TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

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Contact Person:

Identification Number:

Telephone Number:

Employer Identification Number:

Uniform Issue list
501.03-00
509.03-00
511.00-00

LEGEND:

Plan =
Hospital =
x =
Year 1 =
Year 2 =
Year 3 =

Dear :

This responds to your letter of February 24, 2009, in which you request rulings on the application of the federal tax laws to the transactions described below.

Facts

You are exempt from federal income taxation under § 501(a) of the Internal Revenue Code as an organization described in § 501(c)(3). For foundation classification purposes, you are a supporting organization within the meaning of § 509(a)(3). Your mission is to promote health by acting as the parent of a nonprofit health care system and by raising funds and otherwise supporting the health care system.

You are the sole member of various health care corporations that are exempt from federal income taxation under § 501(a) as an organization described in § 501(c)(3) (the "Affiliates"), including two acute care hospitals, a specialty hospital that operates a Medicare-certified psychiatric hospital that provides outpatient services, a corporation that provides outpatient and inpatient physician services through employed physicians, a fundraising foundation, and a corporation that operates a radiation therapy center. None of these Affiliates is a private foundation within the meaning of § 509 of the Code.

Plan is a nonprofit hospital plan corporation that provides fully insured products and administers employer-funded health care plans to residents in the region of the state in which you operate. Plan represents the largest nongovernmental payer for patient services provided by your Affiliates.

Your Affiliates maintain a self-funded health insurance plan for their employees and covered dependents. Each Affiliate contributes funds to the self-funded health insurance plan on a monthly basis to cover health care claims and related fees and expenses, including third party administrator (TPA) services.

Plan provides the TPA services for this self-funded health insurance plan. Plan began providing these TPA services pursuant to a 5-year agreement with you effective in July of Year 2. You selected Plan to be TPA after putting out a bid for these services and determining that Plan offered the best overall proposal in terms of pricing, capabilities and services among the bidders.

You have undertaken an approximately $62.5x capital improvement project (the "Project") that will involve critically needed health care facilities and equipment improvements, expansions, and updates for the Affiliates. At one Affiliate hospital, the Project will result in a newly remodeled hospital campus with square feet of new hospital space (including new space for emergency services, imaging services, and surgical services), a new acute-care bed patient tower enabling the transition of all multi-patient rooms to single occupancy, and a new hospital entrance. At another Affiliate hospital, the Project will result in the expansion of medical oncology services, the expansion and renovation of the radiation therapy area (including the installation of state-of-the-art stereotactic technology), and other upgrades throughout the facility. At a third Affiliate hospital, the Project will include the remodeling of inpatient rooms and a new addition to the main entrance to the long-term care center to provide a family visitation center. You state that the Project is needed to improve health care for patients, enhance delivery and service capabilities, enhance patient safety, increase patient privacy, increase staff effectiveness, health, and safety through a better workplace, and improve building operating efficiencies.

In Year 1, Plan and the state Insurance Department entered into an agreement requiring Plan to make a specified annual financial commitment to providing health insurance through state-approved programs for persons of low income and other community benefit activities approved by the Insurance Department. This agreement resulted in Plan seeking ways to reinvest its surplus funds in community health projects. In that context, Plan offered you financial assistance for the Project. This financial assistance was provided pursuant to an agreement (the "Agreement") between you and Plan (the "Parties").

Under the Agreement, which was effective in January of Year 3 ("Effective Date"), Plan agreed to make available to you and your Affiliates a total amount of $6x (the "Funding"). Pursuant to the Agreement, Plan paid your Affiliate, Hospital, the total amount of the Funding over a one-year period to cover the costs and expenses associated with construction of Hospital's new acute-care bed patient tower and remodeling of Hospital's campus with square feet of new hospital space including new space for emergency services, imaging services, and surgical services. The Funding was also used in the development/construction of a new Energy Service Center and a new hospital entrance. The Funding was contributed to, and booked by, Hospital, not you.

