

Internal Revenue Service

Department of the Treasury

Washington, DC 2022-2000 46040

Contact Person:

§.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 &ted 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**. Further, **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 programming 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 **librarian 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 hi 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 alternative 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, 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 ahamatiie limitations for section 403(b) plan contriitions under section **402(g)(8)(A)** and section 415(c)(4).

Under section 402(g)(l) 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)(S)(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 (ii 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)(l) of the Code provides that **contributions** and other additions provided under a **defined contribution** plan with respect to a particii **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 particii'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)** descnis 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 contriitions 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 Co& **if its primary**

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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, education& 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 hi. 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)(S)(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)(A) and section 415(c)(4) because **Library M** does not **qualify** as an "educational **organization**" of the type descrii **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:
Deleted copy of the letter
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