

# KROKIDAS & BLUESTEIN

## ATTORNEYS

### CLIENT ALERT

#### NEW REQUIREMENTS FOR 501(c)(4) ORGANIZATIONS

Congress passed the “Protecting Americans from Tax Hikes Act of 2015” (the “PATH Act”) in December 2015, which imposed new filing requirements on organizations that are exempt from federal income taxation under Section 501(c)(4) of the Internal Revenue Code (the “Code”). The U.S. Department of the Treasury released temporary regulations that provide more detail on these new filing requirements. The temporary regulations went into effect on July 8, 2016.

#### **What are 501(c)(4) organizations?**

Organizations qualify for tax exemption under Section 501(c)(4) of the Code if they are operated exclusively to promote social welfare or to be a local association of employees, and are not organized for profit. Unlike organizations that are tax-exempt under Section 501(c)(3) of the Code (“501(c)(3) organizations”), organizations that are tax-exempt under Section 501(c)(4) (“501(c)(4) organizations”) (a) may engage in an unlimited amount of lobbying, as long as the lobbying is related to the organization’s exempt purpose, and (b) may engage in political campaigning, as long as political campaigning is not the organization’s primary activity. 501(c)(4) organizations are often created by 501(c)(3) organizations seeking a means to lobby or engage in political activity.

#### **What are the new filing requirements?**

Before the PATH Act was passed, 501(c)(4) organizations were not required to apply for tax-exempt status but could independently determine their exempt status. They could take up to two years after forming before submitting any substantive filing to the Internal Revenue Service (the “IRS”).

#### *Notification of Formation:*

Any 501(c)(4) organization that is organized after July 8, 2016 must submit online to the IRS, within 60 days of its date of organization, a completed IRS Form 8976, including (i) the name, address, and taxpayer identification number of the organization; (ii) the date of organization; (iii) the state under which the organization is formed; (iv) the month the organization’s annual accounting period ends, and (v) a statement that the purpose of the organization is to operate either as a social welfare organization/civic league or as a local association of employees. Any other 501(c)(4) organization that has not yet filed an annual information return on IRS Form 990,

or has not formally submitted a tax exemption application to the IRS on or before July 8, 2016, must submit IRS Form 8976 online by September 6, 2016.

*Additional Information in First Annual Information Return:*

The final regulations, when issued, may require a 501(c)(4) organization to submit additional information with its first annual information return on IRS Form 990.

**Does the new filing requirement replace the tax exemption application process?**

The PATH Act did not change the fact that 501(c)(4) organizations are not required to apply for recognition of tax-exempt status. However, any 501(c)(4) organization may still request an IRS determination that the organization qualifies for tax-exempt status under Section 501(c)(4) of the Code. Submission of an application for tax exemption allows a 501(c)(4) organization to obtain certainty as to its tax status, in the form of an IRS determination letter.

**What is the penalty for failing to comply with the new filing requirements?**

A 501(c)(4) organization that fails to comply with the filing requirements will be fined \$20 for each day that it fails to comply, up to a cap of \$5,000. Additionally, if the Secretary of the Treasury sends a written request to an officer, director, trustee, employee, or other individual who is under a duty to submit the notification of formation described above, and the individual fails to submit the notification by the date specified in the request, the individual will be fined \$20 for each day after the specified deadline that s/he fails to comply, up to a \$5,000 cap.

We will monitor when the final regulations are released and will provide an update at that time. For any questions regarding 501(c)(4) organizations, please contact attorney Elka Sachs ([ets@kb-law.com](mailto:ets@kb-law.com)) or attorney Judith Kim ([jyk@kb-law.com](mailto:jyk@kb-law.com)) at Krokidas & Bluestein LLP.