



American Institute of CPAs  
1455 Pennsylvania Avenue, NW  
Washington, DC 20004-1081

May 23, 2016

The Honorable John A. Koskinen  
Commissioner  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable William J. Wilkins  
Chief Counsel  
Internal Revenue Service  
1111 Constitution Avenue, NW  
Washington, DC 20224

The Honorable Mark Mazur  
Assistant Secretary for Tax Policy  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington, DC 20220

Re: Request for Flexibility Regarding the Definition of “Hospital” Under Section 501(r)(2)

Dear Messrs. Koskinen, Wilkins, and Mazur:

The American Institute of CPAs (AICPA) strongly supports the efforts by the Internal Revenue Service (IRS) and the U. S. Department of the Treasury (“Treasury”) to issue clear regulations and guidance for taxpayers and practitioners. To further these efforts, we request additional guidance that will allow flexibility regarding the definition of the term “hospital” under Internal Revenue Code (IRC or “Code”) section 501(r)(2).<sup>1</sup> Specifically, the AICPA recommends that the Treasury and the IRS issue guidance that will exclude certain organizations, which do not function as or operate what is commonly considered a hospital, from the requirements of section 501(r).

The AICPA is the world’s largest member association representing the accounting profession, with more than 412,000 members in 144 countries, and a history of serving the public interest since 1887. Our members advise clients on federal, state and international tax matters and prepare income and other tax returns for millions of Americans. Our members provide services to individuals, not-for-profit organizations, small and medium-sized businesses, as well as America’s largest businesses.

The comments and recommendations included in this letter were developed by the AICPA Exempt Organizations Taxation Technical Resource Panel and approved by the AICPA Tax Executive Committee.

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<sup>1</sup> All references herein to “section” or “§” are to the Internal Revenue Code of 1986, as amended, or the Treasury regulations promulgated thereunder.

The Honorable John A. Koskinen  
The Honorable William J. Wilkins  
The Honorable Mark Mazur  
May 23, 2016  
Page 2 of 3

### **AICPA Proposal**

The AICPA recommends that the IRS and Treasury issue guidance that allows for flexibility in the application of section 501(r)(2)(A)(i). The current language in the Code states that section 501(r) is applicable to organizations that operate a facility “which is required by a State to be licensed, registered, or similarly recognized as a hospital”<sup>2</sup> and “any other organization which the Secretary determines has the provision of hospital care as its principal function.”<sup>3</sup> In practice, there are situations where an organization is licensed under state law as a hospital, or an organization may maintain licensed hospital beds, but does not actually function as or operate what is commonly thought of as a hospital. Therefore, we do not believe the requirements of section 501(r) should apply to these types of organizations.

Rather than specifically defining the term “hospital,” section 501(r) is, by Statute, applicable to facilities “required by a state to be licensed, registered or otherwise recognized as a hospital.”<sup>4</sup> However, since each state regulates hospitals in a different manner, there is inconsistency in the application of the language of the Code. A state may require organizations such as research institutes, nursing homes, and skilled nursing facilities to be licensed, registered or otherwise recognized as a hospital. For example, in at least one state, acute care organizations and nursing facilities are licensed as hospitals. Also, in at least one state, school clinics are licensed as hospitals. These organizations are not what is commonly considered a hospital.

Compliance with section 501(r) is arguably burdensome for most organizations to which it applies. Therefore, those organizations that are not traditional hospitals should receive an exemption from the requirement to comply with a law that was not intended to apply to them.

For reference, the current section 501(r)(2) language is as follows:

#### **Section 501(r)(2) - Hospital organizations to which subsection applies.**

(A) In general. This subsection shall apply to—

- (i) an organization which operates a facility which is required by a State to be licensed, registered, or similarly recognized as a hospital, and

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<sup>2</sup> See IRC section 501(r)(2)(A)(i)

<sup>3</sup> See IRC section 501(r)(2)(A)(ii)

<sup>4</sup> See IRC section 501(r)(2)(A)(i)

The Honorable John A. Koskinen  
The Honorable William J. Wilkins  
The Honorable Mark Mazur  
May 23, 2016  
Page 3 of 3

(ii) any other organization which the Secretary determines has the provision of hospital care as its principal function or purpose constituting the basis for its exemption under subsection (c)(3) (determined without regard to this subsection).

### **Conclusion**

The AICPA respectfully requests guidance that will allow for a facts and circumstances test to determine whether an organization is a true hospital. This test should place the burden on the organization to substantiate that, despite state licensing requirements, a hospital is not the organization's principal function. If these facts and circumstances are established, then section 501(r) should not apply to the organization.

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We appreciate your consideration of these recommendations and welcome the opportunity to discuss these items further. If you have any questions, please feel free to contact me at (801) 523-1051, or [tlewis@sisna.com](mailto:tlewis@sisna.com); or you may contact Elizabeth E. Krisher, Chair, AICPA Exempt Organizations Taxation Technical Resource Panel, at (412) 535 5503, or [bkrisher@md-cpas.com](mailto:bkrisher@md-cpas.com); or Ogochukwu Anokwute, Lead Technical Manager - AICPA Tax Policy & Advocacy, at (202) 434-9231, or [oanokwute@aicpa.org](mailto: oanokwute@aicpa.org).

Sincerely,



Troy K. Lewis, CPA, CGMA  
Chair, AICPA Tax Executive Committee

cc: Ms. Sunita Lough, Commissioner, Tax Exempt & Government Entities, Internal Revenue Service  
Ms. Tamera Ripperda, Director, Exempt Organizations, Tax Exempt and Government Entities, Internal Revenue Service  
Mr. Tom West, Tax Legislative Counsel, Office of Tax Policy, Department of the Treasury  
Ms. Elinor Ramey, Attorney Advisor, Office of Tax Policy, Department of the Treasury