

Congress of the United States  
Washington, DC 20515

November 4, 2011

Hon. Douglas Shulman  
Commissioner of Internal Revenue  
Department of the Treasury  
1111 Constitution Avenue, NW, Room 3241  
Washington, DC 20224

Dear Commissioner Shulman:

Recent reports indicate that proposed rule REG-13149-10 (rule) released on August 17, 2011 relating to the federal health insurance premium assistance tax credits (tax credits) included in the Patient Protection and Affordable Care Act (PPACA, P.L. 111-148) contradicts the explicit statutory language describing individuals' eligibility for receipt of these tax credits.

Section 1401(b)(2)(A) of Subtitle E of Title I of PPACA states that the tax credit amount determined under this section shall be provided to eligible individuals in a qualified health plan who are "...enrolled in through an Exchange established by the State under [Section] 1311 of the Patient Protection and Affordable Care Act..." However, the rule expands individuals' eligibility for tax credits beyond PPACA's explicit text to individuals enrolled in qualified health plans who reside in states which the federal government has established an Exchange pursuant to PPACA's authority under Section 1321. Specifically, the rule states "The proposed regulations provide that a taxpayer is eligible for the credit for a taxable year if the taxpayer...is enrolled in one or more qualified health plans through an Exchange established under section 1311 or **1321** [emphasis added] of the Affordable Care Act [PPACA]..."<sup>1</sup>

Section 1 of Article I of the U.S. Constitution vested the Congress of the United States with the power to enact legislation. Federal administrative agencies like the Internal Revenue Service do not have the authority under our Constitution to propose regulations which contravene the explicit statutory text of dually-enacted public laws. Therefore, the proposed rule—allowing individuals enrolled in qualified health plans through a federally-operated exchange to receive a tax credit—is in violation of Section 1401(b)(2)(A) of PPACA.

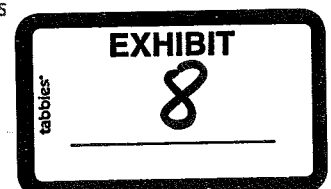
We request that you amend the proposed rule's language to be consistent with PPACA's statutory text. Should your agency fail to make such a change, we will be left to consider a legislative solution that enforces Congressional intent.

Sincerely,

David P. Roe (TN-01)

[Signature] (TN-04)

<sup>1</sup> Page 50934 of the Federal Register/Vol. 76, No. 159/Wednesday, August 17, 2011/Proposed Rules



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