

26 CFR 1.506. Requirement to notify the IRS of intent to operate as a section 501(c)(4) organization.

Rev. Proc. 2016-41

SECTION 1. PURPOSE

This revenue procedure sets forth the procedure for an organization to notify the Internal Revenue Service (IRS), consistent with section 506 of the Internal Revenue Code (Code), that it is operating as an organization described in section 501(c)(4) of the Code (a section 501(c)(4) organization).

.01 In general. Section 506, added to the Code on December 18, 2015, by the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114-113, div. Q) (the PATH Act), requires a section 501(c)(4) organization, no later than 60 days after the organization is established, to notify the Secretary of the Treasury (the Secretary) that it is operating as a section 501(c)(4) organization. The requirement to submit this notification applies to section 501(c)(4) organizations organized after December 18, 2015, and to certain section 501(c)(4) organizations existing on that date.

.02 Terms used in this revenue procedure. For purposes of this revenue procedure--

(1) “Form 8976” means the Form 8976, *Notice of Intent to Operate Under Section 501(c)(4)*, which is used by an organization to notify the IRS that it is operating as a section 501(c)(4) organization, as required by section 506 of the Code.

(2) “Date of Organization” means the date on which the organization was formed as a legal entity. Generally, for corporations formed in the United States, the date of organization refers to the date that the charter or articles of incorporation were approved by the appropriate state official. For unincorporated organizations, the date of organization refers to the date that the constitution or articles of association were adopted.

(3) “State or other jurisdiction of organization” means the jurisdiction, foreign or domestic, under the laws of which the organization was organized.

(4) “Determination Letter” means a written statement issued in response to an application for recognition of exemption from federal income tax under sections 501 or 521 by EO Rulings and Agreements (the office in IRS Exempt Organizations (EO) that is primarily responsible for determinations of exempt status, taxpayer assistance, and assistance to other EO offices) or an Appeals Office (any office under the direction and control of the Chief, Appeals).

(5) “Form 1024” means the Form 1024, *Application for Recognition of Exemption Under Section 501(a)*, which is the form submitted by an organization seeking a Determination Letter recognizing exemption under section 501(a) as an organization described in section 501(c)(2), (4), (5), (6), (7), (8), (9), (10), (12), (13), (15), (17), (19), or (25).

SECTION 2. BACKGROUND

.01 Section 405 of the PATH Act added section 506 to the Code, requiring an organization to notify the IRS that it is operating as a section 501(c)(4) organization. In addition, section 405(b) and (c) of the PATH Act amended sections 6033(f) (relating to information that section 501(c)(4) organizations may be required to include on their annual information returns) and 6652(c) of the Code (relating to penalties for certain failures by tax-exempt organizations to comply with filing or disclosure requirements). See §§ 6033(f)(2), 6652(c)(4).

.02 Under section 405(f) of the PATH Act, section 506 and the related amendments to sections 6033 and 6652 of the Code apply to section 501(c)(4) organizations except for any organization that had, on or before December 18, 2015--

(1) Applied for a Determination Letter that recognizes the organization as a section 501(c)(4) organization (using Form 1024); or

(2) Filed at least one annual information return or notice required under section 6033(a)(1) or (i) (a Form 990, *Return of Organization Exempt From Income Tax*, or, if eligible, Form 990-EZ, *Short Form Return of Organization Exempt From Income Tax*, or Form 990-N (e-Postcard)).

.03 Section 506(a) provides that the notification is due no later than 60 days after the organization is established. Section 405(f)(2) of the PATH Act provides, for organizations in existence on December 18, 2015, that must submit the notification, that the notification is due no later than June 15, 2016, 180 days after the date of enactment of the PATH Act.

.04 Section 6033(f)(2) requires a section 501(c)(4) organization submitting the notification under section 506(a) to include with its first annual information return after submitting the notification any additional information prescribed by regulation that supports the organization's treatment as an organization described in section 501(c)(4). As amended, section 6652(c)(4) imposes penalties for failure to submit the notification under section 506(a) by the date and in the manner prescribed in regulations.

.05 The Treasury Department and the IRS issued Notice 2016-09, 2016-6 I.R.B. 306, to provide interim guidance regarding section 405 of the PATH Act. Specifically, Notice 2016-09 extended the due date for submitting the notification under section 506 until at least 60 days from the date that implementing regulations are issued in order to provide adequate transition time for organizations to comply with the new requirement. Notice 2016-09 further stated that no penalties under section 6652(c)(4) would apply to a section 501(c)(4) organization that submits the notification by the due date provided in the regulations.

