

The Internal Revenue Service (IRS) and Department of the Treasury (Treasury) published in the January 29, 2015 *Federal Register* [final income tax regulations](#) (Regulations) describing procedures by which a qualified nonprofit health insurance issuer (QNHI) participating in the Consumer Operated and Oriented Plan (CO-OP) program established by the Centers for Medicare and Medicaid Services (CMS) may apply for recognition as a tax-exempt organization under section 501(c)(29) of the US Internal Revenue Code of 1986, as amended (Code). The Regulations expressly authorize the Commissioner to recognize a QNHI as exempt effective as of a date prior to the date of its application (i.e., the later of a QNHI's formation date or March 23, 2010 (the date of enactment of the Affordable Care Act (ACA))), provided the application is submitted in the manner and within the time prescribe by the Commissioner and that the QNHI's prior purposes and activities were consistent with the requirements for tax-exempt status under section 501(c)(29) of the Code.

A notice of proposed rulemaking cross-referencing the temporary regulations was published on February 7, 2012. Two comments responding to the notice of proposed rulemaking were received and considered. However, the IRS and Treasury determined that both comments were either not responsive or outside the scope of their authority. Therefore, the Regulations adopt the proposed regulations published in the Federal Register on February 7, 2012, without revision, and the corresponding temporary regulations are removed. Rev. Proc. 2015-17, dated February 17, 2015, provides instructions on applying for tax-exempt status, under the authority of the Regulations.

Background

The ACA directs the CMS to establish the CO-OP program to foster the creation of member-governed QNHIs that will offer qualified health plans in the individual and small group markets. CMS provides loans and repayable grants to organizations applying to become QNHIs. Section 1322(c) of the ACA imposes a number of requirements, including that a QNHI be (i) organized as a nonprofit member corporation under state law and (ii) that substantially all of its activities consist of the issuance of qualified health plans in the individual and small group markets in each state in which it is licensed to issue such plans.

Section 501(c)(29)(A) of the Code provides that a QNHI (within the meaning of section 1322(c) of the ACA) which has received a loan or grant under the CO-OP program may be recognized as a tax exempt organization for periods for which the organization is in compliance with the requirements of section 1322 of the ACA and any agreement with respect to such loan or grant.

Section 501(c)(29)(B) of the Code provides that a QNHI will not qualify for tax exemption unless it meets four additional requirements. First, the QNHI 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). Second, no part of the QNHI's net earnings may inure to the benefit of any private shareholder or individual, except to the extent permitted by section 1322(c)(4) of the ACA (which requires that any profits be used to lower premiums, to improve benefits, or for other programs intended to improve the quality of health care delivered to the organization's members). Third, no substantial part of the QNHI's activities may consist of carrying on propaganda, or otherwise attempting, to influence legislation. Finally, the QNHI may not participate 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.

Section 1322(b)(2)(C)(iii) of the ACA requires CMS to notify the IRS of any determination of a failure to comply with the CO-OP program standards, including any loan or grant agreement, that may affect a QNHI's tax-exempt status under section 501(c)(29) of the Code.

Section 6033 of the Code requires a QNHI to file an annual information return (i.e., Form 990) and to provide additional information on the amount reserves required by each applicable state and the amount of reserves on hand.

Procedure

Rev. Proc. 2015-7 describes the procedures for issuing determination letters and rulings on the tax-exempt status of QNHIs under section 501(c)(29) of the Code. A QNHI seeking recognition of exemption must submit a letter application with Form 8718, "User Fee for Exempt Organization Determination Letter Request," and include the appropriate user fee. A QNHI must comply with the requirements for a substantially completed letter application under Rev. 2015-17.

A determination letter or ruling recognizing exemption under section 501(c)(29) of the Code is generally effective as of the later of the date of the QNHI's formation or March 23, 2010, if two conditions are met: (i) the QNHI's purpose and activities prior to the date of issuance of the determination letter or ruling were consistent with the requirements for exemption and (ii) the QNHI submits a substantially completed letter application within 15 months of the date of its fully executed loan agreement with CMS.

If the IRS requires the QNHI 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 IRS requires the QNHII to make a nonsubstantive amendment, exemption will ordinarily be recognized as of the later date of the QNHII's formation or March 23, 2010. If the 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.

For more information about the Regulations, please contact your usual Squire Patton Boggs lawyer or one of the individuals listed in this publication.

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