



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
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MEMORANDUM FOR EXEMPT ORGANIZATIONS EXAMINATIONS EMPLOYEES

FROM: Sean E. O'Reilly /s/ Sean E. O'Reilly
Director, Exempt Organizations Examinations

SUBJECT: Interim Guidance on Verifying Forms 8976 Were Filed and Applicable Penalties

This memo provides guidance to examiners in determining whether an organization has timely filed Form 8976, Notice of Intent to Operate Under Section 501(c)(4), and assessing the applicable penalties for failure to do so.

Purpose and Background:

The Protecting Americans From Tax Hikes Act of 2015 (PATH Act), imposed a new notification requirement for Internal Revenue Code (IRC) Section 501(c)(4) organizations. This process is described in Rev. Proc. 2016-41 and Treas. Reg. § 1.506-1.

General Rule:

An organization must notify the IRS that it is operating as an IRC Section 501(c)(4) organization no later than 60 days after the date the organization was organized (that is, formed as a legal entity, called the "date of organization"), by electronically filing Form 8976, Notice of Intent to Operate Under Section 501(c)(4). The organization must pay the correct user fee, which is currently \$50, through pay.gov. The process of filing Form 8976 and paying the user fee is referred to as an "IRC Section 506 notification."

Exception:

An entity with a date of organization on or before July 8, 2016, isn't required to submit Form 8976 if, on or before July 8, 2016, it previously:

- Applied for exemption under IRC Section 501(c)(4) by filing Form 1024, **or**
- Filed at least one Form 990 or, if eligible, Form 990-EZ, or 990-N.

Entities with a date of organization on or before July 8, 2016, which didn't file one of the two above-referenced forms, were required to submit Form 8976 by September 6, 2016.

Penalties:

- IRC Section 6652(c)(4)(A) imposes a penalty of \$20 per day, up to a maximum of \$5,000, for each day after the due date that an organization doesn't submit Form 8976.
- The penalty is automatically applied when organizations file Form 8976 more than 60 days after the date of organization. The penalty posts to a civil penalty module (MFT 13) and the IRS issues a CP 215, Civil Penalty notice to the organization.
- The penalty can be abated if an organization's failure to timely submit the Form 8976 was due to reasonable cause.
- A similar penalty is imposed by IRC Section 6652(c)(4)(B) on organization managers who, in response to a written IRS request, don't submit Form 8976 by the date specified in the written request.
- See IRM 20.1.8.3.2.4 for additional information on the IRC Section 6652(c)(4) penalties.

Acknowledgement:

- The IRS is required to acknowledge receipt of Form 8976 within 60 days after receipt. Letter 5822 is sent to acknowledge receipt.

Not a Request for Determination of Exempt Status:

- The IRC Section 506 notification (submission of Form 8976 and payment of user fee) is not a request for determination of exempt status under IRC Section 501(c)(4). An organization must file Form 1024-A to request a determination of exempt status. See Rev. Proc. 2020-5 (or a successor revenue procedure).

Form 8976 Processing:

- After an organization submits Form 8976, the IRS reviews it to ensure that the organization has provided all required information (name, address, EIN, date of organization, state and country of organization, purpose statement). If Form 8976 is complete and filed timely, IRS updates master file status code to 36 and issues Letter 5822 (acknowledgement letter) electronically. If IRS doesn't accept the Form 8976 for any reason, we issue Letter 5823 (notice of non-acceptance) and refund the user fee.

Disclosure:

- An organization's Form 8976 isn't an application within the meaning of IRC Section 6104 and isn't open to public disclosure. The IRS doesn't keep a publicly available database of filed Forms 8976. See section 7.01, Rev. Proc. 2016-41.

Procedural Change:**Perform Filing Check:**

1. Examiners must perform a filing check for Form 8976 during all examinations of IRC Section 501(c)(4) organizations.
 - a. For Forms 8976 filed beginning in January 2017, IDRS shows a date of organization (as given by the organization on Form 8976 - ORG DT:MM-DD-YYYY) and a date of IRC Section 506 notification (in other words, the Form 8976 user fee date - REG DT:MM-DD-YYYY). These new fields are displayed near the top of the first page of BMFOLO (before the EO submodule information). See Exhibit 1.
 - b. BMFOLO doesn't record Forms 8976 filed before January 2017. Consequently, you must contact the taxpayer to determine whether they filed Form 8976 before January 2017. Contact your group manager and Division Counsel, if necessary, if the taxpayer claims they filed Form 8976 before January 2017 but refuses to or can't provide proof they filed.
 - c. If Form 8976 was timely filed or if the organization wasn't required to file Form 8976, you must notate this conclusion on the Form 5773.
 - d. If Form 8976 was not filed, send a written demand, requesting the organization submit the Form 8976 by a specified date determined reasonable under the circumstances. You must verify that the Form 8976 is filed in response to your written demand by securing either proof of filing from the organization (for example, a copy of Letter 5822) or a BMFOLO showing that it was filed. See 2b below if the taxpayer refuses to file Form 8976 in response to the written demand.

Consider Penalties:

2. If you determine that the organization failed to timely file a completed Form 8976, consider the IRC Section 6652(c)(4) penalties.
 - a. Form 8976 filed late: If, in response to the written demand, the organization submits Form 8976 late, you don't need to assess the penalties against the organization, because the penalty is automatically assessed when IRS issues the CP 215 Notice. Refer to IRM 20.1.1.3.2 to determine whether the organization's failure to timely submit a completed Form 8976 was due to reasonable cause. Document all determinations of reasonable cause in sufficient detail in the workpapers. Get a reasonable cause statement from the organization and include it in the RCCMS case file.
 - b. Failure to file Form 8976: If, in response to the written demand, the taxpayer fails to file Form 8976 by the date specified in the written demand, consult with your group manager and Division Counsel, as necessary, to discuss applying the penalty on the organization's managers and/or other compliance actions. Document the discussion, penalty approval and/or compliance actions taken on the CCR.

Effect on Other Documents: We'll incorporate this guidance into IRM 4.75.12 by March 1, 2023.

Effective Date: March 1, 2021.

Contact: If you have questions about this change in procedures contact [*TEGE EO Review Staff](#).

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