



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

August 11, 2021

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Affected IRMs: 7.20.2 and 7.20.3
Expiration Date: August 11, 2023

MEMORANDUM FOR EXEMPT ORGANIZATIONS
RULINGS AND AGREEMENTS EMPLOYEES

FROM: Stephen A. Martin /s/ *Stephen A. Martin*
Director, Exempt Organizations (EO) Rulings and Agreements

SUBJECT: Interim Guidance on Processing a Request for Public Charity
Classification under IRC Sections 509(a)(1) and 170(b)(1)(A)(ii) when
Applicant's Primary Function is not the Presentation of Formal
Instruction

EO Determinations specialists will coordinate with TEGE Division Counsel to process a determination letter request for classification or reclassification of public charity status as an educational organization under Internal Revenue Code (IRC) Sections 509(a)(1) and 170(b)(1)(A)(ii) when the applicant's primary function is not the presentation of formal instruction.

Background/Source(s) of Authority

IRC Section 509(a) provides that the term "private foundation" means a domestic or foreign organization described in Section 501(c)(3) other than four categories of organizations.

IRC Section 509(a)(1) provides that one such category is an organization described in Section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

IRC Section 170(b)(1)(A)(ii) describes "an educational organization which normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on[.]"

Treasury Regulation Section 1.170A-9(c)(1) states, in part, that "[a]n educational organization is described in Section 170(b)(1)(A)(ii) if its primary function is the presentation of formal instruction and it normally maintains a regular faculty and curriculum and normally has a regularly enrolled body of pupils or students in attendance at the place where its educational activities are regularly carried on."

Revenue Procedure 2021-5 (updated annually), section 3.01(3)(b), provides that EO

Determinations issues determination letters regarding the classification or reclassification of private foundation status, including whether an organization is a public charity described in IRC Sections 509(a)(1) and 170(b)(1)(A) (other than clauses (v), (vii), and (viii)).

IRM 7.20.2 provides general case processing procedures for EO Determinations specialists to process determination letter requests.

IRM 7.20.3 provides procedures for EO Determinations specialists to process, among other requests, foundation classification requests on Form 1023 and Form 8940.

In Mayo Clinic v. United States, 997 F.3d 789 (8th Cir. 2021), the United States Court of Appeals for the Eighth Circuit concluded that Treasury Regulation Section 1.170A-9(c)(1) is valid, but only in part. The case has been remanded to the District Court for further proceedings.

Procedural Changes

Because of ongoing litigation in the Eighth Circuit Court of Appeals regarding Treasury Regulation Section 1.170A-9(c)(1), the specialist must coordinate with TEGE Division Counsel when:

1. An applicant is seeking classification or reclassification of public charity status as an educational organization under IRC Sections 509(a)(1) and 170(b)(1)(A)(ii), and
2. The applicant's primary function is not the presentation of formal instruction.

Note:

Specialists do not need to coordinate the processing of such requests with TEGE Division Counsel if the applicant does not satisfy the requirements of IRC Section 501(c)(3).

Effect on Other Documents

This guidance will be incorporated into IRMs 7.20.2 and 7.20.3 by August 11, 2023.

Effective Date

August 11, 2021

Contact

EO Determinations Area 2 Manager

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