

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Application for Recognition of Tax-Exempt Status for Section 501(c)(4)

Organizations Using New Form 1024-A

SUMMARY: The IRS is releasing a new application form for section 501(c)(4)

organizations that apply for recognition of tax-exempt status.

Background

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 Internal Revenue Code and amended sections 6033 and 6652. Section 506(f) of the Code states 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 such treatment. Such request shall be treated for purposes of section 6104 as an application for exemption from taxation under section 501(a).” The Technical Explanation to the PATH Act clarified the intent that

A section 501(c)(4) organization that desires additional certainty regarding its qualification as an organization described in section 501(c)(4) may file a request for a determination, together with the required user fee, with the Secretary. Such a request is in addition to, not in lieu of, filing the required notice described above. It is intended that such a request for a determination be submitted on a new form (separate from Form 1024, which may continue to be used by certain other organizations) that clearly states that filing such a request is optional. The request for a

determination is treated as an application subject to public inspection and disclosure under sections 6104(a) and (d).

Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40)*, (JCX-144-15), December 17, 2015 at 241.

Accordingly, the IRS has developed Form 1024-A, *Application for Recognition of Exemption Under Section 501(c)(4) of the Internal Revenue Code*. Prior to the introduction of the Form 1024-A, organizations seeking recognition of exemption under Section 501(c)(4) would use the Form 1024, *Application for Recognition of Exemption Under Section 501(a)*. The draft Form 1024-A was developed using structural items from the Form 1023, *Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code*, which was last updated in 2006, and substantive items from the Form 1024, which was last updated in 1998. The resulting Form 1024-A seeks to reduce taxpayer burden by adopting easier formatting, using plain language, and eliminating questions that would be duplicative given the other materials that organizations submit with their applications.

A request for public comments on the Form 1024-A was released on August 24, 2017. See 82 FR 40228. The initial public comment period was extended on October 19, 2017 and the comment closing period was November 28, 2017. See 82 FR 48746. As a result of the request, the IRS received comments from 2 organizations.

Review of Comments

A public comment submitted in response to a request for comments published in the Federal Register, 82 FR 40228, suggested that the IRS cease work on the Form 1024-A until the IRS determined whether additional information was necessary on the Form 990 as a result of section 506 of the Code. The commenter also recommended that the IRS expand and continue public education efforts about the notice requirement under section 506. In issuing temporary and proposed regulations implementing the changes from the PATH Act, the Treasury Department and the IRS did not issue regulations prescribing any additional information to be reported on Form 990 or 990-EZ. Rather the preamble to the temporary and proposed regulations provided that the “IRS will monitor the notification process to determine whether additional information is needed.” See 81 FR 45008 at 45011 (July 12, 2016). As of this time, the IRS does not believe that additional information is required on the Form 990 or 990-EZ. The IRS will continue to monitor the notification process to determine whether additional information becomes necessary on the Form 990 or Form 990-EZ. In addition, the IRS has taken efforts to educate organizations regarding the notice requirement under Code section 506. For example, the IRS issued newsletters to the public, updated IRS webpages, and disseminated information through the IRS Customer Accounts Services call site in response to inquiries. As a result, the IRS has received over 2,500 notices from section 501(c)(4) organizations seeking compliance with the notice requirement. In addition to these efforts, the IRS added Part VIII to the Form 1024-A which informs organizations of the requirement to submit the notice required by Code section 506.

One commenter recommended that the IRS develop a shortened Form 1024-EZ, similar to the Form 1023-EZ. In line with this recommendation, the commenter also recommended removing portions of the Form 1024-A that captured organizational structure, the description of the organization's activities, and financial information for the organization. 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 to be described in and operate as a section 501(c)(4) organization. This is different from the rules imposed on section 501(c)(3) organizations by section 508 which requires most section 501(c)(3) organizations to submit an application for recognition of tax-exempt status. Additionally, eligibility for the Form 1023-EZ is restricted to those organizations that meet certain restrictions regarding gross receipts, assets, and activities. See section 6.05 of Rev. Proc. 2017-5, 2017-1 I.R.B. 230. Due to the difference in requirements for section 501(c)(4) organizations, the IRS declines to adopt this comment.

