Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200046040

Contact Person:

S.I.N.: 170,07-02, 170.07-06, 402.00-00 and 415.02-04

Telephone Number:

In Reference to:

Date:

T:EP:RA:T2

AUG 21 2000

Legend:

County L =
Library M =
University N =
Project P =

Dear:

This is in response to the ruling request dated December 14, 1999, as supplemented by a letter dated June 29, 2000, in which your authorized representative has requested a ruling on your behalf concerning whether its employees who participate in Library M's plan described in section 403(b) of the Internal Revenue Code are eligible for the increased limitations specified in section 402(g)(8)(A) and the special elections specified in section 415(c)(4).

Your authorized representative has submitted the following facts and representations:

Library M is an organization recognized as exempt under section 501(c)(3) of the Code and is not a private foundation by reason of sections 509(a) and 170(b)(1)(A)(vi). Library M is organized exclusively for the purpose of providing information, education, inspiration, recreation and research opportunities to the public. In order to accomplish this purpose, Library M acquires books, periodicals, films, recordings and other materials for the public either to use at the library or to borrow. Library M organizes and conducts public discussion groups, panels, forums and similar activities. In its efforts to stimulate discussion and the exchange of ideas, Library M places heavy emphasis on presenting, through various media, all sides of a given issue and in acquiring library materials representing the full spectrum of thought on controversial subjects.

Each of Library M's branch libraries has full-time librarians, as well as librarians who specialize in "young adult" and "children's" activities and interests. In addition, there are part-time staff librarians employed at each of the Library M's 28 branches.

There are currently 50 full-time librarians, 31 young-adult librarians, and 31 children's librarians employed by Library M. Each librarian is required to have a college degree and a Masters of Library Science degree. The librarians serve students of all ages, from pre-school and

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kindergarten all the way through college. They assist children and students to perform research assignments and complete their homework. Each librarian provides educational instruction geared toward teaching how to use Library M's resources. For example, the children's librarians provide various activities for children in the children's departments, as well as for young adults on a daily basis.

University N has its own library school where a student can pursue a Master's degree in Library Science. These students are permitted to intern as part-time librarians in Library M's library system, although they are not considered professionals until they have received their degree. In addition, Library M's librarians have been employed on a part-time basis at University N or as instructors in the Masters of Library Science degree program while also working for Library M. Finally, Library M regularly supports the programming efforts at University N by sponsoring various seminars at University N and sending librarians to attend University N's seminars on children's services. Library M's librarians are often requested to attend library science school functions or to speak at various events and program meetings. Library M also provides financial support to University N by donating money for programing in the areas of librarianship. The relationship between Library M and University N is also maintained through the School of Library Alumni Association of which the librarians who graduated from University N are often actively involved.

Currently, there are 500,000 library cardholders within Library M's system. In addition, there are many more children, students, and public library patrons who are permitted to enroll in any of the free quarterly scheduled classes that are offered by Library M twelve months of the year under the following topics: discover science, nature, films, health, hobbies, library learning, money, performing arts, story time, travel, and numerous other topical headings. The classes are staffed each quarter on the premises of each of the branch libraries within Library M's system.

Further, there is a regular list of schools and students from kindergarten through high school that are visited by librarians each year for the purpose of educational instruction. In 1998, over 80,000 students received educational instruction by librarians within schools in County L.

Over 10,000 school children regularly visited Library M for the purpose of educational instruction during 1998. School age children in grades kindergarten through 5th grade regularly visit the various branches for educational instruction available under the following topics: (a) orientation of library usage, (b) instructional book talks, (c) storytelling basics, and (d) summer resources (introduction to fiction and nonfiction resources). Further, young adults in grades 6th through 12th visit the branch libraries for educational instruction available under the following topics: (a) advanced research skills and (b) reference tools and resources. Certain schools in locations where school lessons are not reinforced in an after-school home environment will

provide additional visits to branch libraries. Also, librarians will often work in conjunction with schoolteachers to arrange library visits for special programs offered in the library branches. Finally, two of the branch libraries regularly have groups of "home schoolers" visit the library on a weekly basis to learn about the various resources or receive training in a certain topic, e.g., history.

The children's librarians regularly visit local schools to encourage children to use library resources. During May and June, they regularly present programs to promote summer reading when schools are in recess. In addition, they regularly conduct storytelling visits with elementary age children and provide "Book Talks" to reinforce the primary teacher's daily lessons on various topics and to encourage students to seek out library resources that complement classroom learning.

The young adult librarians regularly visit local high schools and provide many of the similar programs offered to elementary school children at a more advanced level. Book discussion groups are conducted at all grade levels with age appropriate stories. In May and June, librarians will visit high schools to encourage summer reading through a discussion of new age appropriate books recently added to the library collection. All programs are geared toward encouraging students to utilize library resources and continue reading outside of the classroom.

