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Date: July 21, 2009

Legend

State=
Practice Plan A=
University B=
Company C=

Dear _____ :

This is in reply to a ruling request submitted by your authorized representatives on behalf of Practice Plan A and University B with regard to the status of individuals employed by an LLC owned by one of the entities for purposes of applying the common paymaster rules found in section 3121(s) of the Internal Revenue Code (the "Code"). In particular, a ruling has been requested that individuals employed by an LLC owned by Practice Plan A will not be included in determining whether 30% of Practice Plan A's employees are concurrently employed by both entities for purposes of section 3121(s).

Facts

Practice Plan A is a State nonprofit corporation and is exempt from federal income tax under section 501(a) of the Code as an organization described in sections 501(c)(3) and 509(a)(2) of the Code.

University B is a public university exempt from federal income tax under section 115(a) of the Code, as well as an educational organization, described in section 170(b)(1)(A)(ii) of the Code. University B employs health professionals as faculty members at its medical school.

Beginning on or about January 1, 2009, and continuing over a period of several years, various faculty practice plans and private physician groups are expected to be consolidated into Practice Plan A. This will occur through a series of transactions pursuant to which faculty practice plans and private physician practices will be dissolved and their physicians employed by Practice Plan or through the sale of the faculty practice plan's or private physician practice's assets to Practice Plan A. As part of the consolidation, it is anticipated that substantially all physicians employed by University B and a significant number of non-University employed physicians will become employees of Practice Plan A. You have represented that, at all times, significantly more than 30% of the physicians employed by Practice Plan A will be concurrently employed by Practice Plan A and University B.

Practice Plan A is the sole member of Company C, a State limited liability company. Company C has been created to provide administrative and managerial services to Practice Plan A. Practice Plan A will manage Company C as its sole member.

It is anticipated that many of the non-physician employees associated with the clinical practices operated by both University employed physicians and Non-University employed physicians will be employed by Company C. The employment of non-physician employees is being transferred from their current employers to Company C in order to consolidate a number of duplicative administrative functions. These non-physician employees will continue to provide the same services to Practice Plan A physicians that they currently provide and are generally expected to provide those services at the same locations from which those services are presently provided. Company C will maintain a separate payroll through which the non-physician employees will be paid. The services of the non-physician employees will be provided to Practice Plan A pursuant to a support services agreement.

Law and Analysis

The Federal Insurance Contributions Act (FICA) imposes a tax on the "income" of every individual that equals a percentage of "wages" received by the individual. See Code section 3101. FICA also imposes an "excise tax" on each employer "with respect to having individuals in his employ" that is equal to a specified percentage of wages paid by his employer. See Code section 3111. The definition of wages in Code section 3121(a) excludes that portion of remuneration for employment paid by an employer to an individual that exceeds "the contribution and benefit base" (or wage base) as determined under section 230 of the Social Security Act.

Section 3121(s) of the Code provides that for purposes of sections 3102 (employee FICA taxes), 3111 (employer FICA taxes), and 3121(a)(1) (taxable wage base), if two or more related corporations concurrently employ the same individual and compensate such individual through a common paymaster which is one of such corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to such individual amounts actually disbursed to such individual by another of such corporations.

Section 125 of the Social Security Amendments of 1983, Pub. L. No. 98-21, 97 Stat. 65 (1983), amended section 3121(s) of the Code with respect to the treatment of certain faculty practice plans. Section 125 provides that the following entities are deemed to be related corporations eligible for common paymaster treatment with respect to FICA taxes:

- A state university that employs health professionals as faculty members at the university's medical school, and
- A faculty practice plan described in section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code that employs faculty members of such medical school and in which 30 percent or more of the employees of the faculty practice plan are concurrently employed by the university's medical school ("the Thirty Percent Test").