Under the Agreement, the Funding is conditioned on you and your Affiliates meeting the following seven obligations. First, during the first three years of the Agreement's five-year term

(the "Term"), you and your Affiliates that has employees with health coverage agreed to continue to use Plan as the exclusive TPA for their self-funded health insurance plan, provided the terms and conditions offered by Plan were commercially reasonable. The Agreement allows you to hire an independent actuary mutually agreeable to the Parties to analyze and validate the reasonableness of the rates offered by Plan. If the independent actuary determines that Plan's rates are not reasonable, Plan is required to either adjust its rates in accordance with the evaluation of the independent actuary, or elect not to accept the rates of the independent actuary and permit you and your Affiliates not to use Plan as their administrative services provider without you being in default under the Agreement.

Although the Agreement required you and your Affiliates to use Plan as your TPA for the first three years of the Term, you and your Affiliates were already obligated to use Plan to perform this function for the first half of this three-year period under the five-year agreement that had been effective since July of Year 2. When the five-year term of the agreement effective July of Year 2 expired, you negotiated a one-year and then a three-year extension of the contract on an arm's length basis. These negotiations and renewal processes were conducted without regard to, and independent of, the Agreement, which had been consummated and completed by the time the negotiations took place. You state that the extensions provided for fair and reasonable administrative fees that remained within the reasonable range of administrative fees by reference to the bids you had previously received for these administrative services. More generally, you represent that all the fees paid to Plan for administrative and related services have been, and continue to be, commercially reasonable, developed through arm's length negotiations, for fair market value, and comparable to (or below) what similarly-situated entities would be paid for equivalent services.

Second, you agreed to enter into mutually-agreed extensions to the current terms, or to establish mutually-agreed new terms, of certain provider agreements between Plan and your Affiliates (the "System Provider Agreements"). Under the Agreement, the specified System Provider Agreements will have their current terms extended or have agreed new terms for a period at least equal to the Agreement's Term and continuing through the natural expiration of any relevant provider agreement that has a natural expiration longer than Term. You represent that the mutually-agreed-upon new terms of the System Provider Agreements with Plan were commercially reasonable, developed by the Parties through arm's length negotiations, and provide for fair and reasonable reimbursements for your Affiliates' provision of healthcare services.

Third, you agreed to establish a committee of your Board of Directors (the "Liaison Committee") to meet with a committee established by Plan's Board of Directors up to four times a year during Term. The purpose of such meetings is for the Liaison Committee to provide the Plan's committee with information on the use of the Funding and information on current and future plans and programs that affect Plan members. The meetings are for discussion purposes only and do not involve in any way a delegation of authority by you to Plan.

Fourth, you agreed to provide a "Change of Control Notice" to Plan in the event you receive an offer for a Change of Control Transaction[1] for yourself or certain enumerated Affiliates during

[1] The Agreement defines a "Change of Control Transaction" as any sale or other disposition of all or

the Term and granted Plan the right to either (i) notify you of its approval of your entering into the Change of Control Transaction on the condition that the party that offered the transaction assume all of your obligations under the Agreement, or (ii) notify you of its disapproval of your entering into the Transaction. Proceeding with the Change of Control Transaction after notice of Plan's disapproval would constitute a default under the Agreement.

Fifth, you agreed to adopt and provide to Plan certain performance metrics, including financial and clinical milestones. The performance metrics, which are to be developed by you in your complete discretion, were required to be provided to Plan on or before Effective Date and are reviewed and updated by your Board of Directors at least annually during the Term. In the event that you fail to materially meet your annual performance metrics during the Term, the Agreement provides that you will develop and share with Plan action plans that allow you to achieve the performance metrics. In the event that you fail to meet performance metrics for two consecutive years during the Term, Plan may require you to hire an independent consultant to recommend ways for you to achieve minimum performance metrics. Your refusal to either hire an independent consultant after being directed to do so by Plan, or to timely prepare and submit performance metrics and updates to Plan, would be a default under the Agreement. You state that you developed and adopted these performance metrics, and reported them to Plan, primarily to demonstrate that the Funding provided under the Agreement was being used to further your § 501(c)(3) charitable purposes, specifically addressing your goals of providing high quality healthcare services and improving clinical performance, all in a financially viable manner.

