



[4830-01-p]

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 1 and 602

[TD 9775]

RIN 1545-BN26

Requirement to Notify the IRS of Intent to Operate as a Section 501(c)(4) Organization; Final and Temporary Regulations

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Final and temporary regulations.

SUMMARY: This document contains final and temporary regulations relating to the requirement, added by the Protecting Americans from Tax Hikes Act of 2015, that organizations must notify the IRS of their intent to operate under section 501(c)(4) of the Internal Revenue Code (Code). The regulations affect organizations described in section 501(c)(4) (section 501(c)(4) organizations) that are organized after December 18, 2015, and certain section 501(c)(4) organizations existing on that date. The text of the temporary regulations serves as the text of the proposed regulations set forth in the related notice of proposed rulemaking (REG-101689-16) published in the Proposed Rules section in this issue of the **Federal Register**.

DATES: Effective Date: These regulations are effective on July 8, 2016.

Applicability Date: For date of applicability, see §1.506-1T(f).

FOR FURTHER INFORMATION CONTACT: Chelsea Rubin at (202) 317-5800 (not a toll-free number).

## SUPPLEMENTARY INFORMATION:

### **Paperwork Reduction Act**

The collection of information contained in these final and temporary regulations will be reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-2268.

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

For further information concerning this collection of information, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Books and records relating to a 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 26 U.S.C. 6103.

### **Background**

This Treasury decision contains temporary regulations under section 506 of the Code. Section 405 of the Protecting Americans from Tax Hikes Act of 2015 (Pub. L. No. 114-113, div. Q) (the PATH Act), enacted on December 18, 2015, added section 506 to the Code and amended sections 6033 and 6652. Because the statutory provisions were effective upon enactment and certain section 501(c)(4) organizations must notify the IRS within 60 days of formation, these

temporary regulations are necessary to provide prompt guidance to enable section 501(c)(4) organizations to satisfy the new statutory notification requirement and provide appropriate transition relief.

#### 1. Section 501(c)(4) Organizations

Section 501(a) of the Code generally provides that an organization described in section 501(c) is exempt from federal income tax. Section 501(c)(4) describes certain civic leagues or organizations operated exclusively for the promotion of social welfare and certain local associations of employees. An organization is described in section 501(c)(4) and exempt from tax under section 501(a) if it satisfies the requirements applicable to such status. Subject to certain exceptions, section 6033, in part, requires organizations exempt from taxation under section 501(a) to file annual information returns or notices, as applicable.

Although an organization may apply to the IRS for recognition that the organization qualifies for tax-exempt status under section 501(c)(4), there is no requirement to do so (except as provided in section 6033(j)(2), which requires organizations that lose tax-exempt status for failure to file required annual information returns or notices and want to regain tax-exempt status to apply to obtain reinstatement of such status). Accordingly, a section 501(c)(4) organization that files annual information returns or notices, as required under section 6033, need not seek an IRS determination of its qualification for tax-exempt status in order to be described in and operate as a section 501(c)(4) organization.

#### 2. The PATH Act

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

Section 506(a) requires a section 501(c)(4) organization, no later than 60 days after the organization is established, to notify the Secretary of the Department of the Treasury (Secretary) that it is operating as a section 501(c)(4) organization (the notification). Section 506(b) provides that the notification must include: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. Section 506(c) requires the Secretary to send the organization an acknowledgment of the receipt of its notification within 60 days. Section 506(d) permits the Secretary to extend the 60-day notification period for reasonable cause. Section 506(e) provides that the Secretary shall impose a reasonable user fee for submission of the notification. Section 506(f) provides that, upon request by an organization, the Secretary may issue a determination with respect to the organization's treatment as a section 501(c)(4) organization and that the

organization's request will be treated as an application for exemption from taxation under section 501(a) subject to public inspection under section 6104.<sup>1</sup>

In addition, the PATH Act amended section 6033(f) to require a section 501(c)(4) organization submitting the notification 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 a section 501(c)(4) organization.

The PATH Act also amended section 6652(c) to impose penalties for failure to submit the notification by the date and in the manner prescribed in regulations. In particular, section 6652(c)(4)(A) imposes a penalty on an organization that fails to submit the notification equal to \$20 per day for each day such failure continues, up to a maximum of \$5,000. Additionally, section 6652(c)(4)(B) imposes a similar penalty on persons who fail to timely submit the notification in response to a written request by the Secretary.

Section 405(f) of the PATH Act provides that, in general, the requirement to submit the notification and the related amendments to sections 6033 and 6652 apply to section 501(c)(4) organizations that are established after December 18, 2015, the date of enactment of the PATH Act. Section 405(f)(2) of the PATH Act provides that these provisions also apply to any other section 501(c)(4) organizations that had not, on or before the date of enactment of the PATH Act: (1) applied for a written determination of recognition as a section 501(c)(4) organization (using Form 1024, "Application for Recognition of Exemption Under

---

<sup>1</sup> The separate procedure by which an organization may request a determination of tax-exempt status is prescribed in Rev. Proc. 2016-5, 2016-1 IRB 188, or its successor.

Section 501(a)"); or (2) filed at least one annual information return or notice required under section 6033(a)(1) or (i) (that is, 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)). Organizations described in section 405(f)(2) of the PATH Act must submit the notification within 180 days after the date of enactment of the PATH Act.

### 3. Notice 2016-09

The Treasury Department and the IRS issued Notice 2016-09 (2016-6 IRB 306 (February 8, 2016)) to provide interim guidance regarding section 405 of the PATH Act. Specifically, Notice 2016-09 extended the due date for submitting the notification 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 to submit the notification. 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.

With respect to the separate procedure by which an organization may request a determination from the IRS that it qualifies for tax-exempt status under section 501(c)(4), Notice 2016-09 stated that organizations seeking IRS recognition of section 501(c)(4) status should continue using Form 1024 until further guidance is issued. Notice 2016-09 also clarified that the filing of Form 1024 does not relieve an organization of the requirement to submit the

notification. The Treasury Department and the IRS received a public comment in response to Notice 2016-09, which was considered in drafting these temporary regulations.

## **Explanation of Provisions**

### **1. Overview of Temporary Regulations**

The temporary regulations prescribe the manner in which an organization must notify the IRS, consistent with section 506, that it is operating as a section 501(c)(4) organization. In addition, the temporary regulations clarify that the submission of the notification does not constitute a request by an organization for a determination from the IRS that it qualifies for tax-exempt status.

### **2. The Notification**

The IRS has developed a new electronic form, Form 8976, “Notice of Intent to Operate Under Section 501(c)(4),” for use by organizations submitting the notification. In accordance with section 506(a), the temporary regulations generally require a section 501(c)(4) organization to submit the notification to the IRS on Form 8976 (or its successor) no later than 60 days after the date the organization is organized. The Form 8976 must be submitted in accordance with the form and its instructions.

Consistent with section 506(b), the temporary regulations specify that the notification must include: (1) the name, address, and taxpayer identification number of the organization; (2) the date on which, and the state or other jurisdiction under the laws of which, the organization was organized; and (3) a statement of the purpose of the organization. In addition, the temporary

regulations provide that the notification must include such additional information as may be specified in published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. To ensure that the statutorily required items of information in the notification are correlated accurately within existing IRS systems, Form 8976 requires organizations to provide their annual accounting period.

The temporary regulations also provide that the notification must be accompanied by payment of the reasonable user fee authorized by section 506(e), which will be set forth by published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. Consistent with section 506(d), the temporary regulations state that the 60-day period for submitting the notification may be extended for reasonable cause.

Further, the temporary regulations provide that, within 60 days after receipt of the notification, the IRS will send the organization an acknowledgment of such receipt. The temporary regulations clarify that this acknowledgment is not a determination with respect to tax-exempt status. Thus, it is not a determination on which an organization may rely or a determination or a failure to make a determination with respect to which the organization may seek declaratory judgment under section 7428. For further information regarding the interaction of the section 506 notification requirement with the separate procedure by which an organization may request an IRS determination that it



qualifies for tax-exempt status under section 501(c)(4), see section 5 of this Explanation of Provisions.

Finally, the temporary regulations provide that additional guidance on the procedures for submitting the notification may be provided in published guidance in the Internal Revenue Bulletin or in other guidance, such as forms or instructions, issued with respect to the notification. On July 8, 2016, the IRS released Rev. Proc. 2016-41, 2016-30 IRB xxxx, which provides additional information on the procedure for submitting the Form 8976.

A public comment submitted in response to Notice 2016-09 suggested that section 506(a) should not apply to foreign organizations that do not conduct significant activities (other than investment activities) in the United States, even if the organizations may be required to submit a Form 990 to the IRS. As the commenter notes, foreign section 501(c)(4) organizations generally are required to file an annual information return or notice with the IRS under section 6033. See Rev. Proc. 2011-15, §3 (2011-3 IRB 322). Section 506(a) does not include an exception from the requirement to submit the notification for foreign section 501(c)(4) organizations. The Treasury Department and the IRS have determined that the regulations should not create such an exception because the requirement to submit the notification is intended to replace the former practice under which section 501(c)(4) organizations (both domestic and foreign) might not notify the IRS that they claim section 501(c)(4) status until they file a Form 990 return or notice. Accordingly, the temporary regulations clarify that a section 501(c)(4) organization must submit the notification whether it is organized in the

United States or outside the United States. However, a foreign organization may be eligible for relief from penalties under section 6652 if it submits the notification promptly after first commencing activities or receiving income that would cause it to have a filing requirement under section 6033. Rev. Proc. 2016-41 includes an example to illustrate the availability of this relief.

### 3. Special Rules for Organizations Organized on or Before July 8, 2016

Under section 405(f)(2) of the PATH Act, the requirement to submit the notification does not apply to certain organizations that notified the IRS of their existence on or before December 18, 2015. The Treasury Department and the IRS recognize that, since the enactment of the PATH Act but before the availability of the new electronic Form 8976 for submitting the notification, additional section 501(c)(4) organizations may have notified the IRS of their existence by applying for a written determination of tax-exempt status or filing a required annual information return or notice. Accordingly, to reduce the burden on these organizations and the IRS, the temporary regulations provide relief from the requirement to submit the notification for any section 501(c)(4) organization that, on or before July 8, 2016, either: (1) applied for a written determination of recognition as a section 501(c)(4) organization (using Form 1024); or (2) filed at least one annual return or notice required under section 6033(a)(1) or (i) (that is, a Form 990 or, if eligible, Form 990-EZ or Form 990-N).

In order to allow adequate transition time for organizations that do not qualify for this transition relief to submit the notification in the manner prescribed by these regulations, the temporary regulations provide that an organization that

was organized on or before July 8, 2016, will have until September 6, 2016, which is 60 days from the date that the regulations are filed with the Federal Register, to submit the notification.

#### 4. Failure to Submit the Notification

For information on the applicable penalties for failure to submit the notification, the temporary regulations refer to section 6652(c)(4), which imposes penalties on the organization and on persons who fail to timely submit the notification in response to a written request by the Secretary, as well as section 6652(c)(5), which provides a reasonable cause exception, and section 6652(c)(6), which provides other special rules that generally apply for purposes of section 6652(c) penalties.

Under section 6652(c)(5), no penalty will be imposed with respect to a failure to submit the notification if it is shown that such failure is due to reasonable cause. Rev. Proc. 2016-41 addresses reasonable cause for abating a section 6652(c)(4) penalty.

Under section 6652(c)(6), the section 6652(c)(4)(B) penalty imposed on “persons” who fail to timely submit the notification in response to a written request by the Secretary applies to any officer, director, trustee, employee, or other individual who is under a duty to submit the notification. In addition, under section 6652(c)(6), if more than one person is liable for the section 6652(c)(4)(B) penalty, all such persons will be jointly and severally liable with respect to the failure to submit the notification.

5. Separate Procedure by Which an Organization May Request an IRS Determination That It Qualifies for Section 501(c)(4) Exempt Status

Section 506(f) provides that an organization subject to the section 506 notification requirement may request a determination to be treated as an organization described in section 501(c)(4). This indicates that the procedure by which an organization may request a determination that it is described in section 501(c)(4) is separate from the procedure for submitting the notification. Accordingly, the temporary regulations provide that submission of the notification does not constitute a request for an IRS determination that the organization qualifies for tax-exempt status under section 501(c)(4). Rather, an organization that seeks IRS recognition of tax-exempt status under section 501(c)(4) must separately request a determination in the manner prescribed in Revenue Procedure 2016-5, or its successor.

If an organization receives a determination from the IRS recognizing tax-exempt status, the organization's application, supporting papers, and final determination letter are open to public inspection under section 6104(a)(1) and (d). The notification, by contrast, is not open for public inspection because it is not an application within the meaning of section 6104.

6. No Additional Information Required on Form 990 or 990-EZ at this Time

Section 6033(f)(2), as amended by the PATH Act, provides that the IRS may require an organization that submits the notification to include additional information in support of the organization's treatment as an organization described in section 501(c)(4) on the first Form 990 or 990-EZ, as applicable, filed by the organization after submitting the notification. The temporary

regulations do not prescribe any additional information to be reported on Form 990 or 990-EZ at this time. The IRS will monitor the notification process to determine whether additional information is needed.

### **Statement of Availability of IRS Documents**

For copies of recently issued revenue procedures, revenue rulings, notices, and other guidance published in the Internal Revenue Bulletin, please visit the IRS website at <http://www.irs.gov>.

### **Special Analyses**

Certain IRS regulations, including this one, are exempt from the requirements of Executive Order 12866, as supplemented and reaffirmed by Executive Order 13563. Therefore, a regulatory assessment is not required. It has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) does not apply to these regulations. For applicability of the Regulatory Flexibility Act, please refer to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**. Pursuant to section 7805(f) of the Code, these regulations have been submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

### **Drafting Information**

The principal author of these regulations is Chelsea R. Rubin, Office of Associate Chief Counsel (Tax Exempt and Government Entities). However, other personnel from the Treasury Department and the IRS participated in their development.

