

Extension of Interim Guidance on Modification of Section 833 Treatment of Certain Health Organizations

Notice 2012-37

PURPOSE

This notice extends the interim guidance provided in Notice 2011-51, 2011-27 I.R.B. 36, and Notice 2010-79, 2010-49 I.R.B. 809, as clarified and modified by Notice 2011-4, 2011-2 I.R.B. 282, and Rev. Proc. 2011-14, 2011-4 I.R.B. 330, on the interpretation and application of § 833(c)(5) of the Internal Revenue Code (Code).

BACKGROUND

Section 9016 of the Patient Protection and Affordable Care Act, Pub. L. No. 111-148, 124 Stat. 119 (2010) (Affordable Care Act), added § 833(c)(5) to the Code, effective for taxable years beginning after December 31, 2009. Section 833(c)(5) provides that § 833 does not apply to an otherwise-eligible organization unless the organization's medical loss ratio (MLR) during the taxable year is not less than 85 percent. For purposes of section 833(c)(5), an organization's MLR is equal to the "percentage of total premium revenue expended on reimbursement for clinical services provided to enrollees under its policies during such taxable year (as reported under section 2718 of the Public Health Service Act)."

In December 2010, the Department of Health and Human Services (HHS) issued interim final regulations implementing § 2718 of the Public Health Service Act (PHSA),

75 Fed. Reg. 74864 (December 1, 2010). The Department of Treasury (Treasury) and the Internal Revenue Service (the Service) subsequently issued Notice 2010-79 providing interim guidance and transitional relief on (1) the computation of a taxpayer's MLR for purposes of § 833(c)(5), (2) the consequences of nonapplication of § 833 if § 833(c)(5) is not satisfied, and (3) changes in accounting method by reason of application or nonapplication of § 833. The interim guidance applied to the first taxable year beginning after December 31, 2009. In Notice 2011-51, Treasury and the Service extended the interim guidance and transitional relief to the first taxable year beginning after December 31, 2010.

In December 2011, HHS issued final regulations, codified at 45 C.F.R. pt. 158, implementing the reporting requirements under § 2718 of the PHSA, 76 Fed. Reg. 76574 (December 7, 2011). The final regulations became effective January 3, 2012, and the first reporting under § 2718 of the PHSA is due in June 2012.

EXTENSION OF INTERIM GUIDANCE

Section 833(c)(5) looks to information reported under § 2718 of the PHSA for purposes of determining whether a taxpayer's MLR is at least 85 percent. Now that HHS has issued final regulations under § 2718, Treasury and the Service expect to propose regulations under § 833(c)(5). However, Treasury and the Service believe that the development of those proposed regulations should reflect the experience of both HHS and the affected taxpayers with the implementation of the HHS § 2718 regulations, the first reporting under which occurs this year. Moreover, once Treasury and the Service have published proposed regulations, affected taxpayers will need time to determine the potential effect of the proposed regulations, to provide comments

thereon, and to consider whether any program adjustments may be necessary in advance of the effective date of final regulations. Accordingly, the interim guidance and transitional relief provided in Notices 2010-79 and 2011-51 are extended through the first taxable year beginning after December 31, 2012.

REQUEST FOR COMMENTS

Treasury and the Service invite comments on all aspects of § 833(c)(5), including how the proposed regulations they anticipate issuing under that provision might take account of the specific reporting required under § 2718 of the PHSA and coordinate the MLR computations under § 2718 of the PHSA and § 833(c)(5).

Comments should be submitted in writing on or before September 10, 2012. Comments should include a reference to Notice 2012-37. Send submissions to CC:PA:LPD:PR (Notice 2012-37), Room 5203, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20224. Submissions may be hand-delivered Monday through Friday between the hours of 8 a.m. and 4 p.m. to CC:PA:LPD:PR (Notice 2012-37), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, NW, Washington, DC 20004, or sent electronically, via the following e-mail address: *Notice.comments@irs counsel.treas.gov*. Please include "Notice 2012-37" in the subject line of any electronic communications. All comments submitted will be available for public inspection and copying.

EFFECT ON OTHER DOCUMENTS

Notice 2011-51 is modified and superseded.

CONTACT INFORMATION

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