

EMERGING ISSUES IN NFP TAX COMPLIANCE

SECTION 501(r)



AGENDA



Data Driven IRS Exams



Audit Experience



IRS 2017 Workplan



Temporary Housing & Travel



IRC Section 501(r)

DATA DRIVEN IRS EXAMS



- Searchable Form 990s
- 150+ queries developed as selection model for noncompliance areas
- Find questionable areas and audit solely on possible noncompliance issues – 90% audit change rate

IRS EXAMS as of 9/30/16

- 6,440 completed (27% employment tax, 12% UBI, 43% filing, organizational & operational)
- 61 Revocations
- 968 reviews of hospitals, 363 referred for exam (no CHNA, no FAP or EMC policy, B&C issues)
- Overall change rate 81%
- Plan to review 400 returns with risk of private inurement + 100 private foundations



501(r) Audits --- the New Frontier



Letter 3611 –

And so it begins

WHY US?

Internal Revenue Service
Tax Exempt and Government Entities Division
Exempt Organizations: Examinations
16 New Sudbury St, 8th Floor
Boston, MA 02203

Department of the Treasury

Date: March 31, 2016

Taxpayer Identification Number:
[REDACTED]

Form/Year Ending:
September 30, 2013

Agent's Contact/ID Number:
[REDACTED]

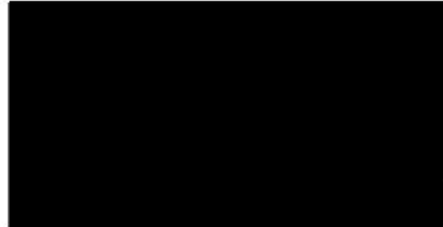
Agent's Contact Numbers:

Phone: 617.316.3115

Fax: 855.204.9051

Manager's Name
[REDACTED]

Secretary's Phone:
617.316.2878



Dear Sir or Madam,

Your organization has been selected for an audit for the year indicated above. The Internal Revenue Service (IRS) routinely audits exempt organizations to ensure compliance with federal tax requirements. Because I was unable to contact you by phone, [REDACTED]

Please call me as soon as possible to confirm this appointment. My phone number is above

Information Document Request

Enclosed are Forms 4564, *Information Document Request (IDR)*, which lists the items I need to conduct the audit. We can discuss any questions you have regarding this request when you call to confirm the appointment. I am usually in my office and available on Thursdays.

In addition, at the beginning of the audit appointment, I'd like to interview an officer or someone familiar with the organization's daily operations. I'll also need to tour the organization's facilities to better understand your operations

Your Rights as a Taxpayer

Also enclosed is Publication 1, *Your Rights as a Taxpayer*. This publication includes information on the audit process, as well as third-party contacts. Please take a few minutes to read it.

Audit Process

I'll review the information you provide. As the audit proceeds, I may request additional records.

After completing my review, I'll discuss my findings with you and explain whether your tax-exempt status or tax liability is affected. In many cases there are no proposed changes. If I do propose changes, you'll have time to review my findings. I'll provide you with a copy of the appeal procedures.

HISTORICAL DATA MAY BE AT ISSUE

DATE OF LETTER

Date: March 31, 2016

AUDIT YEAR

Form/Year Ending:
September 30, 2013

BE PROACTIVE – CONTROL LOGISTICS TO THE EXTENT POSSIBLE

Your organization has been selected for an audit for the year indicated above. The Internal Revenue Service (IRS) routinely audits exempt organizations to ensure compliance with federal tax requirements. Because I was unable to contact you by phone, [REDACTED]

Please call me as soon as possible to confirm this appointment. My phone number is above


Communication

To promote open communication, please call me to discuss any potential issues and keep me informed of unavoidable delays. I'll do likewise. The audit will proceed faster if we address questions and concerns and provide information to each other in a timely manner. You may also speak to my manager at any time. My manager's name and phone number are also shown in the heading of this letter.

INFORMATION/ DOCUMENT REQUESTS


- Requests are extensive and require internal Compilation and investigation
- If potential non-compliance is an issue, counsel should manage the investigation to control information and ensure sensitive discussions are privileged
- Preparation is key -- Have documents prepared and organized and (honestly) characterized and presented in the manner most advantageous to you; try to anticipate and answer questions/ issues

IDR RELATED TO CHNA COMPLIANCE

Form 4564 (Rev. June 1988)	Department of the Treasury – Internal Revenue Service Information Document Request (IDR)	Request Number IDR R3
To: (Name of Taxpayer and Company Division or Branch) 		Year: 201309 Form 990
		Subject: Community Health Needs Assessment (CHNA)
		Dates of Previous Requests None

Description of documents requested: See Below

Tax Period(s): Sept. 30, 2013

The following information is requested for the examination of  tax year ending Sept 30, 2013. The information will be used to determine if the organization is in compliance with IRC § 501(r)(3), which details requirements for periodic community health needs assessments (CHNA).