.06 On July 12, 2016, the Treasury Department and the IRS published TD 9775 (81 FR XXXX) containing temporary regulations that prescribe the manner in which a section 501(c)(4) organization must submit the notification under section 506. The temporary regulations provide that the notification must be submitted on Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," or its successor. In addition, the temporary regulations clarify that submission of the notification does not constitute a request by an organization for a Determination Letter from the IRS that it qualifies for tax-exempt status.

.07 As noted in section 2.02 of this revenue procedure, any section 501(c)(4) organization that had applied for a Determination Letter that recognizes the organization as described in section 501(c)(4) or filed a Form 990 (or, if eligible, Form 990-EZ, or Form 990-N) on or before December 18, 2015, is excepted under section 405 of the PATH Act from the requirement to submit the notification under section 506. Since the enactment of the PATH Act but prior to the availability of the new electronic Form 8976 for submitting the notification, additional section 501(c)(4) organizations may have filed with the IRS in the same manner. To reduce the burden on these section 501(c)(4) organizations and the IRS, the temporary regulations relieve these organizations from the requirement to submit the notification. Specifically, the temporary regulations provide that an organization is not required to submit the notification if it applied for a Determination Letter that recognizes the organization as described in section 501(c)(4) (using Form 1024) or filed a Form 990 (or, if eligible, Form 990-EZ or Form 990-N) after December 18, 2015, but on or before July 8, 2016. For organizations that do not qualify for this relief, the temporary regulations also provide a transition rule that extends the due date of the notification until September 6, 2016.

SECTION 3. APPLICABILITY AND TIMING OF REQUIREMENT TO SUBMIT NOTIFICATION ON FORM 8976

.01 General rule. Except as provided in paragraph 3.02 of this revenue procedure, a section 501(c)(4) organization must submit a completed Form 8976 to the IRS within 60 days after its Date of Organization.

.02 Special rules for organizations that were organized on or before July 8, 2016.

(1) A section 501(c)(4) organization is not required to submit the Form 8976 if, on or before July 8, 2016, the organization either--

(a) Applied on Form 1024 for a Determination Letter that recognizes the organization as a section 501(c)(4) organization; or

(b) Filed at least one annual information return or notice required under section 6033(a)(1) or (i) (a Form 990, or, if eligible, Form 990-EZ or Form 990-N).

(2) An organization that has a Date of Organization on or before July 8, 2016, and is not described in section 3.02(1) of this revenue procedure must submit a completed Form 8976 to the IRS on or before September 6, 2016.

SECTION 4. PROCEDURE FOR SUBMITTING FORM 8976

.01 Method of Submission.

(1) Form 8976 must be submitted online at <https://services.irs.gov/registration/>. Paper submissions will not be accepted and will be treated as incomplete Forms 8976 as described in section 4.05(4) of this revenue procedure. Only Forms 8976 that are complete and properly submitted within the meaning of this revenue procedure will be accepted for processing by the IRS. See section 4.04 of this revenue procedure for the requirements for a completed Form 8976. As described in section 5.01 of this revenue procedure, an incomplete Form 8976 will not be accepted for processing by the IRS even if it has been successfully submitted through <https://services.irs.gov/registration/>.

(2) The individual submitting Form 8976 on behalf of a section 501(c)(4) organization must establish an account at <https://services.irs.gov/registration/> to submit Form 8976 electronically. The IRS may send electronically to the account of the individual submitting Form 8976 on behalf of the organization the confirmation of transmittal of Form 8976 described in section 6.02 of this revenue procedure, the notice of non-acceptance for processing of Form 8976 described in section 5 of this revenue

procedure, and/or the acknowledgement of receipt of Form 8976 described in section 6.01 of this revenue procedure. Accordingly, the organization should ensure that the individual is authorized not only to submit the Form 8976 but also to receive these communications relating to the organization's submission.

.02 User fee. Consistent with section 506(e), a Form 8976 must be accompanied by payment of the correct user fee on www.pay.gov. The correct user fee for 2016 is \$50. In future years, the user fee will be set forth in the instructions or publications with respect to the Form 8976. Payment confirmations are provided through the www.pay.gov portal. Additional information about payment submission can be found under Frequently Asked Questions at www.pay.gov.

.03 Penalty for late submission. An organization that submits a completed Form 8976 after the due date specified in sections 3.01 or 3.02(2) of this revenue procedure may be subject to penalties provided in section 6652(c)(4), as described in section 8 of this revenue procedure.