Two commenters recommended that the IRS modify the font size and/or style used for the statement on page 1 that "[a] request for determination under section 501(c)(4) is optional." They recommended that the IRS increase the font size, or use bolded, italicized, or differently colored font to additionally set the information apart from

the other information on the form. In the Technical Explanation for the PATH Act, the JCT stated that the new application form for section 501(c)(4) organizations should “clearly state[] that filing such a request is optional.” Joint Committee on Taxation, *Technical Explanation of the Revenue Provisions of the Protecting Americans from Tax Hikes Act of 2015, House Amendment #2 to the Senate Amendment to H.R. 2029 (Rules Committee Print 114-40)*, (JCX-144-15), December 17, 2015 at 241. The IRS has complied with this requirement by stating on the face of the Form 1024-A that “[a] request for determination under section 501(c)(4) is optional.” The IRS did not adopt these recommendations to modify the font size or style because the language is clear. Moreover, the Form 1024-A is not optional for some organizations. Although most section 501(c)(4) organizations are not required to apply for recognition of tax-exempt status, organizations that have lost their tax-exempt status for failure to file required annual information returns or notices are required by section 6033(j) of the Code to apply to obtain reinstatement of such status. The instructions clarify by explaining that organizations that have had their tax-exempt status auto-revoked are required to submit the Form 1024-A.

One commenter recommended that the IRS modify the heading in Part II to clarify the use of the term “Limited Liability Companies.” The IRS has considered this comment and decided to not modify the Form 1024-A. The current language states that “[y]ou must be a corporation (including a limited liability company), an unincorporated association, or a trust to be tax exempt. See instructions.” This language matches the language used in the heading of Part II of the Form 1023, which also deals with Organizational Structure. Modification of this language on the Form 1024-A, but leaving

it on the Form 1023 , could cause confusion whether different rules apply. This language has appeared on the Form 1023 since 2004.

One commenter recommended that in Part IV, line 1 the IRS modify the question from requesting information on “officers, directors, and trustees” to include key employees and other highly compensated employees and independent contractors. However, this question mirrors Part V, line 1a of the Form 1023 and was meant to balance what is requested on the Form 1023 regarding officers, directors, and trustees with what is currently requested on the Form 1024. Currently the Form 1024 requests information only on the officers, directors, and trustees (unlike the Form 1023 which has a separate question under Part V Line 1b and 1c for highest compensated employees and independent contractors). Because this question is aligned with information currently requested on the Form 1024 and Form 1023, the IRS is declining to modify the Form 1024-A. That same commenter also suggested including brief instructions on the face of Form 1024-A to include a parenthetical descriptor of the terms they recommended including. Because the IRS is not adopting the recommendation to modify the information requested, it is unnecessary to add definitions for those terms on the form or instructions. As a result, burden will not increase.

One commenter recommended that Part IV, line 3a be modified to remove the question whether employees or independent contractors are compensated. The commenter recommended that the line be modified to read “Do or will you pay any compensation to any individual or company identified in Part IV, Line 1, or to any of your members? If ‘Yes,’ answer lines 3b and 3c.” In drafting the question, the IRS carefully considered which individuals to include. The IRS recognizes that many organizations

may check yes for any compensated employees; however, that alone would not generate an additional burden for organizations. The information is necessary in reviewing of all the facts and circumstances relative to potential tax exemption. The IRS will continue to monitor this question and whether it requires modification in a future revision of the Form 1024-A.

One commenter recommended that Part IV, Line 3b should be modified to include a request for a copy of a conflict of interest policy. However, as explained in the instructions, a conflict of interest policy is not required for tax-exempt status. As a result, the IRS did not adopt the recommendation; consequently, burden will not increase. If required, the lack of an attachment could result in rejection of an application as incomplete. See section 4.10 of Rev. Proc. 2017-5, *id.*

One commenter recommended that the IRS modify Part V, line 1 to request information regarding the organization's activities and expenditures in this area, and the amounts spent or to be spent. This question as it appears on the Form 1024-A is the same as on the Form 1024 since 1998. Separately requesting the information recommended by the commenter is unnecessarily duplicative and would increase burden in completing the application. Organizations are already required to describe their "past, present, and planned activities in a narrative (including the percentage of time and funds spent on these activities" in Part III of the Form 1024-A. Organizations are also required to provide information regarding their various expenditures on Part VI of the Form.

