

G. TAS Prepares for Implementation of Health Care Provisions

For the past few years, TAS has maintained a close eye on all IRS activities concerning the Affordable Care Act (ACA).¹ As we approach 2014, TAS is preparing for the IRS's full implementation of the ACA, specifically the Premium Assistance Tax Credit,² the individual shared responsibility requirement,³ and the employer shared responsibility requirement.⁴ One area of serious concern that TAS will be focusing on is the lack of deficiency procedures for the shared responsibility payment. The shared responsibility penalty is assessed and collected in the same manner as an assessable penalty under subchapter B of chapter 68 of the Internal Revenue Code.⁵ This means the payment is not subject to the deficiency procedures of subchapter B of chapter 63 of the Code. Without deficiency procedures, the taxpayer does not have the ability to petition the Tax Court for a redetermination of the penalty. TAS is concerned about this lack of access to Tax Court for taxpayers and will be pursuing a legislative change to this issue in FY 2014.

Previously, TAS's actions relative to the ACA have involved working with the IRS on implementation efforts and educating TAS employees and others about the coming changes to the tax laws. In FY 2013, TAS's efforts have increased, with the focus on ensuring that TAS employees can assist taxpayers when problems arise and educating taxpayers on where to seek help with problems or questions.

Case Advocacy Efforts

To be ready for implementation of the main tax provisions of the ACA, TAS has developed issue codes that will allow us to track health care cases, advocate for taxpayers, and identify trends or systemic issues. The new issue codes will help the National Taxpayer Advocate to identify the most serious taxpayer problems related to the new provisions. In FY 2014, TAS will assess the skills of its employees in using the new codes to determine if additional training is necessary.

Systemic Advocacy Efforts

As the IRS implements the ACA provisions, TAS's Office of Systemic Advocacy monitors any emerging systemic issues. In FY 2014, Systemic Advocacy will continue its efforts to identify such issues before they impact taxpayers and work with the IRS to resolve them. Systemic Advocacy will also work with TAS's Local Taxpayer Advocates and track issues submitted on the Systemic Advocacy Management System (SAMS) to identify systemic

1 See Patient Protection and Affordable Care Act of 2009, Pub. L. No. 111-148, 124 Stat. 119 (Mar. 23, 2010), as amended by the Health Care and Education Reconciliation Act of 2010, Pub. L. No. 111-152, 124 Stat. 1029 (Mar. 30, 2010).

2 IRC § 36B.

3 IRC § 5000A.

4 IRC § 4980H.

5 IRC § 5000A(g)(1).

problems.⁶ TAS anticipates that it will begin to see these issues as taxpayers begin enrolling in health care plans and signing up for the Premium Assistance Tax Credit. Systemic Advocacy will ensure those issues are identified and elevated for resolution.

Health Care Training for TAS Employees

In FY 2014, TAS will train all its employees on the ACA provisions and prepare them to help taxpayers. This will include immediate training on what employees need to know in advance of open enrollment in health insurance exchanges. TAS's long-term training plan, which will begin in FY 2014, will include in-depth instruction on the Premium Assistance Tax Credit, Individual Responsibility Requirement, and Employer Responsibility Requirement. All TAS employees will receive this training, with additional studies for technical advisors who will serve as health care experts for complicated cases. At the end of FY 2014 and going into FY 2015, TAS will conduct another round of training to prepare case advocates to handle cases they may receive when taxpayers begin filing their tax year 2014 returns.

TAS will also train Low Income Taxpayer Clinic (LITC) staff at the LITC annual conference in FY 2014 to help ensure that those tax professionals are educated about the tax provisions of the ACA that are relevant to the low income taxpayers they assist.⁷ We will also look for opportunities to provide virtual training for the clinics to prepare them for cases stemming from the ACA.

Affordable Care Act training for TAS employees

FY 2014

- Immediate training on issues in advance of open enrollment in the health insurance exchanges
- Training for Low Income Taxpayer Clinic (LITC) staff at their annual conference in FY 2014 and eventually, virtual training on ACA
- Future in-depth instruction on the Premium Assistance Tax Credit, Individual Responsibility Requirement, and Employer Responsibility Requirement
- Additional studies for technical advisors who will serve as health care experts for complicated cases

Into FY 2015

- Training to prepare case advocates to handle cases that may come in once individuals begin filing their 2014 tax year returns

⁶ For a list of advocacy portfolios, see Appendix VIII, *infra*. Individuals can submit a potential systemic issue to SAMS at www.irs.gov/sams. SAMS allows TAS to record and manage advocacy activities that benefit groups of taxpayers.

⁷ See *Integrated Low Income Taxpayer Clinic Technology: Grant Solutions, infra*.

Communications and Outreach Efforts

TAS has also taken steps to provide assistance and education to taxpayers regarding the ACA. TAS developed an estimator for the Small Business Health Care Tax Credit,⁸ which allows small businesses to estimate their credits and find out how changes in circumstances will impact their eligibility.⁹

TAS continued its outreach efforts by participating in the Families USA Conference in February, where a TAS representative spoke with the health care community about the tax implications of the ACA and how to counsel clients who may be struggling with tax issues.¹⁰ TAS will expand its outreach in FY 2014 by requiring all LTAs to conduct grassroots outreach to health care groups in their communities. A focus of TAS's outreach efforts will be to educate taxpayers who are receiving premium tax credits (in the form of premium subsidies) about the critical need to update their information with the exchanges throughout the year, either to increase their credit amount or avoid a tax liability if changes result in eligibility for a smaller credit. TAS believes this is a critical message for taxpayers that should be provided on a continual basis.