Internal Revenue Code (IRC) §501(r)(3)(A):



"IN GENERAL. – An organization meets the requirements of this paragraph with respect to any taxable year only if the organization –

§501(r)(3)(A)(i) has conducted a community health needs assessment which meets the requirements of subparagraph (B) in such taxable year or in either of the 2 taxable years immediately preceding such taxable year, and

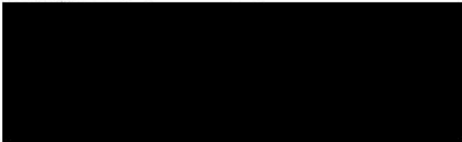


§501(r)(3)(A)(ii) has adopted an implementation strategy to meet the community health needs identified through such assessment."

- 1) So that we may confirm the hospital's compliance with IRC 501(r)(3)(A)(i), please provide a copy of the CHNA in place for the tax year ended September 30, 2013.
- 2) So that we may confirm the hospital's compliance with IRC 501(r)(3)(ii), please provide documentation showing the Board of Directors' formal adoption and implementation of the CHNA referred to above. Documentation may be in the form of a contemporaneous Board signed letter, Board meeting minutes showing the CHNA reviewed & approved by a binding vote of the Board, or similar evidence of formal & timely adoption & implementation of the CHNA.

Please have the above items ready for inspection & review during the fieldwork portion of the examination.

Information due by <u>First day of field visit</u> <input type="checkbox"/> <input type="checkbox"/>		Date
From:	Name and title of requester 	Employee ID number 
	Office Location: IRS-TEGE 15 New Sudbury St, Suite 875, JFK Fed Building, Boston, MA 02203	3/31/2016

IDR RELATED TO FAP

Form 4564 (Rev. June 1988)	Department of the Treasury -- Internal Revenue Service Information Document Request (IDR)	Request Number IDR R4a
To: (Name of Taxpayer and Company Division or Branch) 		Year: 201309 Form 990
		Subject: Financial Assistance Policy (FAP)
		Dates of Previous Requests None
Description of documents requested: See Below		
Tax Period(s): Sept. 30, 2013		
<p>The following information is requested for the examination of  tax year ending Sept 30, 2013. The information will be used to determine if the organization is in compliance with IRC § 501(r)(4) which requires a hospital organization to establish a written financial assistance policy including certain information. Please provide a cover sheet with each response identifying the IDR number and question number(s) related to the response.</p>		
<ol style="list-style-type: none"> 1) Please provide a copy of the written financial assistance policy (FAP) for the hospital that was in place for the tax year ending Sept 30, 2013. 2) In addition to the FAP above, please provide the following FAP associated items: <ol style="list-style-type: none"> a. Please provide a sample application and instructions for applying for financial assistance. b. Provide the basis for calculating the amounts charged to patients under the FAP. c. Provide written documentation supporting what actions the hospital may take in the event of non payment. d. Provide committee minutes describing the hospital's actions in regard to widely publicizing the financial assistance policy as well as documentation supporting the publicity and plain language summary of the hospital's financial assistance policy. e. Describe how the hospital notifies and informs patients of the availability of the FAP. f. Provide a copy of a representative billing statement provided to a patient after discharge with all patient identifying information redacted. g. Provide a copy of any translated FAP documents, including the FAP, the FAP application form, an the plain language summary of the FAP. Also, describe the methodology used to ensure that any limited English proficiency (LEP) populations served by the hospital have access to these translated documents. h. Please make available for interview a person with knowledge of the hospital's billing and collection policies. i. Please make arrangements for an onsite tour of all signage and publications that are present in all facilities regarding the FAP. 		
Please have the above items ready for inspection & review during the fieldwork portion of the examination.		
Information due at <u>First day of field visit</u> <input type="checkbox"/> <input type="checkbox"/>		
From:	Name and title of requester	Employee ID number
		
	Office Location: IRS-TEGE 15 New Sudbury St, Suite 875, JFK Fed Building, Boston, MA 02203	Date

Form **4564**
(Rev. June 1988)

Department of the Treasury - Internal Revenue Service

Information Document Request (IDR)

Request Number
IDR R4b

To: (Name of Taxpayer and Company Division or Branch)



