



STATE OF CALIFORNIA  
**FRANCHISE TAX BOARD – Legal Department**  
 PO Box 1720  
 Rancho Cordova, CA 95741-1720  
 Telephone (916) 845-3066  
 FAX (916) 843-2122

STEVE WESTLY  
 Chair

CAROLE MIGDEN  
 Member

DONNA ARDUIN  
 Member

\*\*\*\*\*

March 29, 2004  
 Chief Counsel Ruling 20030318

Re: \*\*\*\*\*

Dear \*\*\*\*\*:

This chief counsel ruling is issued in response to your request for a determination regarding your eligibility to claim the "Teacher Retention Credit" on your \*\*\*\* California personal income tax return.

**FACTS**

You have provided us with the following information. Your Social Security number is \*\*\*\*\*. You hold a full-time teaching credential for adult education in clear designated subjects and are employed by the \*\*\*\*\* Unified School District as a full time adult education teacher at the \*\*\*\*\* Adult School (CDS \*\*\*\*\*). In this capacity, you exclusively teach the elementary and secondary basic skills programs.

**ISSUE**

Is a properly credentialed teacher, teaching in the elementary and secondary basic skills programs of the adult education system, eligible to claim a credit (the "teachers retention credit") pursuant to Revenue and Taxation Code section 17052.2?

**HOLDING**

An individual who holds either a preliminary or clear teaching credential and has at least four years of service as a credentialed teacher, and is teaching in the elementary and secondary basic skills programs of the adult education system, would qualify to claim the credit pursuant to Revenue and Taxation Code section 17052.2, the "teacher retention credit."

## **DISCUSSION**

Revenue and Taxation Code section 17052.2, added by AB 2879 (Stats. 2000, ch. 75), and amended by AB 1080 (Stats. 2000, ch. 603), provides a credit against the "net tax" imposed under the Personal Income Tax Law for credentialed teachers who teach at qualifying educational institutions. This credit is only available to credentialed teachers who have completed at least four years of service as a credentialed teacher.

Paragraph (1) of subdivision (c) of Revenue and Taxation Code section 17052.2 defines "credentialed teacher" as:

...a person who holds a preliminary or professional clear credential as determined by the Commission on Teacher Credentialing pursuant to Article 1 (commencing with Section 44200) of Chapter 2 of Part 25 of Division 2 of Title 2 of the Education Code and *who teaches at a qualifying educational institution.* (Emphasis added.)

As a threshold matter, only credentialed teachers, as defined, are eligible for the teacher retention credit. An individual cannot be considered a "credentialed teacher" unless the individual possesses a current "preliminary" or "professional clear" credential, as determined by the Commission on Teacher Credentialing.

Paragraph (2) of subdivision (c) of section 17052.2 defines a "qualifying educational institution" as:

...any elementary, secondary, or vocational-technical school located in this state providing education for kindergarten, grades 1 to 12, inclusive, or any part thereof. "Qualifying educational institution" includes an agency or instrumentality of the federal government providing education for grades kindergarten, grades 1 to 12, inclusive, or any part thereof, at any location within this state, including an Indian reservation or a military installation located within the geographical borders of this state, where a credentialed teacher is employed by the federal government or an agency or instrumentality thereof. "Qualifying educational institution" includes any elementary, secondary, or vocational technical school located in California, that files an affidavit pursuant to Section 33190 and 33191 of the Education Code, and provides education for kindergarten and grades 1 to 12, inclusive, or any part thereof.

The definition of "qualifying educational institution" requires an elementary, secondary, or vocational-technical school that provides a particular type of education – education for kindergarten, grades 1 through 12, inclusive, or any part thereof.

Title 2 of the Education Code (commencing with section 33000), entitled "Elementary and Secondary Education," sets forth requirements and criteria relating to and establishing the

standards for elementary and secondary<sup>1</sup> education. Among other topics, it addresses teacher credentialing, course of study for kindergarten and grades 1 through 12, funding, and various education programs designed to meet the needs of special populations. Specifically, at sections 52500 through 52616.24, it establishes the "Adult Schools" for the "purpose of providing instruction in civic, vocational, literacy, health, homemaking, technical and general education." (Ed. Code section 52501.) These programs are to be established and administered by the governing board of a high school district or unified school district. (Ed. Code section 52500 et seq.) Further, these programs are authorized to establish graduation criteria for the elementary and secondary levels for the issuance of graduation certificates by the governing board of the adult school. (Ed. Code section 52508-52510.)

Further, "adult basic education" is defined in Education Code § 8510 as communication and computational skills to and including the 12<sup>th</sup> grade level. This specifically includes English as a second language.

Furthermore, the adult education programs operated by school districts are specifically provided for within the funding mechanisms as administered by the Superintendent of Public Instruction (including, but not limited to, Education Code sections 44700-44705, 52360-52363, and 52610-52616.24).

Thus, in order for you to qualify for the teacher retention credit, you must be a properly credentialed teacher, teaching in a "school" that meets each of the following criteria:

1. The school must be an established organization operated for the purpose of learning and education.
2. The school must be considered to be an elementary, secondary, or vocational-technical school.
3. The school must provide education from the curriculum for kindergarten, grades 1 through 12, or any part thereof.

The adult education program is created under the specific authority of the Education Code to provide education for adults<sup>2</sup> within the curriculum for elementary and secondary education. The program is authorized to be a part of the state school system and funded through that system.

Further, as acknowledged above, the adult system is authorized to award diplomas or certificates for the satisfactory completion of the elementary or secondary course of study.

Therefore, based on the program as established pursuant to the Education Code, an adult education program under the auspices of a unified school district is a secondary school or

---

<sup>1</sup> In this context, the term "secondary" refers to the grades 9 through 12, or "high school." Postsecondary education, i.e., education past the 12<sup>th</sup> grade level, is addressed in title 3 of the Education Code.

<sup>2</sup> There are special provisions which can also make this program available to minors if they meet the detailed criteria pursuant to Education Code section 52500.1

vocational-technical school providing education for kindergarten, grades 1 through 12, or any part thereof, at locations within California. Thus, such programs are considered "qualifying educational institutions" for purposes of the teacher retention credit.

As a result, if the credential you hold constitutes either a preliminary or professional clear teaching credential and you have at least four years of service as a credentialed teacher, based on the facts set forth above, your teaching in the elementary and secondary basic skills programs of the adult education system would qualify you to claim the credit pursuant to Revenue and Taxation Code section 17052.2, the "teacher retention credit."

Please be advised that the tax consequences expressed in this Chief Counsel Ruling are applicable only to the named taxpayer and are based upon and limited to the facts you have submitted. In the event of a change in relevant legislation, or judicial or administrative case law, a change in federal interpretation of federal law in cases where our opinion is based upon such an interpretation, or a change in the material facts or circumstances relating to your request upon which this opinion is based, this opinion may no longer be applicable. It is your responsibility to be aware of these changes, should they occur.

This letter is a legal ruling by the Franchise Tax Board's Chief Counsel within the meaning of paragraph (1) of subdivision (a) of section 21012 of the Revenue and Taxation Code. Please attach a copy of this letter and your request to the appropriate return(s) (if any) when filed, or in response to any notices or inquiries which might be issued.

Very truly yours,

Suzanne L. Small