



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

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March 17, 2003

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Dear *****:

This letter responds to your request for general information on behalf of ***** regarding the treatment of grants made by a United States private foundation or other grant-makers to a Mexican charity determined by the government of Mexico to be an Article 70-B charity. You further request information regarding what date United States private foundations or other grant-makers may begin to rely on a determination of Article 70-B status.

The treatment of grants made by a U.S. private foundation or other contributor to a Mexican charity is governed by Article 22 of the United States-Mexico Income Tax Convention ("Treaty") and Paragraph 17 of the accompanying Protocol. The current Treaty was signed in 1992 and became effective on January 1, 1994, for most provisions, including Article 22 of the Treaty and Paragraph 17 of the Protocol.

Article 22 of the Treaty provides that Mexico and the United States will recognize each other's public charities on a reciprocal basis with respect to exempting the organizations from tax. Paragraph 1 of Article 22 allows for reciprocal recognition of exemption for organizations operated exclusively for religious, scientific, literary, educational or charitable purposes to the extent that such organizations are exempt in the first contracting state. Income of these organizations is exempt from tax of a contracting state to the extent that it is exempt from tax in the other contracting state where it is a resident. This allows for an organization formed in Mexico that is determined by Mexican authorities to be a religious, scientific, literary, educational or charitable charity to be exempt from tax under United States law.

Paragraph 2 of Article 22 provides that if the United States and Mexico agree that Mexican law requires standards essentially equivalent to U.S. standards for public charities, then an organization determined by Mexican authorities to meet such standards shall be treated as a public charity under United States law, for purposes of grants by U.S. private foundations and public charities. Paragraph 3 provides for similar treatment under Mexican law for an organization determined to be a public charity by U.S. authorities.

Paragraph 17 of the Protocol stipulates that the United States and Mexico agree that Article 70-B of the Mexican Income Tax Law and sections 509(a)(1) and (2), except for organizations described in section 170(b)(1)(A)(i), of the United States Internal Revenue Code provide essentially equivalent standards for organizations within their coverage, within the meaning of paragraphs 2 and 3 of Article 22 of the Treaty. Therefore, a finding by the tax authorities of Mexico that an organization qualifies under Article 70-B, or by the United States tax authorities that an organization qualifies under section 509(a)(1) or (2), except for an organization described in section 170(b)(1)(A)(i), shall be accepted by the other contracting state for the purpose of extending the benefits provided in Article 22. Paragraph 17 explains that Article 70-B of Mexican law and sections 509(a)(1) and (2), except for section 170(b)(1)(A)(i), are interpreted by the governing regulations and administrative rulings of Mexico and the United States, respectively, in effect on the date of the signing of the Treaty. It further cautions that if the competent authority of the other contracting state determines that granting such benefits is inappropriate with respect to a particular organization or type of organization, such benefits may be denied after consultation with the competent authority of the first contracting state.

A U.S. private foundation or other grant-maker may rely on the provisions of Article 22 of the Treaty and Paragraph 17 of the Protocol. Accordingly, if the Mexican authorities have granted special authorization to a Mexican charity as an organization described in Article 70-B, a U.S. private foundation or other grant-maker may treat the Mexican charity as equivalent to a section 501(c)(3) organization classified as a public charity described in section 509(a)(1) or (2), except as an organization described in section 170(b)(1)(A)(i).

Mexican charities that have received Article 70-B authorization are not, at present, listed in Publication 78, Cumulative List of Organizations Described in Section 170(c) of the Internal Revenue Code of 1986. Accordingly, a U.S. private foundation or other grant-maker will have to request such proof from the Mexican charity. Such proof can be obtained either through a copy of a letter granting the special authorization from the Mexican Ministry of Finance and Public Credit (Secretaria de Hacienda y Credito

Publico) to the Mexican charity, or by receipt of a copy of the current list of the Mexican charities that have obtained the authorization, as published in the Official Gazette (el diario oficial de la Federacion). The date that U.S. private foundations or other grant-makers may begin to rely on an Article 70-B determination is the date that the Mexican Ministry of Finance and Public Credit grants the authorization, as determined by the date of the letter or date of issuance of the Official Gazette.

We hope this general information will be of assistance to you. However, this letter is not a ruling and may not be relied on as such.

If you have any questions about the contents of this letter, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely,

Marvin Friedlander
Manager, Exempt Organizations
Technical Group 1