

COHBE Organizational/Non-Profit Status

What is COHBE's correct organizational structure and tax-exempt status?

Goals/Objectives of COHBE:

- Compliance under SB 11-200
- Compliance under Federal Regulations

Background

Senate Bill 11-200 created the Colorado Health Benefit Exchange (COHBE) as a “nonprofit unincorporated public entity” and “instrumentality of the State.” (CRS § 10-22-104) COHBE filed Articles of Incorporation with the Secretary of State's office in December 2011 solely for the purpose of establishing an operating account at a financial institution. COHBE has been otherwise operating as a public entity and State instrumentality. Consistent with its nonprofit status and governmental functions, COHBE has also been operating on a tax-exempt basis for Federal and State purposes.

In order to comply with SB11-200 and best serve the organization's constituents, COHBE is recommending a withdrawal of the articles of incorporation with the Secretary of State and simultaneously submitting a clarification of our tax-exempt status with the IRS. Through this recommendation, COHBE will operate under SB11-200 as a nonprofit unincorporated entity, with both a Section 115 (governmental or quasi-governmental entity) and 501(c)(3) (non-profit entity) status in the eyes of the IRS. Adding the 501(c)(3) status enables the organization opportunities regarding potential grant funding in the future and adds an additional layer of accountability (i.e. Federal 990 Tax Return).

Organizational Status

- COHBE is a non-profit unincorporated public entity as per SB11-200.
- COHBE isn't (and doesn't need to be) a corporation.
- Similarly, COHBE isn't (and doesn't need to be) a partnership, association, or cooperative.

Tax-Exempt Status

- Senate Bill 11-200 did not specifically address COHBE's tax status under Colorado law.
- Under Federal law, a State instrumentality has a presumption of tax-exempt status under Code Section 115(l) but the IRS determines tax-exempt status through its letter ruling processes.
- In addition, a State instrumentality may also be tax-exempt under Code Section 501(c)(3) as a public “charitable organization.” The IRS has a determination letter process relating to Section 501(c)(3) status.

Recommendation

COHBE's financial auditors recommended that the organization better define its Organizational and Tax-Exempt Statuses to ensure compliance at all levels of governance. The staff recommendation is:

- Withdraw COHBE Articles of Incorporation on file with the Secretary of State, and upload Articles of Organization.
- Apply for Federal Section 501(c)(3) and Section 115 tax-exempt status.
- Confirm State tax-exempt status based on Federal determination.