Year:
201309 Form 990

Subject:
Emergency Medical Care Plan (EMCP)

Dates of Previous Requests
None

Description of documents requested: See Below

Tax Period(s): Sept. 30, 2013

IDR RELATED TO EMCP

The following information is requested for the examination of [redacted] tax year ending Sept 30, 2013. The information will be used to determine if the organization is in compliance with IRC § 501(r)(4)(B) which requires a hospital to establish a written policy requiring the hospital to provide, without discrimination, care for emergency medical conditions ((within the meaning of Section 1867 of the Social Security Act (42 USC 1395dd)) to individuals regardless of their eligibility for financial assistance. Please provide a cover sheet with each response identifying the IDR number and question number(s) related to the response.

- 1) Please provide a copy of the hospital's written policy with respect to their provision of emergency medical care (EMCP) that was in place for the tax year ended September 30, 2013.
- 2) Provide a copy of the resolution or other memorialization from the BOD or other authorized body of the hospital that establishes the date the emergency medical care policy was formally adopted.
- 3) Specifically explain how the hospital implemented the EMCP.
- 4) Please make available for interview persons with knowledge of the hospital's EMCP.


Please have the above items ready for inspection & review during the fieldwork portion of the examination.

Information due at: First day of field visit

From:


Office Location:
IRS-TEGE 15 New Sudbury St, Suite 875, JFK Fed Building, Boston, MA 02203

IDR RELATED TO CHARGE LIMIT REQUIREMENTS

Form 4564 (Rev. June 1988)	Department of the Treasury -- Internal Revenue Service Information Document Request (IDR)	Request Number IDR R5
To: (Name of Taxpayer and Company Division or Branch)		Year: 201309 Form 990
		Subject: Limits on Charges
		Dates of Previous Requests None

Description of documents requested: See Below

Tax Period(s): Sept. 30, 2013

The following information is requested for the examination of  tax year ending Sept 30, 2013. The information will be used to determine if the organization is in compliance with IRC § 501(r)(5), which places limitations on amounts charged to any individual who is eligible for assistance under your hospital's financial assistance policy (FAP). Please provide a cover sheet with each response identifying the IDR number and question number(s) related to the response.

- 1) Please provide a copy of the hospital's written policy limiting the amounts charged for emergency or other medically necessary care provided to individuals eligible for assistance under the hospital's financial assistance policy (FAP) to not more than the amounts generally billed (AGB) to individuals who have insurance coverage for such care.
 - a. Please provide a copy of calculations used to determine AGB for these services.
 - b. Provide a list of the FAP eligible emergency care the hospital provided during tax year ended September 30, 2013. That shows the prices to be charged for FAP eligible individuals and your gross charges for these services.
 - c. Provide a list of the FAP eligible non emergency but medically necessary care the hospital provided during the tax year that shows the prices to be charged for FAP eligible individuals and your gross charges for these services.
 - d. Provide a list of all other FAP eligible non emergency and non medically necessary medical care that Mayo Regional Hospital provided during tax year ended Sept 30, 2013 that shows the prices to be charged for FAP eligible individuals and the gross charges for these services.
- 2) Please make available a person with knowledge of the hospital's policy on limiting amounts charged under the FAP as well as computations of amount generally billed (AGB).

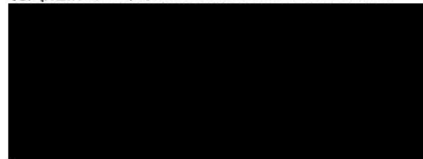
Please have the above items ready for inspection & review during the fieldwork portion of the examination.

Information due by First day of field visit

From:

Office Location:
IRS-TEGE 15 New Sudbury St, Suite 875, JFK Fed Building, Boston, MA 02203

To: (Name of Taxpayer and Company Division or Branch)



Year: 201309 Form 990

Subject: Billing & Collection Procedures

Dates of Previous Requests
None

Description of documents requested: See Below

Tax Period(s): Sept. 30, 2013

The following information is requested for the examination of [redacted] Sept 30, 2013. The information will be used to determine if the organization is in compliance with IRC § 501(r)(6), which requires that each hospital make reasonable efforts to determine whether an individual is eligible for assistance under its financial assistance policy (FAP) before engaging in extraordinary collection actions (ECA) against the individual to obtain payment for medical care. Please provide a cover sheet with each response identifying the IDR number and question number(s) related to the response.

- 1) Please provide a copy of billing, and collection policies in use for the tax year ending Sept 30, 2013.
- 2) If the hospital sells receivables to third parties, please provide copies of these agreements with third party collection agencies, and/or debt purchasers.
- 3) Please provide copies of any notices or extraordinary collection letters used in the tax year.
- 4) Please have a person with knowledge of collection practices available for interview.

