

Private foundation; tutoring service. An organization exempt under section 501(c)(3) of the Code that operates a tutoring service for students on a one-to-one basis in their homes, maintains a small center to test students to determine their need for individual tutoring, and employs tutors on a part-time basis is not an educational organization of the type described in section 170(b)(1)(A)(ii).

Advice has been requested whether the organization described below is an educational organization of the type described in section 170(b)(1)(A)(ii) of the Internal Revenue Code of 1954 and, thus, not a private foundation.

The organization is organized and operated exclusively for charitable and educational purposes and is exempt from Federal income tax under section 501(c)(3) of the Code. Its primary activity consists of operating a tutoring service for students on a one-to-one basis in their homes. The organization does not have any classrooms of its own. However, incidental to its tutoring services, it operates a small testing center where students are tested to determine their need for individual tutoring. Tutors are employed and compensated by the organization on a part-time, hourly basis, with each working only several hours per week. The organization maintains a list of qualified persons from which it selects tutors for a particular assignment.

Section 509(a) of the Code provides that the term 'private foundation' means a domestic or foreign organization described in section 501(c)(3) other than an organization described in section 509(a)(1), (2), (3) or (4). The organizations within the scope of section 509(a)(1) include those described in section 170(b)(1)(A) (other than in clauses (vii) and (viii)).

Section 170(b)(1)(A)(ii) of the Code defines educational organizations as those which normally maintain a regular faculty and curriculum and normally have a regularly enrolled body of pupils or students in attendance at the place where their educational activities are regularly carried on.

By operating in the manner described above, the organization is not an educational organization of the type described in section 170(b)(1)(A)(ii) of the Code. Accordingly, the organization is a private foundation, unless it is otherwise described in section 509(a).