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§51.8 Notification and payment of fee.

(a) *Notification of final fee calculation.* No later than August 31st of each fee year, the IRS will send each covered entity its final fee calculation for that year. In any fee year, the IRS will base its final fee calculation on data provided to it by the Agencies as adjusted pursuant to the dispute resolution process. The notification to a covered entity of its final fee calculation will include—

(1) The covered entity's allocated fee;

(2) The covered entity's adjustment amount calculated as described in §51.5;

(3) The covered entity's branded prescription drug sales, by NDC, by Program;

(4) The covered entity's branded prescription drug sales taken into account after application of §51.5(a)(4);

(5) The aggregate branded prescription drug sales taken into account for all covered entities; and

(6) The final determination with respect to error reports.

(b) *Differences in preliminary fee calculation and final fee calculation.* A covered entity's final fee calculation may differ from the covered entity's preliminary fee calculation because of changes made pursuant to the dispute resolution process described in §51.7. Even if a covered entity did not file an error report described in §51.7, a covered entity's final fee may differ from a covered entity's preliminary fee because of a change in data reported by the Agencies after resolution of error reports, including a change in the aggregate prescription drug sales figure. A change in aggregate prescription drug sales data can affect each covered entity's fee because each covered entity's fee is a fraction of the aggregate fee collected from all covered entities. A covered entity's final fee may also differ from its preliminary fee calculation because the data used in the preliminary fee calculation may have contained inaccurate branded prescription drug sales information that was corrected or updated at the conclusion of the dispute resolution process.

(c) *Payment of final fee.* Each covered entity must pay its final fee by September 30th of the fee year. For a controlled group, the payment must be made using the designated entity's EIN as reported on Form 8947. The fee must be paid by electronic funds transfer as required by §51.6302–1. There is no tax return to be filed for the fee.

(d) *Joint and several liability.* In the case of a controlled group that is liable for the fee, all members of the controlled group are jointly and severally liable for the fee. Accordingly, if a controlled group's fee is not paid, the IRS will separately assess each member of the group for the full amount of the controlled group's fee.

[T.D. 9684, 79 FR 43644, July 28, 2014]

§51.9 Tax treatment of fee.

(a) *Treatment as an excise tax.* The fee imposed by section 9008 is treated as an excise tax for purposes of subtitle F of the Internal Revenue Code (Code) (sections 6001–7874). Thus, references in subtitle F to ''taxes imposed by this title,'' ''internal revenue tax,'' and similar references, are also references to the fee imposed by section 9008. For example, the fee imposed by section 9008 is assessed (section 6201), collected (sections 6301, 6321, and 6331), enforced (section 7402 and 7403), subject to examination and summons (section 7602), and subject to confidentiality rules (section 6103) in the same manner as taxes imposed by the Code.

(b) *Deficiency procedures.* The deficiency procedures of sections 6211–6216 do not apply to the fee imposed by section 9008.

(c) *Limitation on assessment.* The IRS must assess the amount of the fee for any fee year within three years of September 30th of that fee year.

(d) *Application of section 275.* The fee is treated as a tax described in section 275(a)(6) (relating to taxes for which no deduction is allowed).

[T.D. 9684, 79 FR 43645, July 28, 2014]

§51.10 Refund claims.

Any claim for a refund of the fee must be made by the person that paid the fee to the government and must be made on Form 843, ''Claim for Refund and Request for Abatement,'' in accordance with the instructions for that form.

[T.D. 9684, 79 FR 43645, July 28, 2014]