



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR EXEMPT ORGANIZATION DETERMINATIONS UNIT AND
EXEMPT ORGANIZATIONS TECHNICAL UNIT

FROM: Kenneth Corbin /s/
Director, Exempt Organizations, TE/GE

SUBJECT: Interim Guidance on Optional Expedited Process for Certain Exemption
Applications Under Section 501(c)(4)

The purpose of this memorandum is to provide interim administrative guidance to Exempt Organizations Determinations Unit and Exempt Organizations Technical Unit regarding an optional expedited process for certain exemption applications under section 501(c)(4).

In the interest of effective and efficient tax administration and to assist in the transparent and consistent review of applications for tax-exempt status under section 501(c)(4), the IRS is offering an optional expedited process for organizations that have submitted 501(c)(4) applications. This optional expedited process is currently available only to applicants for 501(c)(4) status with applications pending for more than 120 days as of May 28, 2013 that indicate the organization may be involved in political campaign intervention or issue advocacy ("identified pending applications").

Exempt Organizations Determinations Unit and Exempt Organizations Technical Unit must follow the attached procedures for the identified pending applications beginning June 13, 2013. Any questions are to be directed to Karen Schiller, Director, Rulings and Agreements, Exempt Organizations, TE/GE.

The content of this memorandum will be incorporated in IRM 7.20.2.

cc: www.irs.gov

Optional Expedited Process for Certain Exemption Applications Under Section 501(c)(4)

Outlined below are the steps of a new process for achieving expedited and fair processing of certain exemption applications under section 501(c)(4), specifically, those applications for section 501(c)(4) exemption that have been pending 120 or more days since filing as of May 28, 2013 and that indicate the organization may be involved in political campaign intervention or issue advocacy (hereinafter, “pending applications”).

Step 1: IRS Ensures Reviews for Private Inurement

The IRS will promptly review all signed pending applications to ensure the case does not indicate any private inurement.

If there are no private inurement concerns, the pending application will proceed to step 2. If there are concerns with private inurement, the pending application will be referred to Exempt Organizations Technical for technical assistance with regard to private inurement issues after completion of Step 1 for all other pending applications.

If any pending applications are determined ready to be granted favorable status, Exempt Organizations Determinations will proceed to issuing the favorable determination letter and steps 2 through 5 will not apply to such applications.

Step 2: Offering Expedited Option Process

By letter to the applicant, Exempt Organizations Determinations will provide an optional expedited process for all pending applications for which there are no indications of private inurement. The expedited option process will permit these applicants to make representations under penalties of perjury regarding their past, current, and anticipated future political campaign intervention and social welfare activity and the IRS would then issue favorable determination letters regarding these applications without further review. The favorable determination letter will be issued within two weeks of receipt of the signed representations by Exempt Organizations Determinations.

This process would be optional; applicants could determine whether they want to provide the representations, assuming they are able to do so, or whether they want the IRS to continue to review their application with regard to political campaign intervention or advocacy issues and requirements for section 501(c)(4) status.

The expedited option letter will request a response by the applicant within 45 days. During the period in which the applicant is considering the expedited option process, Exempt Organizations Determinations will refer the pending applications to Exempt

Organizations Technical for technical assistance. During this period, Exempt Organizations Technical, with assistance from Chief Counsel attorneys, will review the pending applications for purposes of making a proposed recommendation should the applicant not provide the expedited option representations. If Exempt Organizations Technical and Chief Counsel attorneys determine a favorable determination is warranted, Exempt Organizations Technical will instruct Exempt Organizations Determinations to issue a favorable determination letter and steps 3 through 5 will not apply to such application.¹

Step 3: IRS Processing of Applications

Expedited Option Process—Any applicant that provides the representations under penalties of perjury will receive a favorable determination from Exempt Organizations Determinations within 2 weeks of receiving the signed representations. Like all organizations receiving a favorable determination of exempt status, the organization may be subject to examination by the IRS and the organization's exempt status may be revoked if, and as the tax year in which, the facts and circumstances indicate exempt status is no longer warranted. Revocation may be retroactive to the date of formation if the facts and circumstances indicate the representations were not accurate. An organization may no longer rely on the determination letter issued as part of this expedited option process for any tax year in which its activities are no longer consistent with the representations, if the applicable legal standards change, or if the determination letter is revoked. If the organization determines that it continues to be described in section 501(c)(4) notwithstanding the fact that its activities are no longer consistent with the representations, it may continue to take the position that it is described in section 501(c)(4) and file Form 990, Return of Organization Exempt From Income Tax, but it must notify the IRS about such representations ceasing to be correct on Schedule O, *Supplemental Information*, of the Form 990.