Please have the above items ready for inspection & review during the fieldwork portion of the examination.

Information due by First day of field visit

From:	Name and title of requester	Employee ID number	Date
		[redacted]	[redacted]
	Office Location: IRS-TEGE 15 New Sudbury St, Suite 875, JFK Fed Building, Boston, MA 02203		

IDR RELATED TO BILLING AND COLLECTIONS

PROCESS

In addition, at the beginning of the audit appointment, I'd like to interview an officer or someone familiar with the organization's daily operations. I'll also need to tour the organization's facilities to better understand your operations

Audit Process

I'll review the information you provide. As the audit proceeds, I may request additional records.

After completing my review, I'll discuss my findings with you and explain whether your tax-exempt status or tax liability is affected. In many cases there are no proposed changes. If I do propose changes, you'll have time to review my findings. I'll provide you with a copy of the appeal procedures.

If you agree to the changes, you'll sign an agreement form. If you don't agree, you may ask for a conference with my manager or an IRS Appeals official.

2017 IRS WORKPLAN STRATEGIC ISSUE AREAS

Exemption

Protection of
Assets

Tax Gap

International

Emerging
Issues

EXEMPTION

- Non-exempt purpose activity
- Private inurement

Enforced primarily through field exams



PROTECTION OF ASSETS

- Self-dealing
- Excess benefit transactions
- Loans to disqualified persons

Enforced via correspondence audits and field exams

TAX GAP

- Employment tax
- Unrelated Business Income Tax

Enforced through compliance checks,
correspondence audits and field exams

A photograph of a sidewalk with a yellow tactile strip and the words "MIND THE GAP" painted on it. The text is in white, block letters. The sidewalk is made of concrete tiles, and there is a metal grate with circular holes in the foreground. The background is a blurred street scene.

MIND THE GAP

INTERNATIONAL

- Oversight of funds spent outside the US
- Operating as foreign conduits
- FBAR requirements

Enforced through compliance reviews, compliance checks, correspondence audits and field exams



EMERGING ISSUES

**NON-EXEMPT
CHARITABLE TRUSTS**

SECTION 501(r)

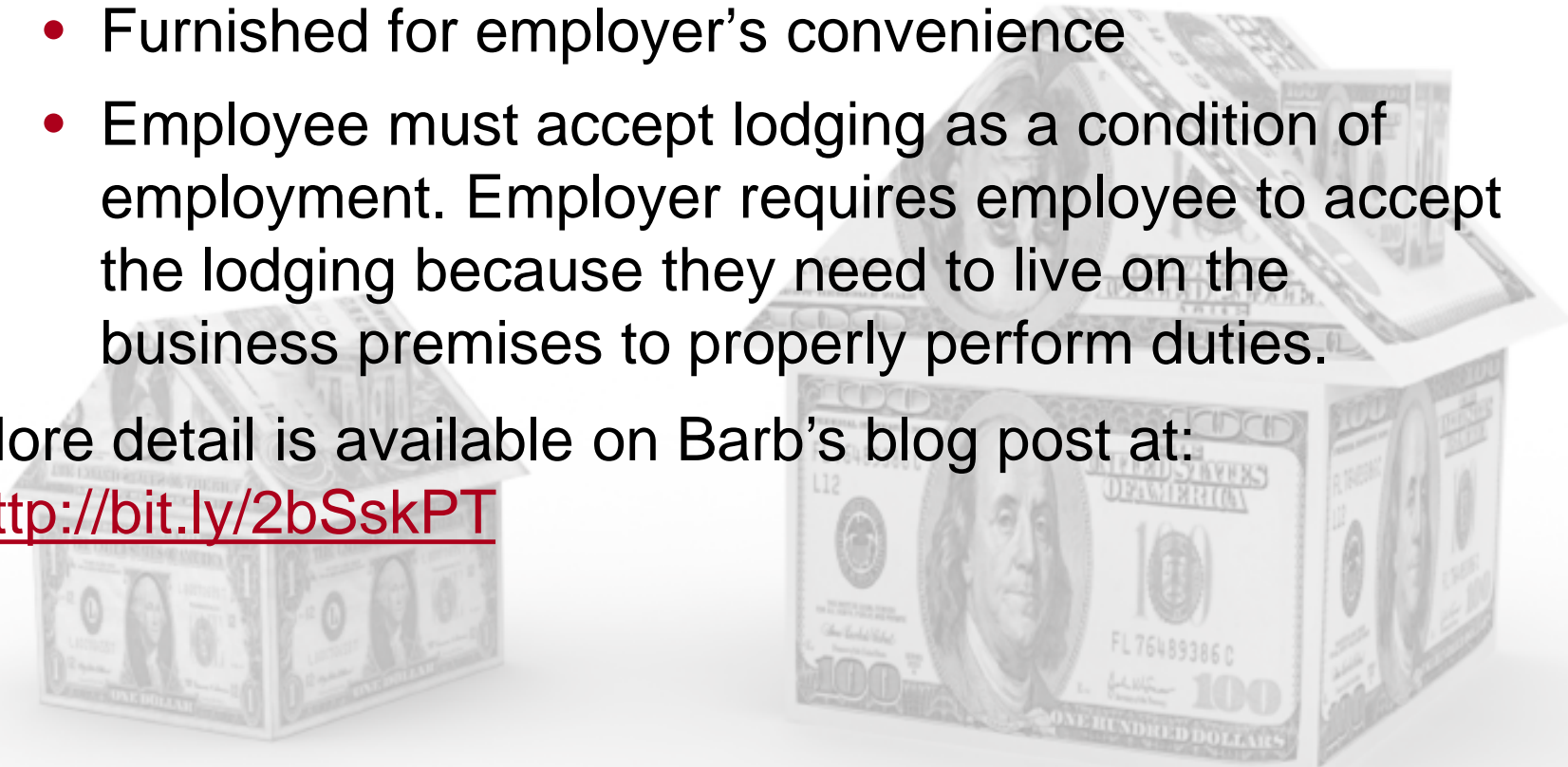
- Enforced through compliance reviews, correspondence audits and field exams
- Oversight includes conducting reviews of hospitals' compliance with IRC section 501(r)