Furthermore, section 125(a)(2) of Pub. L. No. 98-21 provides that remuneration that is disbursed by the faculty practice plan to a health professional employed by both the practice plan and the university shall be deemed to have been actually disbursed by the university as a common paymaster and not to have been actually disbursed by the faculty practice plan. Additionally, section 1802 of the Small Business Job Protection Act of 1996, Pub. L. No. 104-188, 110 Stat. 1755 (1996), further amended section 3121(s) of the Code to provide that for wages paid after December 31, 1996, that the treatment of faculty practice plans and universities contained in section 125 of Pub. L. No. 98-21 would also apply in cases where the remuneration for the health professional's services to a faculty practice plan are paid by the state university through a university agency account that is funded by the practice plan.

If a faculty practice plan and a university meet the requirements of section 125 of Pub. L. No. 98-21, all remuneration disbursed by the faculty practice plan to health professionals employed by both the university and the faculty practice plan shall be treated as disbursed by the university as common paymaster; all other remuneration disbursed by the faculty practice plan to other individuals is treated as disbursed by the faculty practice plan. Additionally, in accordance with section 3121(s) of the code, the faculty practice plan does not have the obligation to withhold the employee portion of

FICA taxes under section 3102 of the Code and to pay the employer portion of FICA under section 3111 of the Code on remuneration paid to health professionals who are concurrently employed by the University and the faculty practice plan. Furthermore, section 3121(s) also aggregates the remuneration paid by the University and the faculty practice plan to an employee concurrently employed by both entities for purposes for determining the FICA wage base under section 3121(a)(1) of the Code.

While a limited liability company (LLC) that has a single owner and has not elected to be taxed as a corporation is a disregarded entity separate from its owner for income tax purposes, beginning January 1, 2009, section 301.7701-2(c)(2)(iv)(A) of the Treasury Regulations provides that an LLC with a single owner that has not elected to be taxed as a corporation will not be treated as a disregarded entity separate from its owner for purposes of taxes imposed under Subtitle C- Employment Taxes and Collection of Income Tax (Chapters 21, 22, 23, 23A, 24, and 25 of the Code). For employment tax purposes, section 301.7701-2(c)(2)(iv)(B) provides that an entity that is otherwise disregarded as an entity separate from its owner but for section 301.7701-2(c)(2)(iv)(A) is treated as a corporation, separate from its single owner. As such, the LLC with a single owner must withhold, report and remit employment taxes with respect to those individuals directly employed by the entity using its own name and Employer Identification Number.

You represent that thirty percent or more of the employees of Practice Plan A, disregarding the employees of Company C, will be concurrently employed by the University. If, on the other hand, the employees of Company C are included for purposes of the Thirty Percent Test, you represent that less than thirty percent of the combined workforce of Practice Plan A and Company C would be concurrently employed by the University. If the employees of Company C are included for this purpose, the Practice Plan and the University cannot qualify for common paymaster treatment under section 3121(s) of the Code.

Company C, a single member LLC, is treated as a corporation, separate from its single owner, for all employment tax purposes, as of January 1, 2009. As the common paymaster rules of section 3121(s) of the Code, as amended by section 125 of Pub. L. No. 98-21, are employment tax provisions, for purposes of applying the common paymaster rules, Company C is a separate corporation, distinct from Practice Plan A, its single member owner. Those individuals solely employed by Company C, are employees of Company C and not employees of Practice Plan A. Accordingly, we conclude, in light of section 301.7701-2(c)(iv) of the Treasury Regulations, that for purposes of applying the common paymaster rules, the employees of Company C will not be included as employees of Practice Plan A for purposes of determining whether the Thirty Percent Test has been satisfied.

This ruling is directed only to the taxpayers requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party. While this office has not verified any of the material submitted in support of the request for rulings, it is subject to verification on examination.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2 (Exempt
Organizations/Employment Tax/Government
Entities)
(Tax Exempt & Government Entities)

Enclosures:

Copy of Letter
Copy for Section 6110 Purposes