



DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEPUTY COMMISSIONER

April 26, 2012

The Honorable Orrin G. Hatch
Ranking Member
Committee on Finance
United States Senate
Washington, DC 20510

Dear Senator Hatch:

I am responding to your letter to Commissioner Shulman dated March 14, 2012, requesting information about the procedures to obtain tax exemption under section 501(c)(4) of the Internal Revenue Code. We appreciate your interest and support of the IRS efforts in the administration of the tax law as it applies to tax-exempt organizations.

Question 1. What is the IRS's process for approval and renewal of a tax-exempt designation under section 501(c)(4)?

The law allows section 501(c)(4) organizations to self-declare and hold themselves out as tax-exempt. Organizations also can apply for IRS recognition as tax-exempt. An organization determined by the IRS to be tax-exempt can rely on that determination if their exempt status is ever questioned, so long as the organization has not deviated from the organizational structure and operational activities set forth in its application.

Once an organization that has applied to the IRS receives recognition of section 501(c)(4) status, it is not required to renew that recognition. If an organization's tax-exemption is later revoked, either through the examination process or automatically for failure to file the annual information return or notice for three consecutive years¹, it may reapply and the process is the same as the initial application process, as described in Revenue Procedure 2012-9, 2012-2 I.R.B 261 and below. As set forth in Revenue Procedure 2012-9, the organization has the burden of proving that it meets the particular requirements of the Code section under which it claims exemption through information in its application and supporting materials. Enclosure A is a copy of the Revenue Procedure.

All applications for tax-exempt status, including applications for status under section 501(c)(4), are filed with a centralized IRS Submission Processing Center, which enters the applications into the EP/EO Determination System and processes the attached user fees. The application is then sent to the Exempt Organizations ("EO") Determinations office in Cincinnati, Ohio for initial technical screening.

¹ IRC § 6033(j)(1).

This technical screening is conducted by EO Determinations' most experienced revenue agents who review the applications and, based on that review, separate the applications into the following four categories:

- Applications that can be approved immediately based on the completeness of the application and the information submitted;
- Applications that need only minor additional required information in the file in order to approve the application;
- Applications that do not contain the information needed to be considered substantially complete; and
- Applications that require further development by an agent in order to determine whether the application meets the requirements for tax-exempt status.

Organizations whose applications fall into the fourth category are sent letters informing them that more development of their application is needed, and that they will be contacted once their application has been assigned to a revenue agent. The applications are sent to unassigned inventory, where they are held until a revenue agent with the appropriate level of experience for the issues involved in the matter is available to further develop the case.²

Once the case is assigned, the revenue agent notifies the organization and reviews the application. Based upon established precedent and the facts and circumstances set forth in the application, the revenue agent requests additional information and documentation to complete the file pertaining to the exempt status application materials³ (the so-called "administrative record") and makes a determination. Where an application for exemption presents issues that require further development to complete the administrative record, the revenue agent engages in a back and forth dialogue with the organization in order to obtain the needed information. This back and forth dialogue helps applicants better understand the requirements for exemption and what is needed to meet them, and it helps the IRS obtain all the information relevant to the determination.

Tools are available to promote consistent handling of full development cases. For example, in situations where there are a number of cases involving similar issues (such as credit counseling organizations, down payment assistance organizations, organizations that were automatically revoked and are seeking retroactive reinstatement, and most recently, advocacy organizations), the IRS will assign cases to designated employees to promote consistency. Additionally, in these cases, EO Technical (an office of specialists in Exempt Organizations) works with the IRS Office of

² Enclosure B describes the criteria used to determine the appropriate level of experience.

³ This includes the application for recognition of tax exempt status, any papers submitted in support of the application, and any letter or other document issued by the IRS with respect to the application. See IRC § 6104(a), (d)(5); Tax Court Rule 210(b)(12).

Chief Counsel to develop educational materials to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

It is important to develop a complete administrative record for the application. The administrative record must be complete so that it supports either exemption or denial. If the application is approved, not only is the administrative record made publicly available (with certain limited exceptions outlined below), but organizations that act as described in the administrative record have reliance on the IRS determination. If the application is denied, the organization may seek review from the Office of Appeals. The Appeals Office, which is independent of Exempt Organizations, reviews the complete administrative record and makes its own independent determination of whether the organization meets the requirements for tax-exempt status. It is to the organization's benefit to have all of their materials in the file in the event that EO Determinations denies exemption and the organization seeks Appeals review. If, based on the information in the administrative record, the Appeals Office decides the organization meets the requirements for tax-exempt status, the application will be approved. If the Appeals Office agrees that the application should be denied, the 501(c)(4) applicant may pay the tax owed as a taxable entity and seek a refund in federal court.

