

[4830-01-p]

DEPARTMENT OF THE TREASURY

26 CFR Part 53

[TD 9629]

RIN 1545-BL58

Requirement of a Section 4959 Excise Tax Return and Time for Filing the Return

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations that provide guidance to charitable hospital organizations regarding the requirement of a return to accompany payment of the excise tax, enacted as part of the Patient Protection and Affordable Care Act of 2010, for failure to meet the community health needs assessment (CHNA) requirements for any taxable year. The regulations affect charitable hospital organizations. This action is necessary to implement section 9007(b) of the Patient Protection and Affordable Care Act of 2010. The text of the temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on August 15, 2013.

Applicability Date: For dates of applicability, see §§53.6011-1T(g) and 53.6071-1T(i) of these regulations.

FOR FURTHER INFORMATION CONTACT: Amy F. Giuliano at (202) 622-6070 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### **Background**

The Patient Protection and Affordable Care Act, Public Law 111-148 (124 Stat. 119 (2010)), added sections 501(r) and 4959 to the Internal Revenue Code (Code). A hospital organization seeking to obtain or maintain tax-exempt status as a charitable organization described in section 501(c)(3) must comply with the requirements of section 501(r), including the requirement to conduct a CHNA under section 501(r)(3).

Section 501(r)(2)(A)(i) defines a hospital organization to which section 501(r) applies as including any organization that operates a facility that is required by a state to be licensed, registered, or similarly recognized as a hospital. Section 501(r)(2)(B)(i) requires a hospital organization that operates more than one hospital facility to meet the requirements of section 501(r) separately with respect to each hospital facility.

Section 501(r)(3) requires hospital organizations to conduct a CHNA at least once every three years and adopt an implementation strategy to meet the community health needs identified through the CHNA. The requirements of section 501(r)(3) are effective for taxable years beginning after March 23, 2012.

Section 4959 imposes a tax equal to \$50,000 if a hospital organization to which section 501(r) applies fails to meet the requirements of section 501(r)(3) for any taxable year. A hospital organization fails to meet the requirements of section 501(r)(3) for any taxable year if the hospital organization fails to conduct a CHNA and adopt an implementation strategy during the three-year period

ending on the last day of any taxable year of the hospital organization. For example, a hospital organization reporting on a calendar year basis that operates only one hospital facility and that fails to conduct a CHNA by the last day of 2013, and that also did not conduct a CHNA in 2011 or 2012, will be subject to the tax under section 4959 with respect to that facility for its 2013 taxable year. The same hospital organization that fails to conduct a CHNA in 2014 also will be subject to a tax under section 4959 with respect to that facility for its 2014 taxable year (for failure to meet the CHNA requirements during the three-year period ending on the last day of 2014). See Joint Committee on Taxation, Technical Explanation of the Revenue Provisions of the “Reconciliation Act of 2010” As Amended, in Combination With the “Patient Protection and Affordable Care Act” (JCX-18-10) (March 21, 2010), at 83 fn. 192 (and accompanying text).

Section 6011 generally requires any person liable for tax imposed by the Code to make a return or statement according to the forms and regulations prescribed by the Secretary of the Treasury. Section 6071 generally provides that return filing dates are prescribed by regulation. Section 6151 generally provides that a tax must be paid when the return reporting the tax is due, without regard to extensions of time to file the return. Treas. Reg. §§53.6011-1 and 53.6071-1 require persons subject to certain excise taxes under Chapters 41 and 42 of the Code to file a Form 4720, “Return of Certain Excise Taxes under Chapters 41 and 42 of the Internal Revenue Code,” to accompany payment of those excise taxes and provide the time for filing the return. Section 4959 was added to Chapter 42 of the Code.

On April 5, 2013, the Treasury Department and the IRS published a notice of proposed rulemaking in the **Federal Register** (REG-130266-11; 78 FR 20523) containing proposed regulations providing guidance to hospital organizations on the CHNA requirements of section 501(r)(3) and the related excise tax of section 4959. That notice of proposed rulemaking did not include amendments to the regulations under section 6011 and section 6071 regarding the return to accompany the payment of the excise tax under section 4959 and the time for filing such a return.

