



Tax Reduction Letter

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PLR 8140117

This is in response to your request for a ruling on behalf of the X Department of Corrections regarding the applicability of section 403(b) of the Internal Revenue Code (Code) to teachers in the State correctional system.

The Department of Corrections serves both adults and juveniles, males and females. The Department of Corrections has a Bureau of Adult Corrections (Adult Corrections) with approximately 759 regular full-time and 36 casual and part-time employees. The Department of Corrections also has a Bureau of Juvenile Corrections (Juvenile Corrections) with approximately 158 regular full-time and 74 casual and part-time employees.

A recent reorganization of the Department of Corrections has resulted in the creation of the position of Director of Education in charge of the Education Section with responsibility for all educational activities within both Adult Corrections and Juvenile Corrections. The Director of Education coordinates his or her activities in compliance with security and other standards set by the Department of Corrections and the superintendents of each institution within the correctional system.

Juvenile Corrections, which includes four separate facilities, maintains 26 full-time teachers, 1 part-time teacher, a principal, and several aides and secretaries. Adult Corrections, which includes five separate facilities, maintains 15 full-time teachers and one principal. The administrative office of the Education Section employs a Director of Education, a supervisor of Curriculum and Instruction, a Youth Activities Advisor and a clerk-typist. All these employees are responsible to the Director of Education.

One-hundred percent of the juveniles committed to Juvenile Corrections are enrolled in educational courses. Seventeen percent of the adults committed to Adult Corrections are enrolled in educational courses.

The Department of Corrections hires teachers who meet certification standards established by the State Board of Education. If, due to the lack of available certified teachers, a non-certified teacher is hired, that teacher must, as a condition of continued employment, work towards obtaining certification.

The curriculum of Juvenile Corrections and Adult Corrections includes Basic Skills and Vocational Education. Basic Skills maintains a focus on the improvement of reading and math skills. General Educational Development high school equivalency degrees are available for those students who reach a certain level of competence in math and reading. Vocational Education includes detailed instruction in acquiring the skills necessary to get and keep a job; improving awareness of different occupations and a student's ability to succeed in them; and advance instruction in specific areas of vocational training in which interest and aptitude have been demonstrated.

Enrollment in the educational program is compulsory for juveniles 16 years of age or younger. Newly committed juveniles are first tested to determine their proper placement within the

educational program. An individual educational plan is then prepared and forwarded to the appropriate teachers for their use in instruction.

Classes are held in designated classrooms in the various institutions of the correctional system. All classes apparently are held in these classrooms with the appropriate instructor present.

On November 20, 1979, the Deputy Attorney General of X, on behalf of the State Treasurer of X, forwarded a request for a ruling on the applicability of for a ruling on the applicability of in the Department of Corrections. The Deputy Attorney General of X is of the opinion that under Treas. Reg. 1.170A-9(b)(1) the teachers would not qualify since the primary purpose of the Department of Corrections is not education.

Section 403(b)(1) provides that special tax treatment will be provided if an annuity contract is purchased for an employee who performs services for an educational organization described in section 170(b)(1)(A)(ii) by an employer which is a State, a political subdivision of a State, or an agency or instrumentality of any one or more of the foregoing.

Section 1.403(b)-1(b)(5) provides:

...a person shall be considered an employee who performs services . . . if he is performing services as an employee directly or indirectly for such an institution. Thus, for example, the principal, clerical employees, custodial employees, and teachers at a public elementary school are employees performing services directly for such an educational institution. An employee who performs services involving the operation or direction of a State's, or political subdivision's education program as carried on through educational institutions . . . is an employee performing services indirectly for such institutions.

Section 170(b)(1)(A)(ii) defines an educational organization entitled to section 403(b)(1) annuity treatment as one '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) provides:

An educational organization is described in section 170(b)(1)(A)(ii) 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 facts of this case reveal that the educational programs of both Juvenile Corrections and Adult Corrections meet the basic tests set out in section 170(b)(1)(A)(ii) It is evident that a regular faculty and curriculum that a regular faculty and curriculum consist of a regular body of pupils, subject, of course, to the length of the student's prison sentence. Also, the students are in attendance at the place, the classrooms of the correctional institutions, where the educational activities are carried on.

In the instant case, the following categories can correctly be called 'organizations' which are agencies or instrumentalities of X: (1) Department of Corrections (2) Adult Corrections (3) Juvenile Corrections (4) Education Section (5) Educational Program of Juvenile Corrections (6) Educational Program of Adult Corrections (7) Individual Institutions (8) Educational Programs of Individual Institutions.

The first two categories, Department of Corrections and Adult Corrections, fail the primary purpose test set forth in section 1.170A-9(b)(1) In both cases the primary purpose of the

organization is correctional and the educational program is only incidental to that primary purpose. Out of approximately 1027 employees of the Department of Corrections, roughly 56 could, without question be considered educational employees. Therefore, only about 5.5% of the employees of the Department of Corrections are definitely employed directly or indirectly in educational pursuits. Out of approximately 800 employees of Adult Corrections only 18 are educational employees. Therefore, only about 2.2% of the employees of Adult Corrections are connected with its educational program. When only 2.2% or 5.5% of an organization's employees are engaged in an activity, that activity can not be considered the primary purpose of the organization. This is particularly true, as here, where no evidence exists that the percentage of employees engaged in the activity is not indicative of the importance of that activity to the organization.

Juvenile Corrections is not an organization whose primary purpose is that of an educational organization as defined in section 170(b)(1)(A)(ii) Approximately 36 of the 232 employees of Juvenile Corrections are teachers, principals, teachers' aides or clerk-typists directly connected to the educational program. Educational employees comprise only 15.5% of the Juvenile Corrections staff (this percentage apparently increases to about 22.1% if only full-time employees are included). While we feel this is a significant percentage, we do not feel it can fairly be considered an indication that the primary purpose of the entirety of Juvenile Corrections is educational as defined in section 170(b)(1)(A)(ii) The file contains no information on the percentages of income distributed by Juvenile Corrections which can be attributed to its educational program. The only other factor which could lead us to conclude that all employees of Juvenile Corrections are eligible for section 403(b)(1) annuities would be the fact that all juveniles take part in the educational program. This is a strong indication that the educational program plays an important part in Juvenile Corrections. However, in light of the small percentages of employees directly involved in the educational program, and the very essence of a correctional system with a primary function as a facility for punishment and isolation from society as well as rehabilitation in the non-educational sense, we conclude that the primary purpose of Juvenile Corrections is not educational as defined in section 170(b)(1)(A)(ii)

The next category which we feel can be considered an 'organization' within the intent of the language of section 403(b)(1) is the Education Section of the Department of Corrections. This section is headed by a Director of Education who has direct authority over all teachers and other personnel in the educational programs in all juvenile and adult facilities. Although the Director of Education must conduct his or her supervisory activities within the context of the broader security and other rules set up by the Department of Corrections and the superintendents of each facility; the file indicates that the Education Section is a structured organization within the Department of Corrections, separate organizationally from each individual detention facility. All employees of the Education Section are directly engaged in activity of the type defined in section 170(b)(1)(A)(ii) The primary purpose of the Education Section is that defined in section 170(b)(1)(A)(ii) Therefore, all employees of the Education Section, including clerk-typists and aides, are eligible for section 403(b)(1) annuities as employees, who perform services for an educational organization as defined in section 170(b)(1)(A)(ii) whose employer is an instrumentality of a state.

In light of our conclusion, that employees of the entire Education Section are eligible for section 403(b)(1) annuities, we need not consider the applicability of section 403(b)(1) to subcategories of the Education Section. We do feel that, as a general rule, a qualified educational program within a larger governmental institution may qualify the employees of the educational program for section 403(b)(1) annuities.

Additionally, we note that reform schools and similar types of semi-correctional educational institutions would generally qualify all employees of the institution for section 403(b)(1) annuities since the primary purpose of such an institution would be educational, as defined in section 170(b)(1)(A)(ii). Insufficient information exists in the file to indicate that any separate detention institution in Juvenile Corrections has a primary purpose of education, as defined in section 170(b)(1)(A)(ii). The information submitted by X indicates that the Juvenile Corrections' institutions are correctional facilities rather than reform schools.

Therefore, we conclude that all employees of the Education Section are eligible for section 403(b)(1) annuities. This would include all Education Section administrators (including the Director of Education), principals, teachers, aides and secretaries, as well as any maintenance or custodial facilities.