In those cases where the application raises issues for which there is no established published precedent or for which non-uniformity may exist, EO Determinations refers the application to EO Technical. In EO Technical, the applications are reviewed by tax law specialists, whose job is to interpret and provide guidance on the law and who work closely with IRS Chief Counsel attorneys on the issues.

Similar to the process in EO Determinations, EO Technical tax law specialists develop cases based on the facts and circumstances of the issues in the specific application. EO Technical staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record. If, upon review of all of the information submitted, it appears that an organization does not meet the requirements for tax-exempt status, a proposed denial explaining the reasons the organization does not meet the requirements is issued. The organization is then entitled to a "conference of right" where it may provide additional information. Following the conference of right, a final determination is issued. If the application is approved, the administrative record is made publicly available, and if the organization acts as described in the application filed, it has reliance on the IRS determination. If the application is denied, the applicant may seek relief by paying the tax owed as a taxable entity and seek a refund in federal court.

Question 2. Are all 501(c)(4) applicants required to provide responses and information beyond the questions specified in Form 1024 and Schedule B? If not, when and on what basis does the IRS require an applicant to make disclosures not described in Form 1024 and Schedule B?

In order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 instructs the applicant to report, among other things, all of its activities – past, present, and planned. The Form and instructions tell the organization that it must

provide a detailed description of each individual activity, including the purpose of the activity and how it furthers the organization's exempt purpose, when the activity is initiated, and where and by whom the activity will be conducted. If the Form 1024 questions are answered with sufficient detail to make a favorable determination, the applicant will not be asked additional questions. If, however, issues remain, then the IRS contacts the organization and solicits the information needed to establish or deny tax exemption.

The range of organizations eligible for tax-exempt status under section 501(c)(4), the requirements they must meet, and the diversity of the facts and circumstances presented by the applications, require individualized consideration, and each development letter will vary depending on the facts and circumstances of the application.

Question 3. Which IRS officials develop and approve the list of questions and requests for information (beyond the questions specified in Form 1024 and Schedule B) which are sent to 501(c)(4) organizations? What are the objective standards by which the responses to such requests for information are evaluated?

As noted in question 2, the IRS contacts the organization and solicits additional information when there is not sufficient information upon which to make a determination of tax exempt status. When an application needs further development, the case is assigned to a revenue agent with the appropriate level of experience for the issues involved in the application.

The general procedures for requesting additional information to develop an application are included in section 7.20.2 of the Internal Revenue Manual. Although there is a template letter that describes the general information on the case development process, the letter does not, and could not, specify the information to be requested from any particular organization because of the broad range of possible facts possible. Enclosure C is a copy of the template letter.

The amount and nature of development necessary to process an application to ensure that the legal requirements of tax-exemption are satisfied depends on several factors, which include the comprehensiveness of the information provided in the application and the issues raised by the application. Consequently, revenue agents prepare individualized questions and requests for documents relevant to the application, which are attached to the above described general template letter. With certain types of applications where the issues are similar or more complex, EO Technical, in coordination with Chief Counsel, develops educational materials to assist the revenue agents in issue spotting and crafting questions to develop those cases consistently.

The revenue agent uses sound reasoning based on tax law training and his or her experience to review the application and identify the additional information needed to make a proper determination of the organization's exempt status. The revenue agent prepares individualized questions and requests for documents based on the facts and circumstances set forth in the particular application.

Once responses are received, the entire application file is evaluated based upon the requirements in the Code and regulations.⁴

Question 4. How do additional requests for information sent by the IRS to 501(c)(4) applicant organizations (beyond the information required by IRS Form 1024 and Schedule B) relate to a specific standard of review previously established by the IRS? Has the IRS published such standards? Does the decision to approve or deny applications for tax-exempt status adhere to these standards, particularly if these standards have not been published and are not readily known?

As noted in question 2, the IRS contacts the organization and solicits additional information if there is insufficient information to make a determination or if issues are raised by the application. All information gathered during the application process is evaluated based upon the requirements of the Code and regulations.⁵

The general procedures for reviewing applications for tax-exempt status, which include requesting further development information, are included in Internal Revenue Manual (IRM) section 7.20.2, which is made available to the public on the IRS website.⁶ Enclosure D is a copy of IRM 7.20.2.

Question 5. Is every 501(c)(4) applicant required to provide the IRS with copies of all social media posts, speeches and panel presentations, names and qualifications of speakers and participants, and any written materials distributed for all public events conducted or planned to be conducted by the organization? If not, which 501(c)(4) applicants must meet this disclosure requirement and on the basis of what objective criteria are they selected?

