



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 57

[TD 9830]

RIN 1545-BM52

Health Insurance Providers Fee

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final regulations and removal of temporary regulations.

SUMMARY: This document contains final regulations that provide rules for the definition of a covered entity for purposes of the fee imposed by section 9010 of the Patient Protection and Affordable Care Act, as amended. The final regulations supersede and adopt the text of temporary regulations that provide rules for the definition of a covered entity. The final regulations affect persons engaged in the business of providing health insurance for United States health risks.

DATES: Effective Date: The final regulations are effective **[INSERT DATE OF FILING FOR PUBLIC INSPECTION BY THE FEDERAL REGISTER]**.

FOR FURTHER INFORMATION CONTACT: Rachel S. Smith at (202) 317-6855 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

Section 9010 of the Patient Protection and Affordable Care Act (PPACA), Public Law No. 111-148 (124 Stat. 119 (2010)), as amended by section 10905 of PPACA, and

as further amended by section 1406 of the Health Care and Education Reconciliation Act of 2010, Public Law 111-152 (124 Stat. 1029 (2010)) (collectively, the Affordable Care Act or ACA) imposes an annual fee on covered entities that provide health insurance for United States health risks. All references in this preamble to section 9010 are references to section 9010 of the ACA. Section 9010 did not amend the Internal Revenue Code (Code) but contains cross-references to specified Code sections. Unless otherwise indicated, all other references to subtitles, chapters, subchapters, and sections in this preamble are references to subtitles, chapters, subchapters, and sections in the Code and related regulations. All references to “fee” in this preamble are references to the fee imposed by section 9010.

On November 27, 2013, the Department of the Treasury (Treasury Department) and the IRS published final regulations (TD 9643) relating to the health insurance providers fee in the **Federal Register** (78 FR 71476). On February 26, 2015, the Treasury Department and the IRS published temporary regulations (TD 9711) relating to the health insurance providers fee in the **Federal Register** (80 FR 10333). A notice of proposed rulemaking (REG-143416-14) cross-referencing the temporary regulations was published in the **Federal Register** in the same issue (80 FR 10435). The temporary regulations provided further guidance on the definition of a covered entity for the 2015 fee year and subsequent fee years.

The Treasury Department and the IRS received two written comments with respect to the notice of proposed rulemaking. No public hearing was requested or held. After considering the public written comments, the final regulations adopt the proposed regulations without change and the temporary regulations are removed.

Explanation of Provisions

The temporary regulations provided that, for the 2015 fee year and each subsequent fee year, an entity qualified for an exclusion under section 9010(c)(2) if it qualified for an exclusion either for the entire data year ending on the prior December 31st or for the entire fee year beginning on January 1st. The temporary regulations also generally imposed a consistency requirement that bound an entity to its original selection of either the data year or the fee year (its test year) to determine whether it qualified for an exclusion under section 9010(c)(2) for the 2015 fee year and each subsequent fee year. Next, the temporary regulations imposed a special rule for any entity that uses the fee year as its test year. Finally, the temporary regulations provided that a controlled group must report net premiums written only for each person who is a controlled group member at the end of the day on December 31st of the data year and that would qualify as a covered entity in the fee year if it were a single-person covered entity (that is, not a member of a controlled group).

The Treasury Department and the IRS received two written comments in response to the proposed and temporary regulations. Both commenters agreed with the approach described in the proposed and temporary regulations. One commenter suggested that the final rules add three additional requirements. First, the commenter suggested that entities seeking to claim the non-profit exemption described in section 9010(c)(2)(C) and §57.2(b)(2)(iii) of the Health Insurance Providers Fee Regulations be required to file a Form 8963, "Report of Health Insurance Provider Information," or similar report indicating its exempt status for either the data year or the fee year. Second, the commenter suggested that such entities claiming exempt status

for the fee year should also file a year-end statement certifying that they maintained their exempt status through the end of the fee year. The Treasury Department and the IRS received similar comments prior to issuing the final regulations. The preamble to TD 9643 (78 FR 71476) explains that the Treasury Department and the IRS declined to adopt commenters' suggestions to require an entity qualifying for an exclusion to report its net premiums written because section 9010(g)(1) applies only to covered entities. Furthermore, imposing additional filing requirements for only certain entities is contrary to Executive Order 13789, which directs the Treasury Department to reduce tax regulatory burdens. Imposing additional filing requirements for only certain entities is also contrary to Executive Order 13765, which directs the executive branch to minimize the regulatory burden of the ACA specifically. Therefore, we decline to adopt the commenter's suggestions.

