

Revenue Procedure 2012-11

SECTION 1. PURPOSE

This revenue procedure sets forth procedures for issuing determination letters and rulings on the exempt status of qualified nonprofit health insurance issuers (QNHIs) described in § 501(c)(29) of the Internal Revenue Code (Code).

SECTION 2. BACKGROUND

Section 501(c)(29) of the Code provides requirements for tax-exemption under § 501(a) for QNHIs. Section 501(c)(29) was added to the Code by § 1322(h)(1) of the Patient Protection and Affordable Care Act, Public Law 111-148 (March 23, 2010) (Affordable Care Act).

Section 1322 of the Affordable Care Act directs the Centers for Medicare and Medicaid Services (CMS) to establish the Consumer Operated and Oriented Plan program (CO-OP program). The purpose of the CO-OP program is to foster the creation of member-governed QNHIs that will operate with a strong consumer focus and offer qualified health plans in the individual and small group markets. CMS will provide loans and repayable grants (collectively loans) to organizations applying to become QNHIs to help cover start-up costs and meet any solvency requirements in States in which the organization is licensed to issue qualified health plans. A Funding Opportunity Announcement for the CO-OP program (CFDA Number 93.545), published by CMS on July 28, 2011 (and amended on September 16, 2011), provides that for each loan, the appropriate CMS official will issue a Notice of Award and Loan Agreement to the QNHII. In addition, the Chief Executive Officer of the QNHII, or an officer of the QNHII's Board of Directors, must sign and return the Loan Agreement to CMS. On December 13, 2011, CMS issued final regulations implementing the CO-OP program at 76 FR 77392.

The CMS final regulations define a QNHII as an entity that, within specified time frames, satisfies or can reasonably be expected to satisfy the standards in § 1322(c) of the Affordable Care Act and in the CMS final regulations. The entity will constitute a QNHII until such time as CMS determines that the entity does not satisfy or cannot reasonably be expected to satisfy these standards.

Section 501(c)(29)(A) provides that a QNHII (within the meaning of § 1322(c) of the Affordable Care Act) which has received a loan or grant under the CO-OP program may be recognized as exempt from taxation under § 501(a), but only for periods for which the organization is in compliance with the requirements of § 1322 of the Affordable Care Act and of any loan agreement with the Secretary of Health and Human Services. Section 501(c)(29)(B) provides that a QNHII will not qualify for tax-exemption unless it meets four additional requirements, the first of which is that the organization must give notice to the Secretary of the

Treasury, in such manner as the Secretary may by regulations prescribe, that it is applying for recognition of exemption as an organization described in § 501(c)(29). On February 7, 2012, the Treasury Department and the IRS issued temporary regulations at 77 FR 6,005 authorizing the IRS to prescribe the procedures by which QNHII's may apply to the IRS for recognition of exemption from Federal income tax. The temporary regulations also authorize the IRS to recognize a QNHII as exempt effective as of the later of the date of the QNHII's formation or March 23, 2010 (the date of enactment of the Affordable Care Act), provided that the application is submitted in the manner and within the time prescribed by the IRS and the QNHII's prior purposes and activities were consistent with the requirements for exempt status under § 501(c)(29).

SECTION 3. RELATED REVENUE PROCEDURES

QNHII's seeking recognition of exemption under § 501(c)(29) should follow this revenue procedure and, to the extent not inconsistent with this revenue procedure, Rev. Proc. 2012-9, 2012-2 I.R.B. 261, or its successor revenue procedure. User fees for requests for a determination letter or ruling are set forth in Rev. Proc. 2012-8, 2012-1 I.R.B. 235, or its successor revenue procedure.

SECTION 4. WHAT ARE THE PROCEDURES FOR REQUESTING RECOGNITION OF EXEMPT STATUS UNDER § 501(c)(29)

.01 Letter application.

A QNHII seeking recognition of exemption under § 501(c)(29) must submit a letter application (rather than a form) with Form 8718, User Fee for Exempt Organization Determination Letter Request, and include the appropriate user fee. For more information on the user fee, see Rev. Proc. 2012-8, 2012-1 I.R.B. 235, or its successor revenue procedure. The request should be mailed to:

IRS-TEGE
P.O. Box 2508
Cincinnati, OH 45201

.02 Requirements for a substantially completed letter application.