Additionally, because many such organizations do not regularly deal with tax issues, it is critical for TAS to educate them about where to go if they have questions or concerns. The unique intersection of taxes and health care in the ACA also makes it important to talk with health care and social services groups about the tax implications of certain health care decisions so they provide their clients with the most comprehensive and accurate information. TAS is developing outreach materials on a number of health care issues that LTAs and others can use. TAS is also developing outreach videos for the TAS toolkit (at www.TaxpayerAdvocate.irs.gov) to educate taxpayers on the ACA provisions and what they need to know prior to 2014.

Ongoing Efforts with the IRS

TAS continues to participate in regular briefings with senior IRS officials and the ACA office, and holds bi-weekly internal meetings. Additionally, TAS is reviewing all draft guidance to identify potential issues prior to implementation. As the IRS moves to implement the major tax provisions of the

The Taxpayer Advocate Service is Your Voice at the IRS...

and that means keeping a close eye on the Affordable Care Act



TAS is reviewing all draft guidance to identify issues before implementation.

As the IRS moves forward, TAS will continue to solicit comments and observations from taxpayers and elevate issues that may arise.



8 See IRC § 45R.

9 The estimator is available at <http://www.taxpayeradvocate.irs.gov/Businesses/Small-Business-Health-Care-Tax-Credit-Estimator>. For more detailed information regarding the Small Business Health Care Tax Credit, including eligibility rules and IRS guidance, see <http://www.irs.gov/uac/Small-Business-Health-Care-Tax-Credit-for-Small-Employers> (last visited Mar. 26, 2013).

10 Families USA works to promote high-quality, affordable health care for all Americans and hosts an annual conference to discuss various health care issues. For more information about Families USA and their annual conference, see <http://www.familiesusa.org/> (last visited Apr. 2, 2013).

ACA, TAS will continue to solicit comments and observations from taxpayers, TAS and IRS employees, and stakeholders on potential systemic issues that may need to be raised in the Annual Report to Congress.

H. The IRS has Revoked the Exempt Status of Thousands of Organizations in Error, Causing Significant Harm to Taxpayers

The National Taxpayer Advocate remains concerned about how the IRS, through the Tax Exempt and Government Entities division (TE/GE), implements provisions of the Pension Protection Act of 2006 (PPA).¹ The PPA mandates automatic revocation of the tax-exempt status of organizations that fail to file required returns or e-Postcards for three consecutive years. However, TE/GE has revoked the exempt status of thousands of organizations in error,² and in April of 2013 it notified TAS that recent changes to its software have caused hundreds more such revocations.

One programming change caused IRS computers to calculate the three-year nonfiling period with reference to the date the organization obtained its Employer Identification Number (EIN),³ rather than the effective date of its exempt status. For example, the IRS would treat an organization that obtained its EIN in 2007 as having had reporting obligations since 2007, even if the organization was not active or operational until it obtained recognition of its exempt status in 2011. Systemic review of filing activity would show three or more consecutive years of nonfiling (2007-2010) and the IRS would notify the organization it was no longer exempt in the very year it was granted exempt status. The IRS cannot identify organizations that have been or will be affected by this programming condition and therefore cannot avoid the erroneous notifications. Instead, it relies on affected organizations to come forward and seek relief. Only then does the IRS restore the organization to exempt status on its databases and issue a letter reflecting this action.

A separate programming change affected reinstated organizations, as IRS databases did not reflect the new status of some organizations as reinstated, with a new three-year automatic revocation period. This caused the IRS to revoke exempt status a second time, shortly after granting reinstatement. The IRS resolved the problem for many of these organizations, but may have overlooked some, which may now seek assistance from TAS.

TAS alerted its employees to the TE/GE programming errors and described how to advocate for affected taxpayers.⁴ In FY 2014, TAS will work with TE/GE to resolve the problems the programming changes have caused for taxpayers.

1 The Pension Protection Act of 2006, Pub. L. No. 109-280 § 1223, 120 Stat. 780, 1090 (Aug. 17, 2006).

2 See, e.g., National Taxpayer Advocate 2012 Annual Report to Congress 192 (Status Update: *Overextended IRS Resources and IRS Errors in the Automatic Revocation and Reinstatement Process are Burdening Tax-Exempt Organizations*); National Taxpayer Advocate 2011 Annual Report to Congress 437 (Status Update: *The IRS Makes Reinstatement of an Organization's Exempt Status Following Revocation Unnecessarily Burdensome*).

3 An EIN is a nine-digit number assigned by the IRS to sole proprietors, corporations, partnerships, estates, trusts, and other entities for tax filing and reporting purposes. See Form S-4, *Application for Employer Identification Number*.

4 TAS added new questions 16 and 17 to the Question and Answer document linked on its internal employee website, available at <http://tas.web.irs.gov/cat/issuecodes/ici/6980.aspx>.