Sixth, you agreed to cooperate with a new medical college described under § 501(c)(3) to develop and implement mutually-agreed-upon student rotations, residency, and/or teaching programs at you and your Affiliates. You have no obligation under the agreement to provide any financial assistance to the medical college. You state that you view the medical college as an integral partner in carrying out your tax-exempt healthcare mission, principally with respect to alleviating the increasingly severe shortage of physicians in some of the areas you serve. You believe that having physician instructors and the medical college's students on site will have an overall positive impact on the medical staff of your hospitals as well as on the care they provide. You also believe that, by introducing medical students to clinical practice in your service area, this cooperation will continue to provide you with an enhanced ability to recruit and retain well-trained and highly-qualified physicians and allow you to carry out your § 501(c)(3) healthcare mission.

Seventh, within twelve months of Effective Date, you and Plan agreed to identify and initiate specific mutually-agreed-upon projects, including regional information technology projects and clinical quality improvement projects. You state that your only obligation under the Agreement was to seek mutually-agreed-upon opportunities in good faith and that there was no affirmative obligation for you to agree to or fund any specific project. You engaged in discussions and planning with Plan to develop a health information exchange (which you say would have been

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substantially all of the assets, or any merger, consolidation, or other similar transaction that results in any individual or entity other than you or your Board having the authority to appoint or elect a majority of the board of directors or similar managing body of yours or any of your Affiliates. However, a Change of Control Transaction does not include any transaction with a tax-exempt, locally controlled provider (as defined in the Agreement) that is not in the insurance business.

important to improving your delivery of healthcare), but you and Plan never implemented that exchange because a similar health information exchange became operational first. You did not identify or initiate any other projects within 12 months of the Effective Date and have not identified or initiated any other projects since. You state that the failure to identify and initiate a mutually-agreed-upon project was a not a default under the Agreement because any obligation to pursue a project was contingent on mutual agreement being reached. You state, further, that you would not have agreed to initiate any project that was not in furtherance of or substantially related to your exempt purposes.

A failure to fulfill any of these seven obligations during the Term would result in a default, meaning that you would need to repay an amount up to the amount of Funding received (without interest). As an alternative to repayment, Plan may seek alternative remedies, including a decree compelling specific performance under the Agreement or orders restraining and enjoining any act that would constitute a breach under the Agreement.

Rulings Requested

The following rulings have been requested:

1. By entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your status as an organization described in § 501(c)(3)

2. By entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your classification as a supporting organization described in § 509(a)(3).

3. The Funding you received under the Agreement will not constitute unrelated business taxable income within the meaning of §§ 511-514.

Law

I.R.C. § 501(a) exempts from federal income taxation organizations described in § 501(c), among others.

I.R.C. § 501(c)(3) describes corporations, trusts, and associations organized and operated exclusively for charitable and other enumerated exempt purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

I.R.C. § 507(d)(2)(A) provides that the term "substantial contributor" means any person who contributed or bequeathed an aggregate amount of more than $5,000 to the organization, if such amount is more than 2 percent of the total contributions and bequests received by the organization before the close of the taxable year of the organization in which the contribution or bequest is received by the organization from such person.

I.R.C. § 509 defines the term "private foundation" as a domestic or foreign organization described in § 501(c)(3) other than an organization described in § 509(a)(1), (2), (3), or (4).

I.R.C. § 509(a)(3) describes an organization which –

A. Is organized, and at all times thereafter is operated, exclusively for the benefit of, to perform the functions of, or to carry out the purposes of one or more specified organizations described in § 509(a)(1) or (2);

B. Is (i) operated, supervised or controlled in connection with one or more organizations described in § 509(a)(1) or (2); (ii) supervised or controlled in connection with one or more such organizations; or (iii) operated in connection with one or more such organizations, and

C. Is not controlled directly or indirectly by one or more disqualified persons (as defined in § 4946) other than foundation managers and other than one or more organizations described in § 509(a)(1) or (2).