## List of Subjects

### 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

### 26 CFR Part 602

Reporting and recordkeeping requirements.

## Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 1 and 602 are amended as follows:

### PART 1--INCOME TAXES

Paragraph 1. The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par 2. Section 1.506-1T is added to read as follows:

§1.506-1T Organizations required to notify Commissioner of intent to operate under section 501(c)(4) (temporary).

(a) Notification requirement--(1) In general. Except as provided in paragraph (b) of this section, an organization (whether domestic or foreign) described in section 501(c)(4) must, no later than 60 days after the date the organization is organized, notify the Commissioner that it is operating as an organization described in section 501(c)(4) by submitting a completed Form 8976, "Notice of Intent to Operate Under Section 501(c)(4)," or its successor (the notification). The notification must be submitted in accordance with the form and its instructions. The notification must include the information specified in paragraph (a)(2) of this section and be accompanied by payment of the user fee described in paragraph (a)(3) of this section. Additional guidance on the

procedure for submitting the notification may be provided in published guidance in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(2) Contents of the notification. The notification must include the following information:

(i) The name, address, and taxpayer identification number of the organization.

(ii) The date on which, and the state or other jurisdiction under the laws of which, the organization was organized (that is, formed as a legal entity). For an organization formed outside the United States, the jurisdiction is the foreign country under the laws of which it is organized.

(iii) A statement of the purpose of the organization.

(iv) Such additional information as may be specified in published guidance in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(3) User fee. The notification must be accompanied by payment of the user fee set forth by published guidance in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter) or in other guidance, such as forms or instructions, issued with respect to the notification.

(4) Extension for reasonable cause. The Commissioner may, for reasonable cause, extend the 60-day period for submitting the notification.

(b) Special rules for organizations that were organized on or before July 8, 2016--(1) Notification requirement does not apply to organizations that filed with

the IRS on or before December 18, 2015. The requirement to submit the notification does not apply to any organization described in section 501(c)(4) that, on or before December 18, 2015, either--

(i) Applied for a written determination of recognition as an organization described in section 501(c)(4) in accordance with §1.501(a)-1 and all applicable guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), forms, and instructions; or

(ii) Filed at least one annual information return or annual electronic notification required under section 6033(a)(1) or (i).

(2) Transition relief available for organizations that filed with the IRS on or before July 8, 2016. An organization described in section 501(c)(4) is not required to submit the notification if, on or before July 8, 2016, the organization either--

(i) Applied for a written determination of recognition as an organization described in section 501(c)(4) in accordance with §1.501(a)-1 and all applicable guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), forms, and instructions; or

(ii) Filed at least one annual information return or annual electronic notification required under section 6033(a)(1) or (i).

(3) Extended due date. An organization that was organized on or before July 8, 2016, and is not described in paragraph (b)(1) or (2) of this section, will satisfy the requirement to submit the notification if the notification is submitted on or before September 6, 2016.



(c) Failure to submit the notification. For information on the penalties for failure to submit the notification, the applicable reasonable cause exception, and applicable special rules, see section 6652(c)(4) through (6).

(d) Acknowledgment of receipt. Within 60 days after receipt of the notification, the Commissioner will send the organization an acknowledgment of such receipt. This acknowledgment is not a determination by the Commissioner that the organization qualifies for exemption under section 501(a) as an organization described in section 501(c)(4). See paragraph (e) of this section.

(e) Separate procedure by which an organization may request an IRS determination that it qualifies for section 501(c)(4) tax-exempt status.

Submission of the notification does not constitute a request by an organization for a determination by the Commissioner that the organization qualifies for exemption under section 501(a) as an organization described in section 501(c)(4). An organization seeking IRS recognition of its tax-exempt status must separately request such a determination in accordance with §1.501(a)-1 and all applicable guidance published in the Internal Revenue Bulletin (see §601.601(d)(2) of this chapter), forms, and instructions.

(f) Effective/applicability date. This section applies on and after July 8, 2016.

(g) Expiration date. The applicability of this section expires on or before July 8, 2019.

PART 602--OMB CONTROL NUMBERS UNDER THE PAPERWORK  
REDUCTION ACT

Par. 3. The authority for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805 \* \* \*

Par. 4. In §602.101, paragraph (b) is amended by adding the following entry in numerical order to the table to read as follows:

§602.101 OMB Control numbers.

\* \* \* \* \*

(b) \* \* \*

---

CFR part or section where  
Identified and described

Current OMB  
control no.

---

\* \* \* \* \*

1.506-1T.....1545-2268

\* \* \* \* \*

---

John Dalrymple,  
Deputy Commissioner for Services and Enforcement.

Approved: June 24, 2016.

Mark J. Mazur,  
Assistant Secretary of the Treasury (Tax Policy).