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Date:
October 15, 2009

Legend

State=
University A=
Company B=
Company C=

Dear :

This is in reply to a ruling request submitted by your authorized representative on behalf of Company C concerning the applicability of the common paymaster rules found in section 3121(s) of the Internal Revenue Code (the "Code"). In particular, a ruling has been requested that University A and Company C are deemed related corporations eligible to use the common paymaster rules under § 3121(s) of the Code, as amended by § 125 of Public Law 98-21, and remuneration disbursed by Company C to health professionals employed by both entities is deemed to actually be disbursed by University A and not Company C.

Facts:

University A is a public university of State. University A employs health professionals as faculty members at its medical school.

Company B is a State nonprofit corporation and is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). Company B is organized and operated exclusively for charitable, educational and scientific purposes within the meaning of § 501(c)(3) of the code and for the benefit of, to perform the functions of, and to carry out the purpose of the University and its medical school.

Company C is a State limited liability company ("LLC"). Company C is organized and operated exclusively for the benefit of, to perform the functions of, and to carry out the purposes of University A and its medical school, and Company B. Additionally, Company C is organized exclusively for charitable, educational and scientific purposes within the meaning of § 501(c)(3) of the Code. Furthermore, Company C's Operating Agreement states that Company C shall not directly or indirectly carry on any activity which would prevent it from obtaining exemption from federal income taxation as a corporation described in § 501(c)(3) of the Code, or cause it to lose such exempt status, or carry on any activity not permitted to be carried on by a corporation, contributions to which are deductible under § 170(c)(2) of the Code.

Company B and Company C together comprise a faculty practice plan. The plan is structured as follows. Company B is the sole member of Company C and manages Company C. Company C employs the physicians or health care professionals and disburses their wages. As a condition of employment with Company C, the physicians and healthcare professionals must have a clinical faculty appointment at the College of Medicine at University A, where they are employed by the University as a faculty member. More than 30 percent of Company C's employees will be concurrently employed by University A and Company C.

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.

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, section 3121(s) of the Code, as modified by P.L. 98-21, § 125, shifts 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 from the faculty practice plan to the university 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 disregarded as an 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 disregarded as an 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.

Company C, whose sole member Company B is a tax exempt entity under section 501(c)(3) of the Code, will be treated as a separate entity for employment tax and related reporting requirements effective January 1, 2009. Although Company C is treated as a separate corporation for employment tax purposes, for other federal tax purposes, Company C is considered an unincorporated branch or division of Company B, the section 501(c)(3) organization that owns it. Treasury Decision 9356 (2007-39 I.R.B. 675) specifically states that, "even though a disregarded entity owned by a section 501(c)(3) organization will be regarded for employment tax purposes, the disregarded entity will continue to be considered an unincorporated branch or division of the section 501(c)(3) organization for other Federal Tax purposes." Therefore, Company C, as a disregarded entity owned by a section 501(c)(3) organization, will continue to be considered an unincorporated division of Company B for federal income tax purposes and thus also a tax exempt organization under section 501(c)(3).

University A and Company C are deemed to be related corporations under section 3121(s) of the code, as amended by section 125 of P.L. 98-21 because University A employs health professionals as faculty members at the College of Medicine and Company C is a faculty practice plan described in section 501(c)(3) of the Code and exempt from tax under 501(a) of the Code and that employs faculty members of the medical school, and 30 percent or more of Company C's employees are concurrently employed by University A's medical school. University A and Company C can utilize the common paymaster rules for the healthcare professionals employed concurrently by University A and Company C.

As University A and Company C meet the requirements of section 125 of P.L. 98-21, all remuneration disbursed by Company C to healthcare professionals is treated as if it were disbursed by University A as common paymaster. All other remuneration disbursed by Company C is treated as disbursed by Company C.

Furthermore, section 3121(s) as modified by P.L. 98-21, § 125, of the Code shifts the obligation to withhold the employee portion of the FICA taxes under section 3101 of the Code and obligation to pay the employer portion of FICA tax under section 3111 of the Code from Company C to University A on remuneration paid to health professionals concurrently employed by University A and Company C. Section 3121(s) of the Code also aggregates the remuneration paid by Company C and University A to employees

concurrently employed by both entities for purposes of determining the FICA wage base under section 3121(a)(1) of the Code. Company C is responsible for employment taxes with respect to wages paid to its employees that are not concurrently employed by University A.

This ruling is directed only to the taxpayer 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