One commenter recommended that Part V, line 2 should be modified to make applicants aware on the Form 1024-A that almost all organizations that answer "Yes" to

this question are barred by statute from exemption under section 501(c)(4). The commenter also recommended modifying the question to ask whether the organization (or any predecessor) “previously received a ruling recognizing you (or such predecessor organization) as exempt under section 501(c)(3) and then had such ruling later revoked due to carrying on propaganda or otherwise attempting to influence legislation or due to engaging in political activity? If 'Yes,' you only qualify for exemption under section 501(c)(4) if you were, or your predecessor was, a church.” The question on the Form 1024-A is phrased in the same manner as the question currently on Schedule B, line 1 of the Form 1024, which has been in place since 1998. However, the instructions did not provide additional guidance for organizations to answer this question. As a result, the IRS maintained the question format when moving the question to the Form 1024-A, but drafted instructions to provide additional guidance for organizations. The IRS will modify the instructions further to capture the commenter’s suggestion.

One commenter recommended that Part V, line 4 should state “organization or company” to assure inclusion of both nonprofit and for-profit connected entities. However, the Form 1024-A instructions already capture this concept. The instructions ask an organization to state any “current or planned connection with any tax-exempt or nonexempt organization.” Because this information is already in the instructions, it is not necessary to modify the Form 1024-A. The commenter also recommended adding an additional example of when “an organization or company is your parent or subsidiary.” The current listing of examples is not exclusive. The IRS will continue to monitor the examples and will modify the Form 1024-A in the future if needed to present additional examples.

One commenter recommended that the IRS broaden Part V, line 7 to include payments for goods as well as services. This question is based upon Part II, line 10 of the Form 1024, which does not inquire about goods. The question on the Form 1024 has been in place since 1998 and has provided the IRS with sufficient information to make a determination regarding recognition of tax-exempt status. As such, the IRS did not expand the question because the additional information is not necessary to make a determination; consequently, burden will not increase. Additionally, confusion could arise if the question required information about goods and services on the Form 1024-A, but only about services on the Form 1024.

One commenter recommended that the IRS modify Part V, line 9 to state “describe in the attachment how your activities promote the social welfare of the community, rather than the private interest of your members.” Currently, Part III of the Form 1024-A requires the organization to “describe all of your past, present, and planned activities in a narrative (including the percentage of time and funds spent on these activities.” This required information assists the IRS in determining whether the organization is promoting social welfare rather than private interests. Requiring the organization to provide this information also on Part V, line 9 is unnecessarily duplicative and would increase the taxpayer’s burden in completing the application.

One commenter recommended that the IRS expand Part V, line 10 to request that organizations “describe in the attachment how you will ensure that your net earnings are devoted exclusively to charitable, educational, or recreational purposes.” However, this information is unnecessary and duplicative since there are currently multiple sections of the Form that already assist the IRS in obtaining this information.

First, the narrative in Part III of the Form 1024-A requires organizations to “describe all of your past, present, and planned activities in a narrative (including the percentage of time and funds spent on these activities.” Organizations are also required to submit their organizing documents under Part II of the Form. Finally, other questions in Part V of the Form assist the IRS in evaluating whether the organization meets the requirements for recognition of exemption under section 501(c)(4) of the Code. The burdensome recommendation is not adopted.

One commenter recommended that the IRS add a question to Part V of the form. Specifically, the commenter noted that organizations may support too many purely social activities to be “primarily” engaged in social welfare activities as required for recognition of tax-exempt status under section 501(c)(4). However, organizations are already required to describe “all of [their] past, present, and planned activities in a narrative (including the percentage of time and funds spent on these activities” under Part III of the Form 1024-A. This narrative description of the organization’s activities should capture whether the organization is engaged in social or recreational activities, and if so the percentage of time and funds spent on those activities. As such, the IRS already has sufficient information to determine whether the organization is engaged in activities that primarily further social welfare purposes as required by section 501(c)(4).

One commenter recommended that the Statement of Revenue and Expenses on Part VI be modified to align the categories of information requested on the Form 1024-A with those that are otherwise applicable to a section 501(c)(4) organization and reported on Part I of the Form 990. If that suggestion is not adopted, the commenter recommended that clarifying language be added with respect to membership fees.

Specifically, the commenter recommended adding explanations to Line 2 and Line 9 regarding membership dues. As noted above, most organizations are not required to apply for recognition of tax-exempt status. In evaluating whether recognition should be made, the IRS may need additional information to conclude that the organization meets the requirements of the requested subsection. As a result, the IRS determined that the information currently requested on Part VI aligned with the information needed to make an affirmative determination regarding an organization's status under section 501(c)(4) of the Code.