An organization receiving the expedited option letter that provides the representations may be referred to the Review of Operations Unit for subsequent review.

Regular Process—If an applicant received the expedited option letter and does not provide the additional representations under the expedited option process within 45 days from the date of the letter, Exempt Organizations Determinations

¹ The favorable determination letter will include an addendum that will instruct the applicant to disregard the expedited option letter.

will formally transfer² the pending application to Exempt Organizations Technical and Exempt Organizations Technical will review and process the pending application under Steps 4 and 5.

Step 4: Reviewing the Pending Application under the Regular Process-- Documenting Review and Recommendations

Review of the pending applications under the regular process will include review by Exempt Organizations Technical, Chief Counsel attorneys, and (in some cases) a newly formed Advocacy Application Review Committee (Review Committee) comprised of 3 career executives from the IRS and the Office of Chief Counsel.³

Exempt Organizations Technical will review the facts and circumstances in the pending application and any other materials to determine if the organization is operated primarily for social welfare purposes, including by evaluating the amount of political campaign intervention activity. The issues will be analyzed as quickly as possible under current law, using available resources in applying the law to the facts.

Under the regular process, Exempt Organizations Technical will document⁴ its review of the pending application and its recommendation regarding a favorable or adverse determination.

Favorable Recommendation: If the recommendation is for a favorable determination, Chief Counsel attorneys will review the application and documentation of the recommendation. If Chief Counsel attorneys concur with the recommendation, Exempt Organizations Technical will issue the favorable determination, except in close cases in which Exempt Organizations Technical or Chief Counsel attorneys determine further review is warranted and send the favorable determination recommendation to the Review Committee. Any level of review may note a recommendation, or review an earlier level's recommendation, regarding referral to the Review of Operations Unit. If Chief Counsel attorneys do not agree with the favorable determination recommendation, the application will be sent to the Review Committee for further review.

Adverse Recommendation: If the recommendation is for an adverse determination, Chief Counsel attorneys will review the application and

² These pending applications have already been referred to Exempt Organizations Technical in Step 2.

³ The Committee will be comprised of the Director, EO; Commissioner (TE/GE); and Division Counsel/Associate Chief Counsel (TEGE), or their delegates.

⁴ Documentation will be done consistently through a template; reviewer will be noted by an identifying number rather than by name.

documentation of the recommendation. If Chief Counsel attorneys disagree with the recommendation, they will provide a brief explanation of their views and send the application to the Review Committee. If Chief Counsel attorneys agree with the recommendation, they will assist Exempt Organizations Technical in preparing the proposed adverse determination letter and will follow normal processes in communicating with the applicant to offer an adverse conference (which would be provided on an expedited basis). If the adverse conference results in a changed recommendation to a favorable determination, Exempt Organizations Technical will issue the favorable determination, unless Exempt Organizations Technical or Chief Counsel attorneys recommend further review by the Review Committee.

If the adverse conference is held and does not result in a changed recommendation, the pending application will be sent to the Review Committee in Step 5.

Step 5: Committee Review of Adverse Recommendations and Difficult Cases Regarding Favorable Determinations

If, after Step 4, Exempt Organizations Technical and Chief Counsel attorneys recommend an adverse determination or conclude that additional review is needed regarding a potential favorable determination, the Review Committee will review the application, the documentation of the recommendations at all levels, the proposed adverse determination (if any), and any additional information from the adverse conference (if any). The Review Committee will apply the law to the facts presented and evaluate whether the applicant has satisfied the requirements for exemption under 501(c)(4).

With respect to an adverse recommendation, if the Review Committee concurs, Exempt Organizations Technical will issue an adverse determination. If the Review Committee does not agree, the Review Committee will instruct Exempt Organizations Technical to issue a favorable determination.

With respect to a favorable recommendation, if the Review Committee concurs, Exempt Organizations Technical will issue a favorable determination. If the Review Committee does not agree, the Review Committee will instruct Exempt Organizations Technical to issue a proposed adverse determination and follow the normal process with regard to an adverse conference. Any additional information presented in an adverse conference will be shared with the Review Committee for consideration prior to issuance of any final adverse determination.

In any case, the Review Committee may recommend referral to the Review of Operations Unit for subsequent review.