A QNHII seeking recognition of exemption under § 501(c)(29) must comply with the requirements for a substantially completed letter application set forth in this section rather than the requirements set forth in § 3.08 of Rev. Proc. 2012-9, 2012-2 I.R.B. 261, or its successor revenue procedure.

A substantially completed letter application for recognition of exemption under § 501(c)(29) must be signed by an authorized individual and must be accompanied by the following declaration: "Under penalties of perjury, I declare that I have examined this request, including accompanying documents, and, to the best of

my knowledge and belief, the request contains all the relevant facts relating to the request, and such facts are true, correct, and complete.”

A substantially completed letter application also must include:

(1) the QNHII’s Employer Identification Number (EIN).

(2) a statement of receipts and expenditures and a balance sheet for the current year and the three preceding years (or the years the QNHII was in existence, if less than four years). If the QNHII has not yet commenced operations, or has not completed one accounting period, a substantially completed application generally must include a proposed budget for two full accounting periods and a current statement of assets and liabilities.

(3) a detailed narrative statement of the QNHII’s past and proposed activities and a narrative description of the QNHII’s actual and anticipated receipts and contemplated expenditures.

(4) a copy of the QNHII’s organizing or enabling document that has been filed with and certified by an appropriate official of a State authority (e.g., stamped “Filed” and dated by the Secretary of State). Alternatively, if the QNHII is not required to file its organizing or enabling documents with a State authority, the organization may submit a copy of the organizing or enabling document that meets the requirements of a “conformed copy” as outlined in Rev. Proc. 68-14, 1968-1 C.B. 768.

(5) a current copy of the QNHII’s by-laws, if applicable, or any similar governing documents.

(6) a copy of both the Notice of Award issued by CMS and the fully executed Loan Agreement with CMS.

(7) the following representations regarding the QNHII:

- Except to the extent allowed by § 1322(c)(4) of the Patient Protection and Affordable Care Act, no part of its net earnings inures to the benefit of any private shareholder or individual, or has so inured since the later of the date of formation or March 23, 2010;
- No substantial part of its activities constitutes, or has constituted since the later of the date of formation or March 23, 2010, carrying on propaganda, or otherwise attempting, to influence legislation; and
- It does not participate in, or intervene in (including the publishing or distributing of statements), any political campaign on behalf of (or in opposition to) any candidate for public office, nor has it so participated

or intervened since the later of the date of formation or March 23, 2010.

(8) a subject line or other indicator on the first page of the request in bold, underlined, and/or all capitals font indicating “**SECTION 501(c)(29) CO-OP HEALTH INSURANCE ISSUER.**”

(9) the correct user fee and Form 8718.

SECTION 5. EFFECT OF DETERMINATION LETTER OR RULING RECOGNIZING EXEMPTION

A determination letter or ruling recognizing exemption under § 501(c)(29) is usually effective as of the later of the date of the QNHII’s formation or March 23, 2010 (the date of enactment of the Affordable Care Act) if:

- The QNHII’s purposes and activities prior to the date of issuance of the determination letter or ruling were consistent with the requirements for exemption; and
- The QNHII submits a substantially completed letter application within 15 months of the date of its fully executed Loan Agreement with CMS.

If the Service requires the QNHII to alter its activities or make substantive amendments to its enabling instrument, exemption will be recognized effective as of the date specified in the determination letter or ruling. If the Service requires the QNHII to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the later of the date of the QNHII’s formation or March 23, 2010.

If a QNHII does not submit a substantially completed letter application within 15 months of the date of its fully executed Loan Agreement with CMS, it may not qualify for exempt status before the postmark date of the letter application.

SECTION 6. EFFECTIVE DATE

This revenue procedure is effective February 7, 2012.

SECTION 7. PAPERWORK REDUCTION ACT

The collection of information for a letter application under § 3.01 of this revenue procedure has been approved under OMB control number 1545-2080. See Rev. Proc. 2012-9, § 15.

DRAFTING INFORMATION

The principal author of this Revenue Procedure is Justin Lowe of the Exempt Organizations, Tax Exempt and Government Entities Division. For further information regarding this revenue procedure, contact Mr. Lowe at 202-283-9486 (not a toll-free call).