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MEMORANDUM

January 12, 2015

TO: Tribal Health Clients

FROM: Hobbs, Straus, Dean & Walker, LLP

Re: *IRS Releases Final Form for Claiming Exemptions from the ACA's Personal Responsibility Payment*

The Internal Revenue Service (IRS) recently released the final Form 8965 and its instructions. Form 8965 allows American Indians and Alaska Natives (AI/ANs) to claim an exemption from the Affordable Care Act's (ACA) shared responsibility payment. The shared responsibility payment is the ACA's requirement that individuals pay a tax penalty if they fail to obtain health coverage that meets certain minimum requirements. However, individuals who are members of a federally recognized tribe are eligible for a statutory exemption from this tax penalty, and individuals who are eligible for services from IHS or an Indian health provider are eligible for a hardship exemption that was created by regulation.

Form 8965 simplifies the exemption-claiming process by allowing individuals to claim an exemption directly through the tax-filing process. Form 8965 merely requires that individuals attest that they are eligible for an exemption, and no supporting documentation is necessary. Previously, persons eligible for IHS services were instructed to apply for a hardship exemption through the Marketplace, wait to receive an exemption certification number (ECN), and include that ECN on their tax forms. Form 8965 now allows both tribal members and persons eligible for IHS services to claim an exemption through the tax-filing process.

Persons wishing to claim either the statutory or hardship exemption directly through the tax filing process simply enter "E" in Part III of Form 8965. Persons that have already applied for an exemption through the Marketplace may instead fill out Part I of the form and enter their exemption certification number.

Final Form 8965 is identical to the Draft Form 8965 that was released by the IRS in 2014. However, in response to tribal feedback, the IRS has made several significant revisions to the instructions for Form 8965. The final instructions for Form 8965:

- Make clear that the exemption for members of federally recognized tribes includes regional or village Alaska Native Claims Act (ANCSA) Corporation Shareholders;
- Place all information regarding AI/AN exemptions together, rather than having separate sections for the statutory exemption for members of federally recognized tribes and the hardship exemption for persons eligible for IHS services; and
- Provide that persons who have applied for an exemption through the health insurance exchanges but have still not received an exemption certificate number (ECN) from the Marketplace may fill out Part I of Form 8965, which is for persons with Marketplace-granted exemptions, and may enter the word “pending” under the column that asks for their ECN.

For tax advice, please consult a tax specialist. For more information regarding this memorandum, please contact Elliott Milhollin at (202) 822-8282 or emilhollin@hobbsstrauss.com or Geoff Strommer at (503) 242-1745 or gstrommer@hobbsstrauss.com.