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## Tea Party Flap Highlights the Road to Exemption.

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That possibility may have been on the minds of IRS officials on May 15 when they released a Q&A explaining the exemption application process, including how the IRS handles applications of organizations that may engage in political or advocacy activities. Detailed information is also available at http://www.irs.gov/eo.

Numerous Tea Party groups and other conservative entities sought to qualify as tax-exempt organizations described in section 501(c)(4). To qualify, an organization must operate primarily to further the common good and general welfare of the people of the community, according to the IRS. Civic leagues, homeowners associations, and volunteer fire companies can qualify as social welfare organizations.

An organization that believes it meets the qualifications for exemption must decide whether to declare itself exempt or apply to the IRS for exemption. Rosemary E. Fei of Adler & Colvin said most of her firm's clients apply for exemption because they want the IRS to bless their proposed activities in writing and because potential donors may want to see a favorable determination letter. (Contributions to a section 501(c)(4) organization are not deductible, however.) A favorable determination letter also grants the organization advantageous postage rates and exemption from some state taxes.

To apply for exemption under section 501(c)(4), an organization must file a Form 1024, "Application for Recognition of Exemption Under Section 501(a)," which is more than 25 pages and asks about the organization's activities, revenues and expenses, assets and liabilities, and other issues. Organizations seeking exemption as a charity under section 501(c)(3) instead file a Form 1023, "Application for Recognition of Exemption Under Section 501(c)(3)."

Using Form 1024 requires a user fee of $400 for organizations with annual gross receipts of $10,000 or less during the preceding four years, or of $850 for organizations with annual gross receipts exceeding $10,000 for the preceding four years.

An organization also must have an employer identification number, even if it has no employees. The EIN can be obtained by filing Form SS-4, "Application for Employer Identification Number."

Exemption applications are sent to the IRS determinations center in Cincinnati. If the application is complete, the IRS will send the organization a letter of acknowledgement; incomplete applications will be returned. If the IRS needs more information to determine whether the organization qualifies

for exemption, it will ask the applicant for the information by a specified date.

Applicants will be informed if their applications are forwarded to IRS headquarters for review. In its Q&A, the IRS said the Cincinnati office may consult with tax law specialists in Washington on how the law applies to a particular case.

Fei said that if an application is in a category singled out for special attention, it will be assigned to a dedicated group of agents. In that case, the applicant can expect a significantly longer wait for one of those few agents to become available, she said. The applicant may also be asked questions that do not seem directly relevant to the application or that have already been answered, she added.

The applicant will normally receive a determination letter after the IRS gets all the information it needs, Fei said. An organization whose application is denied will receive a letter explaining why the IRS believes it does not qualify for exempt status, and it has 30 days to protest. If the IRS does not receive a protest within that time frame, the proposed denial becomes final. Organizations seeking exemption under section 501(c)(3) may petition the Tax Court, the Court of Federal Claims, or the D.C. district court for declaratory judgment that they qualify, but the IRS's determination is final for section 501(c)(4).

The Tea Party controversy may have arisen because the IRS decided to form a dedicated group to handle the applications of social welfare organizations with possible political or advocacy agendas, "since they certainly would present legal issues that would require more knowledge to review than typical applications," Fei said. The group would have had to identify indications that applications needed specialized review, and it may have occurred to someone in the group that having "Tea Party" in an organization's name might point to a political focus that warranted careful scrutiny, she said.

"It was stupid because of the appearance of bias, but in terms of efficient use of limited IRS resources, not unreasonable," Fei said.

by Fred Stokeld

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