I.R.C. § 511 imposes a tax for each taxable year on the unrelated business taxable income of organizations described in § 501(c).

I.R.C. § 512(a) defines "unrelated business taxable income" as the gross income derived by any organization from any unrelated trade or business regularly carried on by it, less allowable deductions which are directly related to the carrying on of such trade or business, both computed with the modifications provided in § 512(b).

I.R.C. § 513(a) defines the term "unrelated trade or business" as any trade or business the conduct of which is not substantially related (aside from the need of such organization for income or funds or the use it makes of the profits derived) to the exercise or performance by such organization of its charitable or other purpose or function constituting the basis for its exemption under § 501.

I.R.C. § 4946(a)(1)(A) provides that "disqualified person" includes a person who is a substantial contributor to the organization, as defined in § 507(d)(2).

Treas. Reg. § 1.501(c)(3)-1(c)(1) provides that an organization will be regarded as "operated exclusively" for one or more exempt purposes only if it engages primarily in activities that accomplish one or more of such exempt purposes specified in § 501(c)(3). An organization will not be so regarded if more than an insubstantial part of its activities is not in furtherance of an exempt purpose.

Treas. Reg. § 1.501(c)(3)-1(d)(1)(ii) provides that an organization is not organized or operated exclusively for one or more exempt purposes unless it serves a public rather than a private interest. Thus, it is necessary for an organization to establish that it is not organized and operated for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization, or persons controlled, directly or indirectly, by such private interests.

Treas. Reg. § 1.501(c)(3)-1(d)(2) provides that the term "charitable" is used in § 501(c)(3) in its generally accepted legal sense. The promotion of health has long been recognized as a charitable purpose. See Restatement (Second) of Trusts, §§ 368, 372; IV Scott on Trusts, §§ 368, 372 (3rd ed. 1967); and Revenue Ruling 69-545, 1969-2 C.B. 117.

Treas. Reg. § 1.502-1(b) provides that if a subsidiary organization of a tax-exempt organization would itself be exempt on the ground that its activities are an integral part of the exempt activities of the parent organization, its exemption will not be lost because, as a matter of accounting between the two organizations, the subsidiary derives a profit from its dealings with its parent organization, for example, a subsidiary organization which is operated for the sole purpose of furnishing electric power used by its parent organization, a tax-exempt educational organization, in carrying on its educational activities. However, the subsidiary organization is not exempt from tax if it is operated for the primary purpose of carrying on a trade or business which would be an unrelated trade or business (that is, unrelated to exempt activities) if regularly carried on by the parent organization.

Treas. Reg. § 1.509(a)-4(j)(1) provides that an organization will be considered "controlled," for purposes of § 509(a)(3)(C), if disqualified persons, by aggregating their votes or positions or authority, may require such organization to perform any act which significantly affects its operations or may prevent such organization from performing such act.

Treas. Reg. § 1.513–1(a) provides that, unless one of the specific exceptions of § 512 or 513 is applicable, gross income of an exempt organization subject to the tax imposed by § 511 is includible in the computation of unrelated business taxable income if: (1) It is income from trade or business; (2) such trade or business is regularly carried on by the organization; and (3) the conduct of such trade or business is not substantially related (other than through the production of funds) to the organization's performance of its exempt functions.

Treas. Reg. § 1.513-1(b) provides that, for purposes of § 513, the term trade or business has the same meaning it has in § 162, and generally includes any activity carried on for the production of income from the sale of goods or performance of services.

Treas. Reg. § 1.513-1(d)(2) provides that a trade or business is related to exempt purposes, in the relevant sense, only where the conduct of the business activity has a causal relationship to the achievement of exempt purposes (other than through the production of income), and it is substantially related, for purposes of § 513, only if the causal relationship is a substantial one. Thus, for the conduct of trade or business from which a particular amount of gross income is derived to be substantially related to purposes for which exemption is granted, the production or distribution of the goods or the performance of the services from which the gross income is derived must contribute importantly to the accomplishment of those purposes. Whether activities productive of gross income contribute importantly to the accomplishment of any purpose for which an organization is granted exemption depends in each case upon the facts and circumstances involved.

