

Section 506 Notification Requirement for New and Certain Existing Section 501(c)(4) Organizations

Notice 2016-09

SECTION 1. PURPOSE AND OVERVIEW

This Notice provides interim guidance regarding section 405 of the Protecting Americans from Tax Hikes Act of 2015 (the PATH Act), enacted on December 18, 2015, as part of the Consolidated Appropriations Act, 2016 (Pub. L. 114-113). Specifically, this Notice addresses the due date of notifications required to be submitted under new section 506 of the Internal Revenue Code (Code) by social welfare organizations described in section 501(c)(4) and the separate process by which an organization may, at its option, request a determination that it qualifies for section 501(c)(4) tax-exempt status.

The section 506 notification requirement applies to social welfare organizations described in section 501(c)(4) that are established after December 18, 2015, and to certain organizations existing on that date. The Department of the Treasury (Treasury Department) and the Internal Revenue Service (IRS) intend to issue temporary regulations under section 506 prescribing the manner in which organizations described in section 501(c)(4) must notify the IRS of their intent to operate under section

501(c)(4). Organizations will have at least 60 days from the date such regulations are issued to submit the information required under section 506, and should wait to submit the information until the regulations are issued. No penalties under section 6652(c)(4) will apply to a section 501(c)(4) organization that provides the section 506 notification by the due date provided in the regulations.

SECTION 2. BACKGROUND

Section 501(a) of the Code generally provides that an organization described in section 501(c) is exempt from federal income tax. In particular, section 501(c)(4) describes organizations “operated exclusively for the promotion of social welfare.” A social welfare organization is described in section 501(c)(4) (and, therefore, exempt from tax under section 501(a)) if it satisfies the requirements applicable to such status. Although an organization may apply to the IRS for recognition that the organization qualifies for section 501(c)(4) tax-exempt status, there is no requirement to do so (except as provided in section 6033(j)(2) for organizations that fail to file required information returns or notices). Accordingly, an organization described in section 501(c)(4) that files the required annual information return or notice, as applicable, need not seek an IRS determination of its qualification for tax-exempt status.

Section 405(a) of the PATH Act added new section 506, requiring an organization to notify the IRS of its intent to operate as an organization described in section 501(c)(4), and amended sections 6033(f) and 6652(c), relating to required annual information returns by tax-exempt organizations and penalties for failures to file

such returns, respectively.

Section 506 requires an organization described in section 501(c)(4), no later than 60 days after the organization is established, to notify the Secretary (in the manner prescribed by regulations) that it is operating as a section 501(c)(4) organization. For certain existing organizations, the notification is due no later than June 15, 2016, 180 days after the date of enactment of the PATH Act. 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 acknowledgement 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. Finally, section 506(f) provides that, upon request by an organization to be treated as an organization described in section 501(c)(4), the Secretary may issue a determination with respect to 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.

Section 405(b) of the PATH Act amended section 6033(f) to require a section 501(c)(4) organization submitting the section 506 notification to include with its first annual information return filed thereafter any additional information prescribed by

regulation that supports the organization's treatment as an organization described in section 501(c)(4).

Section 405(c) of the PATH Act amended section 6652(c) to impose penalties for failure to file the notification by the date and in the manner prescribed in section 506 (and implementing 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 the 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 section 506 notification requirement and the related amendments to sections 6033 and 6652 apply to organizations described in section 501(c)(4) 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) organization that had not, on or before the date of enactment: (1) applied for a written determination of recognition as an organization described in section 501(c)(4) (using Form 1024, "Application for Recognition of Exemption Under Section 501(a)"); or (2) filed at least one annual information return or notice required under section 6033(a)(1) or 6033(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)). Existing organizations described in section 405(f)(2) of the PATH

Act have until June 15, 2016 (180 days after the date of enactment) to submit the section 506 notification.

SECTION 3. EXTENSION OF PERIOD TO NOTIFY IRS

The Treasury Department and the IRS intend to issue temporary regulations implementing the section 506 requirement that organizations described in section 501(c)(4) notify the IRS of their intent to operate under section 501(c)(4). In order to provide adequate transition time for organizations to comply with the new procedures, the Treasury Department and the IRS are extending the due date for submitting the section 506 notification until at least 60 days from the date the regulations are issued. No penalties under section 6652(c)(4) will apply to a section 501(c)(4) organization that submits the required notification by the due date provided in the regulations. In addition, comments from the public regarding the new section 506 notification requirement and related provisions will be requested during the rulemaking process.

SECTION 4. REQUESTS FOR DETERMINATION

Section 506(c) requires the IRS to acknowledge receipt of a section 506 notification. This acknowledgment is not a determination by the IRS that the organization qualifies for section 501(c)(4) tax-exempt status. Rather, section 506(f) provides that an organization seeking IRS recognition of its tax-exempt status may separately request such a determination. Section 506(f) provides that such a request will be treated as an application for exemption from taxation under section 501(a) and therefore will be subject to public inspection under section 6104. Until further guidance

is issued, organizations requesting IRS recognition of exempt status under section 501(c)(4) should continue to use the Form 1024. The filing of Form 1024 is optional and will not relieve an organization of the requirement to file the section 506 notification.

SECTION 5. DRAFTING INFORMATION

The principal author of this Notice is Chelsea Rubin of the Office of Associate Chief Counsel (Tax Exempt and Government Entities). For further information regarding this Notice, contact Chelsea Rubin at (202) 317-5800 (not a toll-free call).