### **Explanation of Provisions**

Under §53.6011-1(c) of these temporary regulations, a charitable hospital organization that is liable for the section 4959 excise tax must file a return on Form 4720. Under §53.6071-1(h) of these temporary regulations, a hospital organization liable for the section 4959 excise tax must file a Form 4720 by the 15<sup>th</sup> day of the fifth month after the end of the organization's taxable year during which the liability under section 4959 was incurred. Thus, for example, a hospital organization reporting on a calendar year basis that failed to meet the requirements of section 501(r)(3) by December 31, 2013, would have to file a Form 4720 and pay the section 4959 tax due by May 15, 2014.

### **Special Analyses**

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866, as supplemented by Executive Order 13563. Therefore, a regulatory assessment is not required. It also has been determined that section 553(b) of the Administrative Procedure

Act (5 U.S.C. chapter 5) does not apply to these regulations. For the applicability of the Regulatory Flexibility Act (5 U.S.C. chapter 6), refer to the Special Analyses section of the preamble to the cross-reference notice of proposed rulemaking published in the Proposed Rules section in this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations were submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business, and no comments were received.

### **Drafting Information**

The principal author of these regulations is Amy F. Giuliano, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the IRS and Treasury Department participated in their development.

### **List of Subjects in 26 CFR Part 53**

Excise taxes, Foundations, Investments, Lobbying, Reporting and recordkeeping requirements.

### **Amendments to the Regulations**

Accordingly, 26 CFR part 53 is amended as follows:

#### **PART 53--FOUNDATION AND SIMILAR EXCISE TAXES**

Paragraph 1. The authority citation for part 53 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 2. Section 53.6011-1 is amended by:

1. Redesignating paragraphs (c) through (e) as (d) through (f).
2. Adding new paragraphs (c) and (g).

The addition reads as follows:

§53.6011-1 General requirement of return, statement or list.

\* \* \* \* \*

(c) [Reserved]. For further guidance, see §53.6011-1T(c).

\* \* \* \* \*

(g) [Reserved]. For further guidance, see §53.6011-1T(g).

Par. 3. Section 53.6011-1T is added to read as follows:

§53.6011-1T General requirement of return, statement or list (temporary).

(a) and (b) [Reserved]. For further guidance, see §53.6011-1(a) and (b).

(c) A hospital organization described in section 501(r)(2)(A) that is liable for tax imposed by section 4959 must file an annual return on Form 4720 and include the information required by the form and instructions. The annual return filed by a hospital organization must include the required information for each of the organization's hospital facilities that failed to meet the requirements of section 501(r)(3) for the taxable year.

(d) through (f) [Reserved]. For further guidance, see §53.6011-1(d) through (f).

(g) Paragraph (c) of this section applies on and after August 15, 2013.

The applicability of paragraph (c) of this section expires on or before August 12, 2016.

Par. 4. Section 53.6071-1 is amended by:

1. Revising paragraph (h).
2. Adding paragraph (i).

The revision and addition read as follows:

§53.6071-1 Time for filing returns.

\* \* \* \* \*

- (h) [Reserved]. For further guidance, see §53.6071-1T(h).
- (i) Effective/applicability date--(1) Paragraph (g) of this section applies on and after July 6, 2007.
- (2) [Reserved]. For further guidance, see §53.6071-1T(i)(2).

Par. 5. Section 53.6071-1T is revised to read as follows:

§53.6071-1T Time for filing returns (temporary).

- (a) through (g) [Reserved]. For further guidance, see §53.6071-1(a) through (g).
- (h) Taxes on failures by charitable hospital organizations to satisfy the community health needs assessment requirements of section 501(r)(3). A hospital organization liable for tax imposed by section 4959 must file a Form 4720, "Return of Certain Excise Taxes Under Chapters 41 and 42 of the Internal Revenue Code," as required by §53.6011-1(c), on or before the 15th day of the fifth month after the end of the hospital organization's taxable year.

- (i) Effective/applicability date--(1) [Reserved]. For further guidance, see §53.6071-1(i)(1).
- (2) Paragraph (h) of this section applies on and after August 15, 2013.

(3) The applicability of paragraph (h) of this section expires on or before August 12, 2016.

Heather C. Maloy

Acting Deputy Commissioner for Services and Enforcement.

Approved: August 9, 2013

Mark J. Mazur

Assistant Secretary of the Treasury (Tax Policy).