the maximum utilization of post-2017 NOLs, rather than pre-2018 NOLs.
    - For example: An exempt organization may allocate all of its pre-2018 NOLs to one of its solos or it may allocate its pre-2018 NOLs ratably among each silo.
      - Whichever results in the greater utilization of the post-2017 NOLs.
  - Additional guidance expected for how changes made to section 172 (NOL carrybacks) affect section 512(a)(6).

Excise tax on excess compensation

Section 4960

- Imposes a 21% excise tax on remuneration to a covered employee in excess of $1 million and any excess parachute payment.
- Effective: Tax Years beginning after December 31, 2017
- Guidance:
  - Notice 2019-09
  - Proposed 512(a)(6) Regulations
  - Final Regulations – Expected
- Impacted filings: Forms 4720 & Form 990
  - 2018 (short periods for fiscal year filings)
  - 2019
- Other Considerations & Planning
  - Final regulations expected

Covid-19 Relief Provisions

Families First Coronavirus Response Act (FFCRA) and the Coronavirus Aid, Relief, and Economic Security Act (CARES Act)

Paid FMLA & Paid Sick Leave	Obligates employers (fewer than 500 employees) to provide COVID-19-related protections and paid leave under FMLA and EPSLA.
Employee Retention Credit	Credit against employer 6.2% SS for organizations who experienced a significant decline in gross receipts or were subject to a government shut down order.
Loan Program for Retaining Employees –	Establishes a SBA Paycheck Protection Program to provide gvt. loans for eligible businesses (fewer than 500 employees) that maintain certain employment and employee wages.
Employer Payroll Tax Deposit Deferral	Permits employers to defer the due date for employer 6.2% Social Security tax.
Net Operating Loss (NOL) Carrybacks	Restores NOL carrybacks that were eliminated by 2017 TCJA.

CARES Act Employee Retention Payroll Tax Credit

Payroll Tax Credit

- Elective, refundable, advanceable credit against employer 6.2% SS tax due each quarter for organizations who experienced a significant decline in gross receipts or were subject to a government shut down order.
- Covered period: March 13, 2020 through Dec. 31, 2020
- Guidance: FAQs: Employee Retention Credit under the CARES Act
- Impacted Filings: Forms 941
    - 2020 Quarters 2, 3 & 4
- Other Considerations & Planning
    - Adequate Documentation/IRS Audit Defense Package
    - Amend a previous quarter

CARES Act Employer Social Security Tax Deferral

Employer Payroll Tax Deferral

- Permits deferral of deposit of employer 6.2% SS tax payment.
- Covered period: March 27, 2020 through December 31, 2020
- Guidance: Deferral of Employment Tax Deposits and Payments Through December 31, 2020
- Impacted Filings: Forms 941
  - 2020 – Quarters 2, 3, and 4
- Other Considerations & Planning
  - 50% of deferred tax due December 31, 2021.
  - Remaining 50% of deferred tax Due December 31, 2022.

Net operating loss (NOL) carrybacks

NOL Carrybacks

- Temporarily restores NOL carrybacks that were eliminated by TCJA for businesses and individuals and temporarily removes the 80% limitation on the use of post-2017 NOLs through 2020 tax year.
- Effective: Tax years 2018, 2019, 2020
- Guidance: FAQs - Carryback of NOLs by Certain Exempt Organizations
- Impacted Filings: Forms 990-T
  - 2013-2020 (5 year carryback)
- Other Considerations & Planning
  - 2020 Losses may be carried back.

Thank you

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