



TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

DEPARTMENT OF THE TREASURY  
INTERNAL REVENUE SERVICE  
WASHINGTON, D C. 20224

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[4.75.17](#), [4.75.18](#), [4.75.24](#),  
[4.75.31](#), [4.75.32](#)  
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MEMORANDUM FOR ALL EO EXAMINATIONS MANAGERS AND  
ALL EO EXAMINATIONS REVENUE AGENTS

FROM: Paul A. Marmolejo /s/  
Acting Director, EO Examinations

SUBJECT: PATH Act – Impact on Revocations and Modifications of Exempt Status

**Purpose:**

The purpose of this memorandum is to notify employees of the enactment of the Protecting Americans from Tax Hikes Act of 2015 (PATH Act), P.L. 114-113, and to provide revised procedures resulting from the enactment of this new law, which was effective December 18, 2015.

**Background:**

With respect to the initial or continuing qualification of an organization as exempt from federal income tax, Section 406 of the PATH Act expands declaratory judgment rights under Internal Revenue Code (IRC) section 7428 to all IRC section 501(c) organizations regardless of paragraph, and to IRC section 501(d) organizations.

**Procedural Changes for Internal Revenue Agents:**

The PATH Act requires all revocations to be treated the same, with declaratory judgment rights conferred upon *all* revoked exempt organizations. Thus, all revocations of IRC section 501(c) or (d) organizations will follow the same procedures and processes as those previously used for IRC section 501(c)(3) organizations.

As a result of these expanded rights, *modifications* of tax-exempt status (such as modifying a recognized section 501(c)(4) exemption to a section 501(c)(7)) are no longer applicable. Rather, the Service will revoke (or *treat* as a revocation for declaratory judgment purposes) any organization that no longer qualifies under the Code section for which tax-exemption was granted or self-declared. A revoked organization is free to apply or reapply for recognition of exemption under a different IRC section. Self-declared organizations are identified as "Status 36 organizations" in the EO Business Master File.

For any organization that no longer qualifies for tax-exempt status based on an audit, revenue agents will:

- (1) Propose a revocation. Do **not** propose a modification of tax-exempt status.
- (2) Use [Letter 3618](#) as the standard 30-day letter for all proposed revocations.
- (3) Insert the appropriate section 501(c) or (d) status being revoked in [Letter 3618](#) wherever “501(c)(3)” is indicated. For non-501(c)(3) organizations, this will require changing the phrase “501(c)(3)” in the letter to the appropriate subsection.

**Note:** For organizations that were not eligible to receive deductible contributions, delete the sentence, “*After we issue the final revocation letter, we’ll announce that your organization is no longer eligible for contributions deductible under section 170 of the Code.*”

- (4) Use [Form 6018](#), *Consent to Proposed Adverse Action*, for all agreements to revocation of exempt status. Do not use the “modification of exempt status” option. (Form will be revised to remove this option.)
- (5) Prepare an administrative record folder for all sections 501(c) or (d) audits.
- (6) Contemporaneously construct the administrative record in date order.
- (7) Prepare an administrative record index once you determine the revocation is unagreed. You can choose to tab and index while you construct your administrative record file.

**Note:** A non-501(c)(3) revocation or modification case currently pending in Mandatory Review may be sent back to the group for a new report and 30-day letter, and for construction of an administrative record and index.

#### **Procedural Changes for Review Functions:**

The following is a list of substantive changes applicable to review functions.

- (1) Except for agreed revocations dated prior to the effective date of this memorandum, ensure an administrative record is present for all revocations. An administrative record index will be required only for unagreed revocations.

**Note:** For unagreed non-501(c)(3) revocation or modification cases currently pending in review that do not have an administrative record and index, the reviewer may direct agents to prepare a new report and 30-day letter, and to construct an administrative record and index.

- (2) Ensure Division Counsel reviews all unagreed revocations.
- (3) Prepare a 90-day final adverse determination letter, containing the language providing declaratory judgment rights, for all revocations without protest.

#### **Other Information:**

This memorandum also applies to *disqualifications* of tax-exempt status on a year-to-year basis for organizations described under IRC section 501(c)(12) or IRC section 501(c)(15) that fail their respective 85 percent member income test or gross receipts test for a particular tax year. These cases will be *treated as* a revocation for declaratory judgment purposes for the failed tax years only. Consult with Mandatory Review regarding the appropriate 30-day letter.

The expansion of declaratory judgment rights applies retroactively to final adverse determinations issued 90 days prior to the enactment of the PATH Act. Final adverse

determination letters issued to non-501(c)(3) during that time frame did not contain language regarding declaratory judgment rights. If you have a case where a final adverse determination letter was issued to a non-501(c)(3) organization where declaratory judgment rights are now available and the letter issued to the organization did not contain language discussing those rights, contact your manager and the review functions for appropriate instructions on how to notify the organization of their rights and updating the final adverse determination.

Additional guidance will be forthcoming on other issues presented by the PATH Act.

**Effect on Other Documents:**

- Internal Forms [6018](#), [4621-A](#) and [Letter 3618](#) will be revised to reflect these changes based on the PATH Act. A modification of tax-exempt status is no longer an available option on Forms 4621-A, as well as on Form 6018. Form [6018-A](#) will be obsolete.
- Letters [3610-M](#) and [3610-R](#), 30-day letters for modifications and revocations of organizations described under other than IRC section 501(c)(3), are obsolete.
- Letter in IRM Exhibit [4.75.15-16](#) is obsolete
- Letter in IRM Exhibit [4.75.15-17](#) is obsolete
- Letter in IRM Exhibit [4.75.24-2](#) is obsolete
- Letter in IRM Exhibit [4.75.24-8](#) is obsolete
- Letter in IRM Exhibit [4.75.24-9](#) is obsolete
- Letter in IRM Exhibit [4.75.31-9](#) is obsolete
- AIMS Disposal Code 16 (RCCMS Code 204), *Change in Subsection*, in [Document 6379](#), *Information Systems Codes FY 2016 Quick Reference for EO Employees*, is obsolete. AIMS Principal Issue Code (PIC) 05D, *Modification-Change in Subsection*, is obsolete.
- Revocation and modification procedures stated in the Internal Revenue Manuals (IRMs) listed at the heading of this memorandum will be revised.

**Effective Date:**

This memorandum is effective immediately.

The contents of this memorandum will be incorporated in the IRMs listed in the heading within two years from the date of this memorandum.

Please submit your questions to Mandatory Review via [\\*TEGE EO Review Staff](#).

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