

Recent IRS Internal Directive Is a Reminder of Tax Reporting Obligations for Payments by Health Care Providers to Independent Contractors

Providers Must Adopt, Implement, and Comply
with Internal Policies and Procedures to Assure
Compliance



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A recently issued Chief Counsel Advice (CCA) serves as a reminder to health care providers of the tax reporting requirements for payments to independent contractors. Any taxpayer (whether tax-exempt or "for profit") that makes payments of \$600.00 or more in the course of its business must report these payments to the Internal Revenue Service (IRS) and also must issue a tax reporting statement (Form 1099) to the recipient of these payments. However, these reporting requirements (imposed by Section 6041 of the Internal Revenue Code) do not apply to payments to corporations. Thus, payments to individuals and to entity payees that are taxed as partnerships (such as limited liability companies) are subject to these reporting requirements.

In Chief Counsel Advice 201447025 (issued November 21, 2014), the IRS concluded that payments made to a limited liability company (LLC) are subject to the tax reporting requirement unless the payor has information to the effect that the LLC has elected to be taxed as a corporation by filing Form 8832 (Entity Classification Election) in a timely manner with the IRS. See Reg. § 301.7701-3(c). (Under the Internal Revenue Code (IRC), LLCs can elect to be taxed as corporations by filing this form.)

Although this CCA applies to payments to LLCs of all types, it serves as a reminder to health care providers to adopt, implement, and comply with internal policies and procedures to assure compliance with the tax reporting

requirements for payments. These procedures should include the following items:

1. transmit Form W-9s to each person (business, firm, or individual) who receives payments;
2. do not remit payments (other than payments to employees) from which/whom a Form W-9 (Request for Employer Identification Number) has been requested until the W-9 has been completed, signed by a duly authorized representative of the payee, and returned to the health care provider; and
3. for any payee that uses the term "LLC," "PLLC," "LLP," or "PLLP" in its business name, confirm with the payee that the entity has not elected to be taxed as a corporation as is permitted by the IRC.

The CCA does not provide additional guidance as to what specific information a

taxpayer should obtain under Item no. 3 of these proposed guidelines; it only suggests that the payor obtain documentation that the election to be taxed as a corporation has been made by the LLC or limited partnership. The best type of information to be obtained by the payor to meet this requirement would be a copy of the Form 8832 (Entity Classification Election) as filed by the LLC or limited partnership with the IRS.

For additional discussion as to the impact of failure of a medical practice to comply with the tax reporting requirements for payments to independent contractors, see the prior article by this author that appeared in the January/February 2015 issue of this publication entitled "Medical Practice Penalized for Unreported Payments to Providers." This article included a discussion about the implications of a "spillover" audit to a recipient of payments from a medical practice.



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