WAKE FOREST UNIVERSITY
SCHOOL of LAW

Section 501(c)(4):
The Other Tax Exemption

A Guide for Practitioners and Community Members

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Determining which section of the Internal Revenue Code to pursue tax exemption under is an important consideration for nonprofit planners, one that will likely have a lasting impact on their organization. Most nonprofits receive tax-exempt recognition by meeting the requirements of a charitable organization under section 501(c)(3); however, many entities that fail to meet those strenuous requirements may qualify for recognition as a "social welfare organization" under section 501(c)(4). This post looks at the requirements for a "social welfare organization" and provides a brief comparison between social welfare organizations under section 501(c)(4) and charitable organizations under section 501(c)(3).

An entity is exempt under section 501(c)(4) as a "social welfare organization" if it is operated exclusively for the promotion of social welfare, which means that the entity is engaged in some way in promoting the common good and general welfare of the community. A social welfare organization cannot provide a benefit for a private group or for its members; however, the organization does not have to benefit every member of society equally if any limitations on the benefit are a result of the activity the organization pursues and are not imposed by the organization. While the exemption may seem overly broad, the IRS has analogized section 501(c)(4) to a "catchall" provision for beneficial nonprofit entities that are not exempt under other provisions of the Internal Revenue Code. Section 501(c)(4) has been used by a wide range of entities, including those that supervise facilities that teach safe handling and care of firearms, conduct annual festivals to further regional customs and traditions, and are created to make loans to businesses to induce relocation to economically depressed areas.

There is substantial overlap between entities that would qualify as charitable organizations under section 501(c)(3) and social welfare organizations under section 501(c)(4), but there are several differences that should be considered. First, contributions to a 501(c)(4) organization are generally not deductible for the donor, but they are under section 501(c)(3). Second, a 501(c)(3) entity risks its tax exemption if it engages in any insubstantial nonexempt activities (like political lobbying), while a 501(c)(4) organization can engage in nonexempt activities as long as those activities are not the primary activities of the organization, which can still result in substantial nonexempt activities. The "primary activities" of a social welfare organization is determined by looking at the facts and circumstances that surround the activities. Finally, an organization is not operated for social welfare if its primary activity is carrying on a business with the general public; however, an organization exempt under section 501(c)(3) may operate a business if the sole purpose for the business is to raise funds for charity.

While there are benefits to pursuing exemption under other provisions of the Internal Revenue Code, the catchall qualities of section 501(c)(4) provides many beneficial entities a pathway to tax-exempt status and should be considered by nonprofit planners. For more information see IRS Guidance on Section 501(c)(4) Organizations and Requirements for Exemption – Social Welfare Organizations.