TEMPORARY HOUSING AND TRAVEL

- IC – travel reimbursement excluded from 1099-Misc
- All benefits taxable unless exclusion applies
- 3 tests for lodging exclusion:
 - Furnished on business premises
 - Furnished for employer's convenience
 - Employee must accept lodging as a condition of employment. Employer requires employee to accept the lodging because they need to live on the business premises to properly perform duties.

More detail is available on Barb's blog post at:

<http://bit.ly/2bSskPT>



IRC SECTION 501(r)

Hospital will no longer be treated as a 501(c)(3) unless it meets 501(r)(3) through 501(r)(6) rules

2010

Enacted via
ACA in
March

2014

Final regs
effective
12/29/2014

2015

Fully comply
by start of first
tax year
beginning after
12/29/2015

IRC SECTION 501(r)

501(r)(3)
Community Health Needs
Assessment (CHNA)

501(r)(4)
Financial Assistance Policy (FAP)
and Emergency Medical Care
Policy

501(r)(5)
Limitations on Charges

501(r)(6)
Billings and Collections

CHNA & FAP: WIDELY AVAILABLE

- Posting written report on hospital's website (or system's) or on another's website if hospital's site has link & instructions
- A CHNA must continue to be made available to the public until date two subsequent CHNA reports are made widely available (both web and paper versions)
- Provide anyone requesting a copy of written report with direct website address or url to access document
- Make paper copy available for public inspection upon request without charge at hospital facility



CHNA: IMPLEMENTATION STRATEGY

Describe how hospital plans to address each significant health need identified in CHNA

- Actions and anticipated impact
- Resources hospital plans to commit
- Planned collaborations

Identify and explain any significant health need hospital does **NOT** intend to address

- Resource constraints
- Other organizations addressing need
- Lack of expertise or competency to be effective
- Low priority need
- Lack of identified effective interventions

Must adopt an IS by 15th day of fifth month after the end of taxable year in which it completes the related CHNA

FAP PLAIN LANGUAGE SUMMARY

Clear, concise, easy-to-understand written statement:

- Brief description of eligibility requirements and assistance offered
- Brief summary of how to apply for assistance under FAP
- URL & physical locations with FAP and FAP application
- Instructions on obtaining FAP and FAP application by mail
- Hospital office phone number & physical location for assistance with FAP application process and any nonprofit and/or government agencies that hospital identifies as available sources of assistance for FAP applications
- Any translations of the FAP, application and summary
- No FAP-eligible person will be charged more for emergency or medically necessary care than AGB

501(R) ASSISTANCE



QUESTIONS?

Teresa Cloutier, Esq.

207.622.6124

tcloutier@doylenelson.com

Barb McGuan, CPA

207.541.2319

bmcguan@berrydunn.com