The nature of any development letter will vary depending on the facts and circumstances of a given application. Therefore, organizations receive different questions. As indicated earlier, in situations where there are a number of cases involving similar issues (such as, for example, credit counseling organizations, down payment assistance organizations, and advocacy organizations), educational materials may be developed to assist the revenue agents in issue spotting and crafting questions to develop cases consistently.

As to the specific matters you raised in your letter, Question 16 of Part II of Form 1024

⁴ IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.

⁵ IRC § 501(c)(4); Treas. Reg. § 501(c)(4)-1.

⁶ IRM 7.20.2 is available at http://www.irs.gov/irm/part7/irm_07-020-002.html.

asks organizations whether they publish pamphlets, brochures, newsletters, journals, or similar printed material. This includes material that may be used to publicize the organization's activities, or as an informational item to members or potential members. If so, the Form instructs organizations to attach a recent copy of each. If the organization's application indicates that it does publish such materials but it did not provide this material with the application, the material will be requested in further development.

The IRS recognizes that many organizations communicate through the internet and social media as well as through paper. Where relevant to the issues raised in an application, the IRS will ask for those materials as well. To ensure a complete administrative record for reliance and review purposes, copies of relevant internet materials must be included. The extent of any required submission depends upon the facts and circumstances of a given case and the professional judgment of the revenue agent involved.

As noted above, with regard to other activities such as public events, in order for the IRS to make a proper determination of an organization's exempt status, the Form 1024 requires organizations to provide a detailed narrative description of all of the activities of the organization - past, present, and planned, listing each activity separately. Each description should include, at a minimum, a detailed description of the activity including its purpose and how each activity furthers the organization's exempt purpose, when the activity was or will be initiated, and where and by whom the activity will be conducted. If the organization does not provide this information or if it does not provide sufficient detail, more information may be requested as part of the development process in order to complete its application record. As previously discussed, EO staff engages in a back and forth dialogue with the organization in order to obtain the information needed to complete the administrative record and make a determination. If an organization believes that the legal requirements can be satisfied without the requested documentation or the organization needs additional time to respond, the organization can discuss an alternative approach or timing with their agent. The IRS will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed and whether an extension of time is warranted.

As explained above, a complete application record is important for both the IRS and the organization. The administrative record must be complete so that it supports either exemption or denial.

Question 6. Form 1040 does not require specific donor information, as the instructions for the form indicate that the statement of revenue need not include “amounts received from the general public...for the exercise or performance of the organization’s exempt function.” In addition, the annual schedule of contributors required by the IRS for 501(c)(4) organizations is limited to donors giving the organization \$5,000 or more for the year, and the names and addresses of contributors are not required to be made available for public inspection (according to IRS Form 990, schedule B). However, some of the IRS letters recently sent to 501(c)(4) applicant organizations specifically ask for the names of all donors and the amounts of each of the donations, and furthermore state that this information will in fact be made available for public inspection. These specific requests for donor information appear to contradict the published IRS policy. Given this discrepancy, please provide any correspondence (including emails, written notes, and electronic documents) generated with respect to the decision to send letters in 2012 requesting all donor information from 501(c)(4) applicant organizations, including correspondence between IRS employees, or between or among the IRS, the Department of Treasury, and the White House.

In answering this question, we assumed that the language referred to in the question relates to the Form 1024 rather than the Form 1040. The quoted language refers to the fact that amounts received for the performance of an exempt function should be reported on line 3 rather than line 2 of the Form 1024.

As explained above, when a Form 1024 application needs further development, the IRS contacts the organization and solicits additional information in order to have a complete administrative record on which the IRS can make a determination as to whether the requirements of the Code and regulations are met. There are instances where donor information may be needed for the IRS to make a proper determination of an organization’s exempt status, such as when the application presents possible issues of inurement or private benefit. Nevertheless, the IRS takes privacy very seriously, and makes an effort to work with the organization to obtain the needed information so that the confidentiality of any potentially sensitive or privileged information is taken into account. We have advised applicant organizations that if they believe that the requested information required to demonstrate eligibility for section 501(c)(4) status can be provided through alternative information, they should contact the revenue agent assigned to their application. As discussed above, we will consider whether compliance with the legal requirements can be satisfied in the alternative manner proposed. We have also granted applicants additional time to respond.

IRS policy or practice does not govern whether or not donor information is made public. This matter is governed by statute. Public disclosure regarding tax exempt organization filings is principally governed by sections 6104 and 6110 of the Internal Revenue Code.

Section 6104 of the Code requires the IRS to make certain materials related to tax-exempt organizations available for public inspection, including an organization's application for recognition of tax exemption and Form 990 annual information returns.⁷ If the IRS approves an organization's application for tax-exempt status, section 6104(a) requires that the application and supporting materials be made available for public inspection. The only exception to that requirement is found in section 6104(a)(1)(D), which exempts from disclosure information that the IRS determines is related to any "trade secret, patent, process, style of work, or apparatus of the organization" that would adversely affect the organization, or information that could adversely affect national defense.

