Nonprofit Alert: Some 501(c)(4)s Must Take Immediate Action to Avoid Financial Penalties

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Certain social welfare organizations must notify the IRS of their existence before September 6, 2016 or face financial penalties. Section 501(c)(4) of the Internal Revenue Code describes organizations that are exempt from federal income tax because they promote the social welfare by furthering the common good and general welfare of the community. Recent legislation requires all new 501(c)(4) organizations to notify the IRS within 60 days of their formation and requires some existing 501(c)(4)s—which may not have previously interacted with the IRS—to promptly submit a Form 8976.

A new 501(c)(4) must notify the IRS of its existence within 60 days of organization

Unlike 501(c)(3) organizations, 501(c)(4)s are not required to request a determination from the IRS that they qualify for tax-exemption. However, the Protecting Americans from Tax Hikes Act of 2015 (the "PATH Act") requires all 501(c)(4) organizations to notify the IRS of their intent to operate as a 501(c)(4) no later than 60 days after the organization is established (generally, the day it files its organizational documents with the secretary of state or, if unincorporated, adopts its constitution or articles). This requirement does not apply to other types of tax-exempt entities, including 501(c)(3)s.

Exception for some 501(c)(4)s existing before July 8, 2016

The PATH Act provides that the new notice provision does not apply to organizations that did either of the following before December 18, 2015: (1) applied for a determination from the IRS that the organization is a 501(c)(4) (by submitting a Form 1024); or (2) filed an exempt-organization information return (a Form 990, 990-EZ, or 990-N "e-Postcard" filing).

Last month, the IRS issued temporary regulations and a detailed revenue procedure regarding the notice requirement. The IRS extended the exemption to the notice requirement to organizations that filed a Form 1024 or the appropriate Form 990-series information return **before July 8, 2016**.

This means that any organization that intends to operate as a 501(c)(4) but has neither requested a determination letter from the IRS nor filed an annual Form 990 information return must comply with the notice requirement.

Procedure for organizations that must notify the IRS: Complete Form 8976

A 501(c)(4) formed after July 8, 2016 must submit a Form 8976 within 60 days of organizing. Organizations formed on or before July 8 that have not filed a 1024 or a 990 must complete a Form 8976 **on or before September 6, 2016**.

A 501(c)(4) organization subject to the requirement must submit the Form 8976 online at https://services.irs.gov/registration/. The online form will request information including the name, tax identification number, and date of organization of the 501(c)(4). The form also requests a statement that the organization is either: (1) a social welfare organization/civic league; or (2) a local association of employees. Filers must submit a $50 user fee.

If the form is incomplete, the IRS will reject it, notify the filer, and return the user fee. The IRS will not accept Form 8976 from organizations not subject to the requirement or that have already filed the form. The IRS will formally acknowledge that it received the Form 8976 within 60 days (if the form was properly completed).

Financial penalties for failure to file

The PATH Act established penalties for 501(c)(4)s that fail to file a Form 8976, unless the failure was due to reasonable cause. The IRS may assess a penalty on the organization of $20 per day, up to a maximum of $5,000. In addition, the IRS may send a written demand to an organization that fails to file a Form 8976 and direct the organization to file the form by a certain date. If the organization fails to submit the form by the specified date, the IRS may impose a penalty (of $20 per day, up to $5,000) on the *individuals responsible* for this failure. If more than one person is responsible, each will be jointly and severally liable for payment of the penalty.

Form 8976 is neither a request for a determination letter nor a substitute for Form 990

The IRS makes clear that filing a Form 8976 does not constitute a request for the IRS to determine that the organization qualifies as tax-exempt. Until the IRS releases further guidance, 501(c)(4)s that choose to seek a determination letter should continue to file Form 1024. As of July 8, 2016, filing a Form 1024 does not relieve an organization from the obligation to file a Form 8976.

The Form 8976 is a one-time notification, and it does not alter the obligation to file a Form 990 information return. 501(c)(4) organizations that are subject to the requirement to file a Form 990 (or 990-EZ or 990-N) must continue to file the appropriate version of the 990 as usual.