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New IRS Notification Requirement for Section 501(c)(4) Social Welfare Organizations

UPDATE: In Notice 2016-09, the IRS indicated that the notification requirement will not go into effect until “at least 60 days from the date” it issues regulations implementing Section 506, and no penalties will be assessed against any Section 501(c)(4) organization that submits the required notice by the due date provided in those regulations.

On December 18, 2015, President Obama signed into law the Protecting Americans from Tax Hikes Act of 2015 (the “PATH Act”). The PATH Act contains several provisions of note for tax-exempt organizations. This post focuses on a new notification requirement for organizations operating as social welfare organizations under Section 501(c)(4) of the Internal Revenue Code (“Code”). (See [our earlier post](#) for information about PATH Act provisions addressing gift tax and certain charitable contribution incentives.)

Social welfare organizations exempt under Section 501(c)(4) are not organized for profit and are operated primarily to promote social welfare. They do not receive tax-deductible contributions and can lobby without limit, but partisan political activities (combined with any other non-social-welfare activities) must not be their primary activities. (The IRS has embarked on an [effort to produce new regulations](#) clarifying the boundaries of political activity by social welfare and other non-charitable exempt organizations. However, the Consolidated Appropriations Act, 2016 (which also includes the PATH Act) prohibits the IRS from using any funds appropriated during FY 2016 (Oct. 2015 – Sep. 2016) to “issue, revise, or finalize any regulation, revenue ruling, or other guidance . . . related to” the qualifications for exemption under Section 501(c)(4).)

Under prior law, an organization organized and operating as a 501(c)(4) organization could “self-declare” its tax-exempt status and begin filing annual returns on Form 990, without submitting a Form 1024 application for exemption and obtaining an IRS determination letter explicitly recognizing the organization’s qualification for such status, or otherwise notifying the IRS.

The PATH Act added new Code Section 506, which requires a social welfare organization to notify the IRS within 60 days of formation that it is operating under Section 501(c)(4). The new provision authorizes the IRS to establish a fee for filing the notice, although the IRS has not yet done so.

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Nonprofit Law Matters looks at legal issues in the nonprofit and tax-exempt organizations world. Written by the attorneys and paralegals of Adler & Colvin, it provides updates and analysis regarding philanthropy, charity, and other exempt organization issues.

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Section 506 states that the notice must include:

- (1) The name, address and taxpayer identification number of the organization.
- (2) The date on which, and the State under the laws of which, the organization was organized.
- (3) A statement of the purpose of the organization.

The IRS must acknowledge receipt of the notice within 60 days. Both the notice and the IRS acknowledgement of receipt are subject to public disclosure under Section 6104.

Section 506 provides that organizations that are organized after the date of enactment, December 18, 2015, are subject to the new notice requirement. Organizations that were organized before the date of enactment but that have not yet applied for exemption or filed an annual return are also subject to the notice requirement, but have 180 days from the date of enactment to submit the notice.

However, as of the date of this post, the IRS has provided only **minimal guidance** regarding the manner of notice, stating that “Until these regulations are issued, organizations need not submit any notification.” In addition, the statement indicates that the regulations, once issued, will include “transition rules that extend the 60- or 180-day period, as may be applicable, in order to comply with the regulations.” We will monitor the IRS’s progress on the implementation of Section 506, and will post updates as more information becomes available.

Under Section 506, an organization that fails to submit the notice will be fined \$20 per day until the notice is filed, up to \$5,000. An individual manager of an organization that fails to submit notice after receiving a written demand from the IRS specifying a reasonable future date for submission will also be fined, personally, \$20 per day up to \$5,000.

As under existing law, 501(c)(4) organizations that want the additional certainty of an IRS determination may apply for recognition of exemption. Under the new law, however, such applications do not take the place of the required notice described in new Code Section 506. The **Joint Committee on Taxation’s explanation** of provisions (page 241) indicates that the application for determination of 501(c)(4) status will be “submitted on a new form (separate from Form 1024) that clearly states that filing such a request is optional.” As of the date of this post, this new form has not yet been released.