The long-standing statutory requirements regarding the disclosure of exemption applications, including Form 1024, are separate from those requiring public availability of Form 990 annual information returns, which are contained in section 6104(b). Under section 6104(b), Form 990 annual information returns also are subject to disclosure for public inspection, with the sole exception of donor information contained in Schedule B of the Form 990.⁸ The withholding of donor information from public disclosure applies only to Form 990; this exception does not extend to information obtained from Form 1024 and supporting materials.

In light of the statutory requirement to make approved applications public, page 2 of the Form 1024 instructions notifies organizations that information they provide will be available for public inspection. This notice is reiterated in any development letters sent to the organizations. Although the statute requires the administrative record to be made available for public inspection, the IRS does not affirmatively publish this information. It is available only upon request.

Additionally, under section 6110 of the Code, if the IRS ultimately denies the application for recognition of tax-exempt status, the denial letter and background information are subject to public inspection, with certain identifying and other information redacted, to assist the public understand the IRS reasoning while also protecting the identity of the organization and any person identified in the file (including individual donors).

⁷ The disclosure rules have been in place since 1958, and the legislative history provided the following rationale for public disclosure of exemption applications: "[the] committee believes that making these applications available to the public will provide substantial additional aid to the Internal Revenue Service in determining whether organizations are actually operating in the manner in which they have stated in their applications for exemption." H.R. Rep. No. 85-262, at 41-42 (1957). In 1987, Congress added what is now section 6104(d) to the Code, that requires organizations to make their returns available to the public, and in 1996 extended this rule to application materials.

⁸ The withholding exception does not apply to donor information for organizations that file Form 990-PF or to those section 527 organizations that are required to file Form 990 or 990-EZ.

In response to your specific question, having inquired, I am informed that there have been no communications between IRS employees and the Department of Treasury or the White House with respect to requests for donor information from any 501(c)(4) applicant organizations. Requests for information, including donor information, of specific organizations that are currently in the application process are subject to the requirements of section 6103 of the Code. Section 6103(f) sets forth the means by which congressional committees may obtain access to return and return information (that is not otherwise made publicly available under sections 6104 and 6110). We are available to discuss these rules in more detail with your staff.

Question 7. Many applicant organizations have stated that the IRS gave them less than 3 weeks to produce a significant volume of paperwork, including copies of virtually all internal and public communications. What is the typical deadline for responses to an IRS inquiry for additional information under section 501(c)(4)?

Section 7.20.2.7.1 of the Internal Revenue Manual provides that a revenue agent seeking additional information from an organization applying for tax-exempt status, will give that organization 21 days to provide a response. Accordingly, this 21 day response time is given to all organizations whose application requires further development. Enclosure D contains the IRM provision.

Organizations can request more time to respond and if an organization fails to respond by the specified date the agent will contact the organization to inquire about the status of the information request and whether additional time is needed. These procedures are specified in section 7.20.2.7.1 of the IRM.

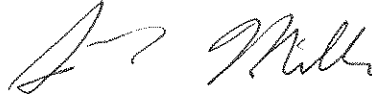
Organizations that may be engaged in advocacy activities, and have recently received development letters as part of the exemption application process have been advised that they have additional time to respond. We sent a follow-up letter advising the organizations that they have an additional 60 days to respond; and that if they believe that the requested information required to demonstrate eligibility for tax-exempt status can be provided through alternative information, they should contact the revenue agent assigned to their application. If they need more than the additional 60 days to respond, they should contact their revenue agent to request a further extension.

Question 8. Form 1024 and related disclosures by 501(c)(4) organizations are generally "open for public inspection." In the interest of addressing any concerns about uneven IRS enforcement of section 501(c)(4) eligibility requirements, can you please provide us with copies of all IRS inquiries sent to and responses received from Priorities USA? Those documents would provide a useful basis for comparison to other inquiries the IRS has addressed to section 501(c)(4) applicants.

Section 6104(a) of the Code permits public disclosure of an application for recognition of tax exempt status of organizations that have been recognized as exempt. Our records do not indicate that any organization with the name Priorities USA has been recognized as tax-exempt.

I hope this information is helpful. I am also writing to your colleagues. If you have questions, please contact me or have your staff contact Cathy Barre at (202) 622-3720.

Sincerely,

A handwritten signature in black ink, appearing to read "S. T. Miller". The signature is fluid and cursive, with the first name "S." and last name "Miller" clearly distinguishable.

Steven T. Miller
Deputy Commissioner
for Services and Enforcement

Enclosures