.04 Requirements for completed Form 8976. For purposes of this revenue procedure, a Form 8976 submitted by an organization is complete if it:

(1) Provides accurate responses for each required line item of the form, consistent with the form instructions, including--

- (a) Name of the organization;
- (b) Address of the organization;
- (c) Employer Identification Number (EIN) of the organization;
- (d) Date of Organization;
- (e) State or other jurisdiction of organization;

(f) Statement that the purpose of the organization is to operate as either a (i) social welfare organization/civic league, or (ii) local association of employees; and

(g) Month the organization's annual accounting period ends.

(2) Includes an attestation that the information provided is correct and the individual submitting the Form 8976 is authorized to submit the Form 8976 on behalf of the organization; and

(3) Is accompanied by the correct user fee, as described in section 4.02 of this revenue procedure.

.05 Incomplete Forms 8976. A Form 8976 submitted by an organization will not be considered complete if--

(1) Any required line item of the electronic form is incomplete or unintelligible;

(2) The organization's name or EIN do not match the records in the IRS Business Master File;

(3) The organization fails to include payment of the correct user fee; or

(4) The required information is submitted on an improper form or in any other improper format.

SECTION 5. NON-ACCEPTANCE FOR PROCESSING

.01 Incomplete Form 8976. A submitted Form 8976 that is not a completed Form 8976 within the meaning of section 4.04 of this revenue procedure will not be accepted for processing by the IRS. The organization will be notified of the non-acceptance of its form and any user fee that was paid will be returned or refunded. The organization may then submit a completed Form 8976 with a new user fee.

.02 Submission of Form 8976 by excepted organizations. If an organization's Form 8976 is not accepted for processing because the organization is excepted from section 506 under section 405(f) of the PATH Act (an organization that, on or before December 18, 2015, had applied for a Determination Letter that recognizes it as described in section 501(c)(4) of the Code (using Form 1024) or filed a Form 990 (or, if eligible, a Form 990-EZ or 990-N)), the organization will be notified of the non-acceptance of its form and any user fee that was paid will be returned or refunded.

.03 Submission of multiple Forms 8976. An organization should not submit more than one Form 8976. If an organization attempts to submit more than one Form 8976, only the first Form 8976 will be accepted for processing. The organization will be notified of the non-acceptance of any subsequent form and any user fee that was paid in connection with a subsequent form will be returned or refunded.

SECTION 6. ACKNOWLEDGMENT OF RECEIPT UNDER SECTION 506

.01 In general. Within 60 days of receiving an organization's completed and properly submitted Form 8976, the IRS will send the organization an acknowledgment of its receipt as required by section 506(c) of the Code. The acknowledgment will be sent electronically to the account through which the organization's Form 8976 was submitted. The acknowledgment is not a determination of tax-exempt status. See section 7.02 of this revenue procedure.

.02 Confirmation of transmittal is not acknowledgment. The electronic platform for submitting the Form 8976 will automatically supply a confirmation when an organization submits a Form 8976. However, that confirmation is not the acknowledgment required by section 506(c) of the Code. The IRS will send an acknowledgment electronically as

provided in section 6.01 of this revenue procedure after processing of the Form 8976 is complete.

SECTION 7. EFFECT OF SUBMISSION OF FORM 8976

.01 Form 8976 is not a request for a determination. Submission of the Form 8976 does not constitute a request for a Determination Letter that recognizes the organization as a section 501(c)(4) organization. See section 7.05 of this revenue procedure. An organization's submitted Form 8976 is not open to public inspection under section 6104(a)(1) and (d) because it is not an application within the meaning of section 6104.

.02 Acknowledgment required by section 506(c) is not a determination of exempt status by the IRS. Acknowledgment of receipt of an organization's Form 8976 is not a determination of tax-exempt status by the IRS.

.03 Declaratory judgment provisions of section 7428 do not apply. Because Form 8976 is not a request for a Determination Letter and the acknowledgment of receipt of Form 8976 is not a determination by the IRS, the declaratory judgment provisions of section 7428 do not apply.

.04 Requirement to file annual information returns. A section 501(c)(4) organization must file applicable annual information returns or notices, as required by section 6033(a) or (i), separate from and without regard to its submission of Form 8976.

.05 Separate procedure by which an organization may request a Determination Letter. This revenue procedure does not address the separate procedure by which an organization may request a Determination Letter recognizing the organization as a section 501(c)(4) organization. An organization wishing to submit a request for a Determination Letter from the IRS that it qualifies for tax-exempt status should do so in

the manner prescribed in Rev. Proc. 2016-5, 2016-1 I.R.B. 188, or a successor revenue procedure.

