

New IRS notification process announced for 501(c)(4) nonprofits

July 26, 2016

Earlier this month, the US Internal Revenue Service (IRS) released its long-awaited temporary regulatory framework implementing the new statutory notification requirements placed on 501(c)(4) nonprofit organizations by the Protecting Americans from Tax Hikes (PATH) Act of 2015. This new legal framework, contained in Revenue Procedure 2016-41, will require nonprofit social welfare organizations to file a public notification form with the IRS within 60 days of formation that indicates their intention to operate under Section 501(c)(4) of the Internal Revenue Code. Failure to comply with this new obligation could place at risk the nonprofit status of social welfare entities, and likewise subject the organization, its officers and its directors to substantial financial penalties.

Under the IRS' new regulatory framework, nearly all recently-established 501(c)(4) organizations operating in the United States will be required to complete and file a new Form 8976 through the agency's newly established Electronic Notice Registration System. All nonprofit social welfare entities formed on or after the publication of the Revenue Procedure on July 8, 2016, will be required to complete and file Form 8976 within 60 days of their date of organization. For incorporated nonprofit entities, the date of organization is considered the date on which a nonprofit's charter or articles of incorporation are approved by an appropriate state regulatory agency. For unincorporated 501(c)(4) entities, the date of organization is considered the date on which a nonprofit's charter or articles of association are adopted.

For 501(c)(4) nonprofits formed prior to the release of the July 8 Revenue Procedure, compliance with the new Form 8976 filing obligation will be required by September 6, 2016, unless one of two statutory exemptions apply. The first such exemption is for social welfare organizations that filed a Form 1024 application for recognition of tax-exempt status with the IRS on or before July 8, 2016. The second such exemption from filing the new Form 8976 is for 501(c)(4)s that have filed at least one Form 990, Form 990-EZ or Form 990-N on or before July 8, 2016.

Nonprofits submitting a Form 8976 to the IRS will first be required to create an online user account in the Electronic Notice Registration System. This account must be tied to the organization itself and a responsible individual for the covered 501(c)(4). The online form itself will require reporting nonprofits to submit a wide range of basic organizational information, including:

- The full name of the organization
- The organization's Employer Identification Number
- The organization's full mailing address
- The entity's date of formation
- The state and country of organizational formation
- The organizational accounting year

- A basic organizational statement of purpose

At the time of submission, a mandatory user fee of US\$50 will also be required for filing nonprofits.

Following the submission, the IRS will process the notification, send a receipt confirming payment of the user fee and send a formal acknowledgement of filing to the organization's responsible party. 501(c)(4)s participating in this system should note that this acknowledgement letter will in no way function as a formal recognition of the organization's tax-exempt status, nor will it alleviate the need for the organization to file a Form 990, 990-EZ or 990-N annual information return. A social welfare organization seeking official IRS recognition of its tax-exempt status, or requiring assistance with its end-of-year information returns, should still proceed under the standard regulatory regimes in place since before the passage of the PATH Act.

Dentons' Public and Political Law teams are available to assist 501(c)(4) entities across the country with these existing compliance obligations, as well as with adhering to the notification requirements recently announced by the IRS.

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