Rev. Rul. 78-41, 1978-1 C.B. 148, concerns a trust created by a § 501(c)(3) tax-exempt hospital for the sole purpose of accumulating and holding funds to be used to satisfy malpractice claims against the hospital, and from which the hospital directs the bank-trustee to make payments to claimants. By serving as a repository for funds paid in by the hospital, and by making payments at the direction of the hospital to persons with malpractice claims against the hospital, the trust is operating as an integral part of the hospital. Of equal importance is the fact that the trust is performing a function that the hospital could do directly. Accordingly, the organization is operated exclusively for charitable purposes and, thus, is exempt from federal income tax under

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§ 501(c)(3).

Analysis

Issue 1: Whether by entering into the Agreement and fulfilling your obligations thereunder, you jeopardize your status as an organization described in § 501(c)(3).

You have been recognized as an organization described in § 501(c)(3) because, by serving as the corporate parent of your § 501(c)(3) Affiliates, you perform an essential service for your Affiliates and, therefore, your activities are an integral part of the exempt charitable activities of your Affiliates within the meaning of § 1.502-1(b). Rev. Rul. 78-41. By entering into the Agreement and fulfilling the obligations thereunder, your activities will continue to support your Affiliates and be an integral part of their healthcare activities in furtherance of charitable purposes. Your Affiliate, Hospital, used the Funding received under the Agreement to improve the quality of patient care, expand hospital facilities, and advance medical training, education, and research programs.

As for the obligations under the Agreement, you represent that the extensions of your administrative services contact and System Provider Agreements with Plan were negotiated at arm's length and resulted in reasonable, fair market value compensation. The Agreement specifically stipulates that your use of Plan as the TPA for your Affiliates' self-funded health insurance plan would be on "commercially reasonable" terms and gives you the right to hire an independent actuary to analyze and validate the reasonableness of rates offered by Plan. In the event an actuary were engaged under this provision, either Plan must accept the actuary's rates or you are relieved of the obligation to hire Plan as an administrative services organization without being in default under the Agreement. The Agreement also requires that the extensions of the System Provider Agreements be "mutually agreed" upon by you and Plan, and you represent that the System Provider Agreement terms you negotiated at arm's length and agreed upon ensure your Affiliates fair and reasonable reimbursements for their provision of health care services to patients insured by Plan. Thus, any private benefit to Plan as a result of your agreeing to extend your administrative services contract and the System Provider Agreements is insubstantial and incidental to the essential services you provide in fulfillment of the exempt purposes of your Affiliates.

The Agreement's requirements that you establish a Liaison Committee to provide Plan with information on the use of the Funding and to adopt and report on financial and clinical milestones (that were developed solely at your discretion) appear to be reasonable precautions to ensure that the Funding would be used to further § 501(c)(3) purposes by promoting the health of the community, as do the Agreement's provisions regarding Change of Control Transactions during the Term.

The student rotations, residency, and/or teaching programs you agreed to develop and implement in cooperation with the medical college were to be "mutually agreed upon" and require no financial commitment from you. Moreover, these activities are consistent with your purpose of providing services in fulfillment of the exempt purposes of your Affiliates because they positively impact patient care and help to train and recruit qualified physicians.

Finally, your agreement to identify and initiate a mutually-agreed-upon project within the first 12 months after Effective Date did not require you to identify and initiate any project that you did not agree to and you have represented that you would not agree to any project that did not further your exempt purposes.

Thus, by entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your status as an organization described in § 501(c)(3).

Issue 2: Whether by entering into the Agreement and fulfilling your obligations thereunder, you jeopardize your classification as a supporting organization described in § 509(a)(3).

For purposes of private foundation classification, you are classified as a supporting organization described in § 509(a)(3) because you are organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of your Affiliates, which are classified as organizations described in § 509(a)(1).

