

Internal Revenue Service

Department of the Treasury

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CC:IT&A:2 – COR-112103-00

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Dear [REDACTED]:

This is in response to your letter of June 14, 2000, in which you inquired whether expenses for kindergarten and for summer school qualify for the dependent care credit. You also asked whether a school district that provides kindergarten and summer school services should provide its taxpayer identification number to parents who desire to claim the dependent care credit for the expenses of the programs.

The school district operates a multi-age, full-day kindergarten program at four elementary schools. Other elementary schools within the school district offer half-day kindergarten. The school district provides full-day kindergarten to furnish additional educational opportunities to the kindergarten students and not as a type of day care. Parents are charged \$ [REDACTED] per day in order to defray the cost of the program.

The school district also operates a summer school program divided into kindergarten to eighth grade (K - 8) and high school (HS) academies. The K - 8 Academy has two sessions of 3 weeks each, which meet for a half day, 4 days a week. The program is instructional in nature, offering a curriculum that includes fine arts, fundamental skills, technology and enrichment. A fee of \$ [REDACTED] per session is charged to defray the cost of the program.

The High School Academy offers two sessions of 4 weeks each, which meet for a half day, 4 days a week. It offers courses on a variety of topics that count for one-half credit toward graduation.

The state in which the school district is located does not require the school district to provide full-day kindergarten or summer school programs.

Section 21 of the Internal Revenue Code (§ 44A prior to its redesignation as § 21) provides for a credit for a percentage of employment-related expenses, subject to certain limitations. "Employment-related expenses" are defined in § 21(b)(2)(A)(ii), in part, as expenses for the care of a qualifying individual that are incurred in order to allow the taxpayer to be gainfully employed.

Under § 1.44A-1(c)(3)(i) of the Income Tax Regulations, for expenses to be considered for the care of a qualifying individual their primary purpose must be to assure the individual's well-being and protection. Not all benefits bestowed upon an individual are

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considered to be for care. Amounts paid to provide food, clothing, or education are not expenses paid for care. However, amounts paid for care are allowed even though non-qualified services, such as food and education, are also provided, if the non-qualified services are incident to and inseparable from the care.

Section 1.44A-1(c)(6) provides that if a portion of an expense is for the care of a qualifying individual and a portion is for other purposes, a reasonable allocation must be made, and only the portion of the expense attributable to care is an employment-related expense. However, no allocation is required if the portion of the expense for the non-care purpose is minimal or insignificant.

Accordingly, whether or not an expense qualifies for the dependent care credit depends on the nature and primary purpose of the services provided and is primarily a question of fact. In order for an expense to qualify in full for the dependent care credit, any portion of the expense for purposes other than care must be minimal or insignificant and inseparable from the portion of the expense for care. If a significant portion of the expense is for purposes other than care, an allocation must be made. An expense that is primarily for a purpose that is not care, such as education, does not qualify for the dependent care credit.

To illustrate these principles, § 1.44A-1(c)(3) states that the full amount paid to a nursery school in which a qualifying child is enrolled is considered to be for the care of the child, even though the school also furnishes lunch and educational services. Educational expenses incurred for a child in the first or higher grade level are not expenses incurred for the care of a qualifying individual. These statements presume that nursery school is primarily for care and that other services provided are incidental, whereas first grade and above is primarily educational in nature and any care provided is incidental.

The regulations do not specifically mention kindergarten. However, a conclusion that this omission indicates that expenses for kindergarten will qualify for the dependent care credit would be erroneous. Accordingly, IRS Publication 503, Child and Dependent Care Expenses, includes the following example at page 7:

Example 2. Your 5-year-old child goes to kindergarten in the morning. In the afternoon, she attends an after-school day care program at the same school. Your total cost for sending her to the school is \$3,000, of which \$1,800 is for the after-school program. Only the \$1,800 qualifies for figuring the credit.

This example assumes that the character of the kindergarten program is primarily educational, as may often be the case. We have enclosed a copy of this publication for your assistance.

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Since your letter did not satisfy the requirements for a private letter ruling request, we cannot definitively state whether or not expenses for the school district's full-day kindergarten and the summer K - 8 and High School Academies qualify for the dependent care credit. However, you have characterized these programs as primarily educational in nature and purpose. As such, the cost of the programs would not qualify for the dependent care credit.

Please note in this regard that the fact that the state does not require the school district to provide the programs is not determinative of the character of the services. It is also insufficient that parents utilizing these programs must have some arrangement to care for their children in order to be able to work. The same may be true of parents of children in first grade and above. The taxpayer must satisfy both the requirement that the expenses are incurred to enable the taxpayer to be gainfully employed, and the requirement that the services provided are primarily for care.

Nonetheless, the school district may provide its taxpayer identification number as a convenience to parents who request it and will incur no liability as a result. Furthermore, taxpayers are not required to obtain a taxpayer identification number from certain care providers that are tax exempt. See page 9 of Publication 503.

I hope this information is helpful. Please call Donna M. Crisalli at the number above (not a toll-free number) if you have any questions.

Sincerely,

Associate Chief Counsel
(Income Tax & Accounting)

By _____
Robert A. Berkovsky
Chief, Branch 2

Enclosure