
Kutak Rock: Proposed IRS Rule Targets Tax-Exempt Status for Private Schools

On the Hill

On September 3, 2026 the Internal Revenue Service and the U.S. Department of the Treasury published proposed regulations (REG-119986-25, RIN 1545-BS05) that would disallow tax-exempt status under Section 501(c)(3) of the Internal Revenue Code of 1986 (the “Tax Code”) for any private school that discriminates on the basis of race color, or national or ethnic origin in the administration of any educational policy, admissions policy, scholarship or loan program, athletic program or other school-administered or school-supported program.

The proposed regulation defines “private school” broadly to include any private primary or secondary school, college, professional or trade school or university that is described in Section 501(c)(3) and classified as an educational organization under Section 170(b)(1)(A)(ii) of the Tax Code. Public schools are excluded from the proposed regulation’s purview.

The proposed regulation would impose a year-by-year nondiscrimination test. For taxable years beginning after May 31, 2027, a private school that “adopts, maintains, or enforces any policy or practice that discriminates on the basis of race, color, or national or ethnic origin” in the administration of any educational, admissions, scholarship or loan, athletic or other school-administered or school-supported program would not be treated as tax-exempt for that year. Because the test is annual, a school that changes its policies could potentially regain exempt status in a later year. The “for any purpose” standard would include policies defended as remedial or diversity-related, and the proposal would modify Rev. Proc. 75-50 (as modified by Rev. Proc. 2019-22) by deleting provisions that permitted preferences for racial minority groups in admissions, programs, facilities or financial assistance.

Continue reading.

Publications – Client Alert | September 8, 2026

Kutak Rock LLP