



Holme Roberts
& Owen LLP

Attorneys at Law

HRO CONTACTS

Denver - 303.861.7000

Stephen P. Nash
steve.nash@hro.com

John R. Valentine
john.valentine@hro.com

Arlen L. Brammer
arlen.brammer@hro.com

Richard L. Gabriel
richard.gabriel@hro.com

Dominic A. Lloyd
dominic.lloyd@hro.com

David B. Wilson
david.wilson@hro.com

Matthew J. Rita
matt.rita@hro.com

Elizabeth A. Meier
elizabeth.meier@hro.com

Samantha Sturgis
samantha.sturgis@hro.com

Colorado Springs - 719.473.3800

Susan D. Campbell
susan.campbell@hro.com

Steve L. Gaines
steve.gaines@hro.com

Stuart J. Lark
stuart.lark@hro.com

John R. Wylie
john.wylie@hro.com

Salt Lake City - 801.521.5800

Blaine J. Benard
blaine.benard@hro.com

Carolyn Cox
carolyn.cox@hro.com

San Francisco - 415.268.2000

Kenneth R. Whiting, Jr.
ken.whiting@hro.com

July 7, 2006

IRS SENDS COMPLIANCE CHECKLIST TO TAX-EXEMPT HOSPITALS

This summer will be a busy one for the IRS, which recently sent out a 72-question compliance checklist to 550 tax-exempt hospitals. The purpose of the checklist is to help the IRS determine how much “community benefit” tax-exempt hospitals provide in return for their exemption from federal income taxation.

“Community benefit” is the legal standard that hospitals must demonstrate to obtain (and retain) their tax exemption. “Community benefit” includes, but is much broader than, just charity care. “Community benefit” includes all of the benefits that a tax-exempt hospital provides to the community where it is located. The compliance checklist reflects this broad concept of “community benefit” by asking questions concerning a wide range of issues, including whether, within the most recently completed tax period, the tax-exempt hospital:

- denied care to any patients, including those covered by private insurance, Medicare, Medicaid, other public health insurance, or the uninsured;
- operated an emergency room open to all patients without regard to their ability to pay;
- had a board of directors that was broadly representative of the members of the community;
- provided medical staff privileges to all qualified physicians in the community;
- conducted medical research programs;
- conducted professional medical education and training;
- provided uncompensated care; or
- conducted any other community programs, such as medical screenings or immunization programs.

Of note are the detailed questions about how the hospital calculates the amount of uncompensated care it provides to the community. The compliance checklist inquires whether the hospital treats as “uncompensated care” the excess of what the hospital charges for services over the amount paid by private insurance, Medicare, Medicaid, other public insurance, or by individuals without insurance. The compliance checklist also inquires concerning whether the hospital treats bad debts as uncompensated care. Please refer to chart entitled “Calculating Community Benefits” for a sample work sheet.


Also of note, the compliance checklist includes a number of questions regarding the hospital’s compensation practices. While these questions do pertain to the issue of “community benefit,” they are primarily intended to ferret out violations of the intermediate sanctions rules. The intermediate sanctions rules provide that if an insider of a tax-exempt organization receives more than a reasonable amount of compensation, the insider will be liable for an excise tax. The compliance checklist asks about both the amount of compensation paid to such individuals as well as the process used by the tax-exempt hospital to set the compensation. Recent conversations with the IRS project team lead, Jack Reilly, suggest that the IRS is asking for total compensation paid, in the aggregate, by the hospital and its affiliates (e.g., a related foundation, parent corporation, or sister corporation), to each officer, director, trustee, or other key employee.

IRS Compliance Checklist for Tax-Exempt Hospitals

Finally, Mr. Reilly encourages responding hospitals to use this questionnaire to tell their story of why they should be entitled to be a Section 501(c)(3) charitable organization, apart from the provision of charity care. Pressed for examples, Mr. Reilly cited community outreach programs intended to broaden access to care.

A compliance check is not an audit or an examination. It is a tool used by the IRS to gather information. Tax-exempt hospitals that receive a compliance checklist are not required to complete it. However, failure to do so may raise suspicion at the IRS and prompt a full examination. The compliance checklist is intended to help educate the tax-exempt community on the issues covered in the checklist and to increase voluntary compliance. Of course, the IRS can, and undoubtedly will, conduct full examinations in situations where the responses to the compliance checklist suggest violations. Consequently, great care should be taken in completing the checklist. We would be glad to assist your organization in responding to this or other inquiries from the IRS. If you have further questions, please call Steve Nash at 303.866.0659, John Valentine at 303.866.0627, or any of the other individuals listed on page one of this HRO Healthcare Law Alert.

To read the IRS compliance checklist, see:
http://www.irs.gov/pub/irs-tege/eo_hospital_questionnaire_sample.pdf




Calculating Community Benefit

	<u>Total Tax Benefits</u>		<u>Total Community Benefit</u>
Future Income Tax	\$ _____	Charity Care	\$ _____
FUTA	\$ _____	Public Program Shortfall	\$ _____
Interest Savings – TE Bonds	\$ _____	Subsidized Health Services (e.g. ER)	\$ _____
State Income Tax	\$ _____	Research & Education	\$ _____
Sales & Use Tax	\$ _____	Other Community Benefit	\$ _____
Property Tax	\$ _____		
State Unemployment Tax	\$ _____		
Total Tax Savings	\$ _____	Total Community Benefit	\$ _____

▼

**Best Practices
for
Nonprofit
Governance
in the
Sarbanes-Oxley
Era**



**Holme Roberts
& Owen LLP**

This article is a periodic publication of Holme Roberts & Owen LLP and should not be construed as legal advice or legal opinion on any specific facts or circumstances, nor is it intended to address specific disclosure or compliance issues that may arise in particular circumstances or provide an exhaustive discussion of the topics discussed herein. The contents are intended for general informational purposes only, and you are urged to consult counsel concerning your own situation and any specific legal questions you may have. For further information regarding the topics described herein, please contact any of the persons listed on the left side of page one by telephone at (303) 861-7000 or by email at the addresses listed.

1700 Lincoln Street, Suite 4100 · Denver, Colorado 80203-4541
 tel/ 303-861-7000 · fax 303-866-0200 · www.hro.com