Internal Revenue Service

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Department of the Treasury
Washington, DC 20224

Third Party Communication: None
Date of Communication: Not Applicable

Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP4
PLR-T-102497-15

Date:
June 18, 2015

In Re:

Company A =

Company B =

Plan C =

Dear :

This is in response to your request dated September 4, 2013, submitted by your authorized representative, in which you request a ruling that employees of Company B, a single-member LLC that is treated as a disregarded entity under § 7701 of the Internal Revenue Code (the "Code"), will be treated as employees of Company A, the single member of Company B, and thus eligible to participate in Plan C, a § 403(b) plan maintained by Company A.

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested:

Company A is nonprofit corporation described in § 501(c)(3) and is exempt from tax under § 501(a). Company A is a multi-hospital health system. Company A maintains Plan C, a defined contribution plan intended to comply with the requirements of § 403(b) that provides for employee elective deferrals and employer matching contributions.

Company B is a limited liability company established in 1998, which provides home health care services. Company B originally had two members, Company A and

another entity. However, in October 2000, Company A became the sole member of Company B.

You represent that Company B is not a corporation, as defined in § 301.7701-2(b) of the Procedure and Administration Regulations (the "P&A Regulations", and has not filed a Form 8832 (Entity Classification Election) to change its classification for tax purposes. Company B has also not filed a Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code).

You represent that under the default classification rules of § 301.7701-3(b) of the P&A Regulations, Company B is disregarded as an entity separate from its sole member, Company A, for federal tax purposes.

Company B established a § 401(k) plan for its employees in 1999, before Company A became its sole member. Company B's § 401(k) plan was amended to freeze participation and contributions, effective February 28, 2013.

Plan C was amended to allow Company B's employees to participate in that plan, effective March 1, 2013.

Based on the foregoing facts and representations, you have requested a ruling that the employees of Company B will be treated as employees of Company A and will be eligible to participate in Plan C.

Section 403(b) provides, in relevant part, that if an annuity contract is purchased for an employee by an employer described in § 501(c)(3) which is exempt from tax under § 501(a), then contributions by such employer to the contract are excluded from the employee's gross income, if specified conditions are met.

Section 1.403(b)-3(a) of the Income Tax Regulations (the "Regulations") provides that amounts contributed by an eligible employer for the purchase of an annuity contract for an employee are excluded from the employee's gross income if certain conditions are met.

Section 1.403(b)-2(b)(8)(i)(B) of the Regulations defines an "eligible employer" as including a § 501(c)(3) organization with respect to any employee of the § 501(c)(3) organization.

Section 1.403(b)-2(b)(8)(ii) of the Regulations further provides that:

> [a] subsidiary or other affiliate of an eligible employer is not an eligible employer under paragraph [(b)](8)(i) of this section if the subsidiary or other affiliate is not an entity described in paragraph [(b)](8)(i) of this section.

Section 1.403(b)-5(b)(1) of the Regulations provides for a universal availability requirement for § 403(b) plans. Under universal availability, all employees of an eligible employer must be permitted to make elective deferrals if any employee of the eligible employer is permitted to make elective deferrals to the § 403(b) plan.
Section 1.403(b)-5(b)(4) provides that a plan will not fail to satisfy the universal availability requirement merely because it excludes employees who (i) are eligible to make elective deferrals under another § 403(b) plan, a § 457(b) eligible governmental plan, or a § 401(k) plan of the employer, (ii) are non-resident aliens, (iii) are students performing services described under § 3121(b)(10), or (iv) normally work less than 20 hours per week.

Section 301.7701-1(a) of the P&A Regulations states that the classification of various organizations for federal tax purposes is determined under the Code, and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(a) of the P&A Regulations provides that for purposes of such section and § 301.7701-3, a business entity with only one owner is either 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 P&A Regulations provides that a business entity that is not classified as a corporation under § 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 such section. Section 301.7701-3(a) further provides that an eligible entity with a single owner can elect to be classified for federal tax purpose as an association (which is treated as a corporation) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) of the P&A Regulations provides, in relevant part, that unless the entity elects otherwise, a domestic eligible entity is disregarded as an entity separate from its owner if it has a single owner.

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

Section 301.7701-2(c)(iv) of the P&A Regulations provides exceptions to the disregarded entity rules for certain specific purposes, generally including employment taxes and certain excise taxes. No exception is provided for § 403(b).

In this case, you have represented that Company B is a single-member limited liability company, is not a corporation (as defined in § 301.7701-2(b) of the P&A Regulations), and has not elected under § 301.7701-3(c) to be classified as a corporation using Form 8832. As a limited liability company with a single member which

has not elected a different classification, