

Part III - Administrative, Procedural, and Miscellaneous

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

Notice 2011-51

PURPOSE

This notice extends the interim guidance provided in Notice 2010-79, I.R.B. 2010-49, 809, as clarified and modified by Notice 2011-4, I.R.B. 2011-2, 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 Protections 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 this purpose, an organization's MLR is equal to the fraction of the organization's total premium revenue that is expended on reimbursement for clinical services provided to enrollees under its policies during the taxable year (as reported under § 2718 of the Public Health Service Act).

In 2010, the Department of Health and Human Services issued interim final regulations implementing § 2718 of the Public Health Service Act, 75 Fed. Reg. 74864 (December 1, 2010) (to be codified at 45 C.F.R. pt. 158).

Also in 2010, Treasury and the IRS issued Notice 2010-79, I.R.B 2010-49, 809, providing transitional relief and interim guidance on the computation of a taxpayer's MLR for purposes of § 833(c)(5), the consequences of nonapplication of § 833 by reason of § 833(c)(5), and changes in accounting method. The relief applied to the first taxable year beginning after December 31, 2009.

EXTENSION OF INTERIM GUIDANCE

To provide affected taxpayers with sufficient time to adapt to the reporting requirements under § 2718 of the Public Health Service Act that bear on data used to compute the MLR under § 833(c)(5) and to make any administrative or other adjustments that may be necessary in light of the possible nonapplication of § 833 to such taxpayers, the interim guidance provided in Notice 2010-79 is extended to any taxable year beginning in 2010 and the first taxable year beginning after December 31, 2010.

CONTACT INFORMATION

The principal author of this notice is Rebecca L. Baxter of the Office of Associate Chief Counsel (Financial Institutions & Products). For further information regarding this notice contact Rebecca L. Baxter at (202) 622-7117 (not a toll-free call).