DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200851044

SEP 2 4 2008

U.I.L. 403.00-00
U.I.L. 7701.00-00

T:EP:RA:T2

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XXXXXXXXXXXXXXX
XXXXXXXXXXXXXXX

Attn: XXXXXXXXXXXXXX

LEGEND:
Employer M = XXXXXXXXXXXXX

Company O = XXXXXXXXXXXXX

State M = XXXXXXXXXXXXX

Plan X = XXXXXXXXXXXXX

Dear XXXX:

This letter is in response to a request for a private letter ruling dated March 16, 2007, supplemented by letters dated December 28, 2007, January 8, 2008, and February 4, 2008, submitted on your behalf by your authorized representative concerning sections 403(b) and 7701 of the Internal Revenue Code ("Code").

The following facts and representations have been submitted:

Employer M is a multi-facility health system providing medical and optical services to the general public in State M. Employer M is an organization described in section 501(c)(3) which is exempt from tax under section 501(a).

Company O is a single member limited liability company organized under the laws of State M. Employer M formerly owned percent of Company O and unrelated optometrists owned percent. Effective December 31, 2003, Employer M purchased the remaining percent interest from the unrelated individuals thereby converting Company O into a single member LLC. Currently, Employer M owns percent (%) of Company O's membership interests.

You represent that Company O is not classified as a corporation under section 301.7701-2(b) of the Procedure and Administration Regulations ("Regulations"). You have also asserted that Company O has not filed Form 8832, Entity Classification Election, to change its classification under section 301.7701-3(c) of the Regulations and will be disregarded for federal tax purposes pursuant to the default classification rules under section 301.7701-3(b). Company O has not filed an Application for Recognition of Exemption on Form 1023.

Employer M sponsors Plan X for the benefit of its employees. Plan X is intended to meet all the requirements of an annuity purchase plan under section 403(b) of the Code. All employees of Employer M are currently eligible to make contributions pursuant to salary reduction agreements under Plan X.

Employer M proposes to extend participation in Plan X to employees of Company O in order to provide them with an opportunity to electively defer income under section 403(b) of the Code on the same basis as employees of Employer M. However, under Code section 403(b)(1)(A)(i), participation in Plan X is conditioned on employment by an organization described in section 501(c)(3) that is exempt from tax under section 501(a). You represent that although Company O is an entity whose status is disregarded from an organization described in section 501(c)(3) that is exempt from tax under section 501(a), Company O, itself, is not an organization described in section 501(c)(3) of the Code that is exempt from tax under section 501(a) of the Code. Subject to its receipt of a favorable ruling, Employer M plans to have Company O adopt Plan X with Employer M's consent, and permit employees of Company O to participate in Plan X subject to the terms and conditions of Plan X.

Based on these facts and representations you request a ruling that for purposes of section 403(b) of the Code, employees of Company O, a single member limited liability company, will be treated as employed by Employer M, an organization described in section 501(c)(3) of the Code, which is the sole member of Company O, and eligible to participate in Plan X.

Section 403(b) of the Code provides, in pertinent part that, if an annuity contract is purchased for an employee described in section 501(c)(3) of the Code, which is exempt from tax under section 501(a), the amounts contributed by the employer for such annuity contract, on or after such rights become nonforfeitable, shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415.

Section 301.7701-1(a)(1) of the Regulations provides that the Code prescribes the classification of various organizations for federal tax purposes.

Section 301.7701-1(a)(4) of the Regulations provides that under sections 301.7701-2 and 301-7701-3 certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

Under section 301.7701-2(a), a business entity is any entity recognized for federal tax purposes (including an entity with a single owner that may be disregarded as an entity separate from its owner under section 301.7701-3) that is not properly classified as a trust under section 301.7701-4 or otherwise subject to special treatment under the Code. A business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch or division of the owner.

Section 301.7701-3(a) of the Regulations provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an eligible entity) can elect its classification for federal tax purposes as provided in section 301.7701-3. An eligible entity with a single owner can elect to be classified as either an association (and thus a corporation under section 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) of the Regulations provides that, except as provided in section 301.7701-3(b)(3), unless the entity elects otherwise, a domestic eligible entity is (i) a partnership if it has two or more members; or (ii) disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c)(1)(i) of the Regulations provides, in part, that an eligible entity may elect to be classified other than as provided under section 301.7701-3(b), or to change its classification, by filing Form 8832, Entity Classification Election, with the service center designated on Form 8832.

Since Company O has not filed Form 8832 making an election to be classified as an association under the rules of section 301.7701-3(a) of the Regulations; it is disregarded for federal tax purposes pursuant to the default classification rules under section 301.7701-3(b) of the Regulations. Company O also has not filed IRS Form 1023 seeking a determination letter of exempt status. Thus for purposes of section 301.7701-2 of the Regulations, Company O, a disregarded entity, is treated in the same manner as a sole proprietorship, branch or division of its owner, Employer M. Therefore, the employees of Company O will be treated as employees of Employer M for purposes of section 403(b) of the Code.

Accordingly, we conclude with respect to your ruling request that for purposes of the requirements of Code section 403(b), employees of Company O, a single member limited liability company, will be treated as employed by Employer M, an organization described in section 501(c)(3) of the Code, which is the sole member of Company O, and eligible to participate in Plan X.

This ruling is based on the assumption that Plan X, prior to and subsequent to the inclusion of Company O's employees as participants, meets the requirements of section 403(b) of the Code.

This letter ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

If you have any questions concerning this ruling, please contact XXXXXXXX XXXXX, I.D. Number XXXXXXXX, SE: T:EP:RA:T:4, at XXXXXXXXXX.

Sincerely yours,

for Ada Perry
Donzell Littlejohn, Manager
Employee Plans Technical Group 4

Enclosures:
Deleted copy of letter ruling
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