Third, the commenter suggested that any entities that fail to remain exempted for the full duration of the fee year should be subject to a fee assessment at the end of the year. The final regulations do not adopt this suggestion. Section 57.6(c) of the Health Insurance Providers Fee Regulations provides that the IRS will not alter fee calculations on the basis of information provided after the end of the error correction period. Section 9010(g)(2) and §57.3(b)(1) of the Health Insurance Providers Fee Regulations impose a penalty on covered entities that fail to timely submit Form 8963 without reasonable cause. It is possible that if an entity fails to remain exempted for the full duration of the fee year, such entity will be subject to a penalty provided for by the existing statutory and regulatory framework. An additional fee assessment for such entities is not necessary.

Special Analyses

Certain IRS regulations, including these, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory impact assessment is not required. Because the final regulations do not impose a collection of information on small entities, the Regulatory Flexibility Act (5 U.S.C. chapter 6) does not apply. Pursuant to section 7805(f) of the Code, the temporary regulations that preceded the final regulations was submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Drafting Information

The principal author of these final regulations is Rachel S. Smith, Office of the Associate Chief Counsel (Passthroughs and Special Industries). However, other personnel from the Treasury Department and the IRS participated in their development.

List of Subjects in 26 CFR Part 57

Health insurance, Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR part 57 is amended as follows:

PART 57 – HEALTH INSURANCE PROVIDERS FEE

Paragraph 1. The authority citation for part 57 continues to read in part as follows:

Authority: 26 U.S.C. 7805; sec. 9010, P. L. 111–148 (124 Stat. 119 (2010)). * * *

Par. 2. Section 57.2 is amended by revising paragraphs (b)(3) and (c)(3)(ii) as follows:

§57.2 Explanation of terms.

* * * * *

(b) * * *

(3) Application of exclusions--(i) Test year. An entity qualifies for an exclusion described in paragraphs (b)(2)(i) through (iv) of this section if it so qualifies in its test year. The term test year means either the entire data year or the entire fee year.

(ii) Consistency rule. For purposes of paragraph (b)(3)(i) of this section, an entity must use the same test year as it used in its first fee year beginning after December 31, 2014, and in each subsequent fee year. Thus, for example, if an entity used the 2014 data year as its test year for the 2015 fee year, that entity must use the data year as its test year for each subsequent fee year.

(iii) Special rule for fee year as test year. For purposes of paragraph (b)(3) of this section, any entity that uses the fee year as its test year but ultimately does not qualify for an exclusion described in paragraphs (b)(2)(i) through (iv) of this section for that entire fee year must use the data year as its test year for each subsequent fee year.

* * *

(c) * * *

(3) * * *

(ii) A person is treated as being a member of the controlled group if it is a member of the group at the end of the day on December 31st of the data year. However, a person's net premiums written are included in net premiums written for the controlled group only if the person would qualify as a covered entity in the fee year if the person were not a member of the controlled group.

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§57.2T [Removed]

Par. 3. Section 57.2T is removed.

Par. 4. Section 57.10 is amended by revising paragraph (b) to read as follows:

§57.10 Effective/applicability date.

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(b) Paragraphs (b)(3) and (c)(3)(ii) of §57.2. Paragraphs (b)(3) and (c)(3)(ii) of §57.2 apply on **[INSERT DATE OF FILING FOR PUBLIC INSPECTION BY THE FEDERAL REGISTER]**.

§57.10T [Removed]

Par. 5. Section 57.10T is removed.

Kirsten Wielobob,

Deputy Commissioner for Services and Enforcement.

Approved: February 15, 2018.

David J. Kautter,

Assistant Secretary of the Treasury (Tax Policy).

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