You will not cease to be organized and operated exclusively for the benefit of, to perform the functions of, or to carry out the purposes of your Affiliates as a result of entering into the Agreement and fulfilling the obligations thereunder. The Agreement also will not affect whether you are operated, supervised or controlled by or in connection with your Affiliates.

To be described in § 509(a)(3), you also must not be controlled directly or indirectly by one or more disqualified persons. You state that all of the Funding was designated for and paid to and for the use of Hospital and that it was Hospital, not you, that booked the Funding on its balance sheet for accounting purposes. You state that, because Plan did not contribute any funds to you under the Agreement, Plan did not become a substantial contributor to you and thus is not a disqualified person.

However, even if Plan were considered a "substantial contributor" and thus a disqualified person with respect to you, the Agreement did not result in you or your Affiliates being controlled directly or indirectly by Plan within the meaning of § 509(a)(3)(C). Taken together, your obligations under the Agreement do not give Plan the ability to require you or your Affiliates to perform any act which significantly affects your or your Affiliates' operations or to prevent you or your Affiliates from performing such act. While the provisions related to Change of Control Transactions could affect your operations, they do not give Plan the power to prevent you from entering into such transactions. Rather, even if Plan objects to a Change in Control Transaction, you can proceed with the transaction as long as you repay certain amounts of the Funding that Plan paid to you.

Consequently, by entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your classification as a supporting organization described in § 509(a)(3).

Issue 3: Whether the Funding you received under the Agreement constitutes unrelated business taxable income within the meaning of §§ 511-514.

You state that the Funding was contributed to and booked by Hospital, not you. Thus, you did

not receive any income which could be unrelated business taxable income with respect to you. However, even if the Funding had been contributed to you, your obligations under the Agreement either do not constitute a trade or business within the meaning of § 1.513-1(b) or are substantially related to your exempt purposes within the meaning of § 1.513-1(d)(2). To the extent a portion of the Funding constitutes a payment to extend your contract with Plan to provide TPA services for your Affiliates' self-funded health insurance plan for the first three years of the Term, such payment would only serve as a reduction to the price you pay in exchange for Plan's services; it would not constitute your performance of services (or sale of goods) in exchange for income.

The obligation to enter into mutually-agreed-upon extensions of the System Provider Agreements relates to your negotiation of the compensation your Affiliates receive in exchange for their provision of the health care services constituting the basis of their exemption under § 501(c)(3) and, hence, is substantially related to your exempt purposes. Your agreement to cooperate with a medical college to develop and implement mutually agreed-upon student rotations, residency, or teaching programs is also substantially related to your exempt purpose.

The obligations to inform Plan, via the Liaison Committee, on the use of the Funding and to adopt and report on certain clinical and financial performance metrics appear to be reasonable precautions to ensure that the Funding would be used to further § 501(c)(3) purposes by promoting the health of the community, as do the Agreement's provisions regarding Change of Control Transactions during the Term.

Finally, the obligation to identify and initiate a project was contingent on your reaching a mutual agreement with Plan on a project, and you represent you would not have agreed to any project that was not substantially related to your exempt purpose.

Thus, the Funding you received under the Agreement will not constitute unrelated business taxable income within the meaning of §§ 511-514.

Rulings

Based on the information submitted, we rule as follows:

1. By entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your status as an organization described in § 501(c)(3).

2. By entering into the Agreement and fulfilling your obligations thereunder, you will not jeopardize your classification as a supporting organization described in § 509(a)(3).

3. The Funding you received under the Agreement will not constitute unrelated business taxable income within the meaning of §§ 511-514.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose.* A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should

follow the instructions in Notice 437.

This ruling is directed only to the organization that requested it. I.R.C. § 6110(k)(3) provides that it may not be used or cited by others as precedent.

This ruling is based on the facts as they were presented and on the understanding that there will be no material changes in these facts. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because it could help resolved questions concerning your federal income tax status, this ruling should be kept in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter.

In accordance with the Power of Attorney currently on file with the Internal Revenue Service, we are sending a copy of this letter to your authorized representative.

Sincerely,

Michael Seto
Manager, EO Technical

Enclosure
Notice 437