Finally, the following educational activities are regularly provided each year: (a) Project P provides thematic kits for teachers of preschool age children. These kits contain eight books, a musical cassette and tip sheets to help teachers make these books part of the learning environment. Workshops to train teachers are conducted biannually. (b) The puppet center enables teachers and children to use an alterative way of learning classic literature while developing language skills. (c) The project read was created so that teachers could make "trade books" a part of their instruction. The book collection includes 250 titles and is appropriate for children from kindergarten through seventh grade. Teachers are allowed to borrow the materials for several weeks at a time for classroom use. (d) Quarterly classes are scheduled each calendar quarter and fall under the headings of: educational, films, health, hobbies, just for fun, library learning, money, performing arts, story time treats, travel, and several others. These classes are conducted at each of the branch libraries throughout a calendar year.

Library M sponsors a section 403(b) program for its employees. Library M was originally classified as one that is not a private foundation within the meaning of section 509(a) of the Code because it is an organization described in section 509(a)(1) and section 170(b)(1)(A)(vi) of the Code. Library M contends that it should also qualify as an educational organization described in section 170(b)(1)(A)(ii).

You have asked for a ruling that Library M qualifies as an educational organization as described in section 170(b)(1)(A)(ii) of the Code, so that its employees are eligible for the additional and alternative limitations for section 403(b) plan contributions under section 402(g)(8)(A) and section 415(c)(4).

Under section 402(g)(1) of the Code, the general limit on elective deferrals for the taxable year is $7,000, adjusted for cost of living adjustments. Section 402(g)(8)(A) provides that in the case of a qualified employee of a qualified organization, the limitation of paragraph (1) with respect to elective deferrals made under a 403(b) annuity contract, shall be increased by whichever of the following is the least: (i) $3,000, (ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or (iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over such elective deferrals made by the organization on behalf of such employee for prior taxable years.

Section 402(g)(8)(B) of the Code defines the term "qualified organization" to mean any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches. It notes that terms in this subparagraph shall have the same meaning as when used in section 415(c)(4).

Section 415(c)(1) of the Code provides that contributions and other additions provided under a defined contribution plan with respect to a participant cannot exceed the limitation when expressed as an annual addition to the participant's account is greater than the lesser of – (A) $30,000 or (B) 25 percent of the participant's compensation.

Section 415(c)(4) of the Code provides a special election for section 403(b) contracts purchased by educational organizations, hospitals, home health service agencies and certain churches. Section 415(c)(4)(D)(ii) describes for the purposes of section 415(c)(4) an "educational organization" as meaning an education organization described in section 170(b)(1)(A)(ii).

Section 170(b)(1)(A)(ii) of the Code provides that the deduction provided in section 170(a) shall be limited, *inter alia,* to charitable contributions to 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.

Section 1.170A-9(b)(1) of the Income Tax Regulations provides that an organization is an educational organization as described in section 170(b)(1)(A)(ii) of the Code 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. The term includes institutions such as primary, secondary, preparatory, or high schools, and colleges and universities. It includes Federal, State, and other public-supported schools which otherwise come within the definition. It does not include organizations engaged in both educational and noneducational activities unless the latter are merely incidental to the educational activities. A recognized university, for example, which incidentally operates a museum or sponsors concerts is an educational organization within the meaning of section 170(b)(1)(A)(ii). However, the operation of a school by a museum does not necessarily qualify the museum as an educational organization within the meaning of this subparagraph.

Section 170 (b)(1)(A)(vi) of the Code provides, in part, that an organization described in that section is one that normally receives a substantial part of its support (exclusive of income received in the exercise or performance by such organization of its charitable, educational, or other purposes or functions constituting the basis for its exemption under section 501(a)) from a governmental unit or from direct or indirect contributions from the general public.

Section 1.170 A-9(e)(ii) of the regulations states that the types of organizations which, subject to the provisions of this paragraph, generally qualify under section 170(b)(1)(A)(vi) of the Code as "publicly supported" are publicly or governmentally supported museums of history, art, or science, libraries, community centers to promote the arts, organizations providing facilities for the support of an opera, symphony orchestra, ballet, or repertory drama or for some other direct service to the general public, and organizations such as the American Red Cross or the United Givers Fund.

Although the information submitted shows that Library M has educational activities, these activities are not primarily carried on in the manner of an educational organization described in section 1.170A-9(b)(1) of the regulations. While Library M's librarians educate students and others located in County L, they perform these activities as part of librarian activities rather than as being members of a regular faculty. Moreover, while these activities teach students and others about library resources and related activities, they are not presented primarily as formal instruction, and the persons educated do not represent a regularly enrolled body of pupils or students of Library M. Library M primarily functions as a library. Although its activities are educational in nature, Library M is not carrying on the specific educational activities of a school that are required for an organization to meet the requirements of section 170(b)(1)(A)(ii).

Therefore, Library M is not a "qualified organization' within the meaning of section 402(g)(8)(B) of the Code or an "educational organization" within the meaning of section 415(c)(1) because it does not meet the definition of an "educational organization" under section

415(c)(4)(D)(ii). Thus, it is not the type of organization whose employees are eligible for the increased limitations specified in section 402(g)(8)(A) and the special elections specified in section 415(c)(4).

On this basis, we conclude that Library M's employees are not eligible for the additional and alternative limitations provided for a section 403(b) plan by section 402(g)(8)(A) and section 415(c)(4) because Library M does not qualify as an "educational organization" of the type described in section 170(b)(1)(A)(ii).

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
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