SECTION 8. PENALTIES FOR FAILURE TO TIMELY SUBMIT A FORM 8976

.01 Failure to submit a timely Form 8976 as required under section 506. An organization that fails to submit a completed Form 8976 by the due date described in section 3.01 or 3.02(2) of this revenue procedure, as applicable, will be subject to the penalties provided in section 6652(c)(4), unless it is shown that the failure was due to reasonable cause.

(1) Penalty on organization. An organization that fails to submit a completed Form 8976 by the due date must pay a penalty of \$20 for each day during which such failure continues. However, the total imposed on the organization for failure to submit Form 8976 shall not exceed \$5,000.

(2) Penalty on managers. If an organization fails to submit a completed Form 8976 by the due date, the IRS may send a written demand, requesting that the organization submit the Form 8976 by a specified future date that the IRS determines is reasonable under the circumstances. If the organization fails to submit the Form 8976 on or before the date specified in the demand, the person or persons responsible for such failure must pay a penalty of \$20 for each day after the date specified in the demand during which such failure continues. For these purposes, the term “person” means any officer, director, trustee, employee, member, or other individual whose duty it is to submit the Form 8976. If more than one person is responsible for a failure to submit the Form 8976, all such persons shall be jointly and severally liable with respect

to the penalty for such failure. However, the total amount imposed on all persons responsible for such failure shall not exceed \$5,000.

.02 Requesting relief from a section 6652(c)(4) penalty. Under section 6652(c)(5) and the regulations thereunder, relief from a penalty imposed by section 6652(c)(4) may be obtained if it is established to the satisfaction of the IRS that the failure to timely submit the Form 8976 was due to reasonable cause. The correspondence from the IRS regarding the penalty will provide instructions on how to submit a request for penalty relief.

.03 Example of a situation in which reasonable cause relief from the penalty on the organization would be appropriate. Organization O is formed under the laws of a foreign country and operates for a number of years during which it conducts no activities in the United States and has no income from U.S. sources. In October 2016, O commences operations in the United States from which it anticipates income that will be reported on a Form 990 (or require the filing of a Form 990-N) and promptly notifies the IRS of its intent to operate as a section 501(c)(4) organization by submitting Form 8976. Because the date of submission of Form 8976 is more than 60 days after its Date of Organization, O receives a penalty letter from the IRS. Based on these facts, O's failure is due to reasonable cause, and O may obtain relief from the penalty described in section 8.01(1) of this revenue procedure by submitting a request in accordance with the instructions in the correspondence from the IRS regarding the penalty.

SECTION 9. EFFECTIVE DATE

This revenue procedure is effective July 8, 2016.

SECTION 10. PAPERWORK REDUCTION ACT

The collection of information contained in this revenue procedure will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget in accordance with the Paperwork Reduction Act (44 USC 3507) under control number 1545-2268.

The collection of information in section 4 of this revenue procedure is required to satisfy the requirement imposed by section 506 of the Code to notify the Secretary of an organization's intent to operate under section 501(c)(4). This information will be used by the IRS to process the Form 8976 for completeness in satisfaction of the statutory requirement and to determine applicability of the penalties imposed by section 6652(c)(4) of the Code. The burden for the collection of information contained in section 4 of this revenue procedure will be reflected in the burden estimate for Form 8976.

An agency may not conduct or sponsor, and person is not required to respond to, a collection of information unless the collection of information displays a valid OMB number.

Books and records relating to the collection of information must be retained as long as their contents may become material in the administration of any internal revenue law. Generally, tax returns and tax return information are confidential, as required by section 6103.

SECTION 11. REQUEST FOR COMMENTS

The Treasury Department and the IRS request comments on this revenue procedure, which will be considered in making any future update to these procedures.

Comments should refer to Rev. Proc. 2016-41, and should be submitted to:

Internal Revenue Service
Attn: CC:PA:LPD:PR
(Rev. Proc. 2016-41) Room 5203
P.O. Box 7604
Ben Franklin Station
Washington, DC 20044

Submissions also may be hand delivered Monday through Friday between the hours of 8 am and 4 pm to CC:PA:LPD:PR (Rev. Proc. 2016-41), Courier's Desk, Internal Revenue Service, 1111 Constitution Avenue, N.W. Washington, DC Alternatively, comments may be submitted electronically via the following email address:

Notice.Comments@irsounsel.treas.gov. Please include "Rev. Proc. 2016-41" in the subject line of any electronic communication. All comments will be available for public inspection and copying.

SECTION 10. DRAFTING INFORMATION

The principal author of this revenue procedure is Chelsea Rubin of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For additional information, please contact Ms. Rubin at 202-317-5800 (not a toll-free number).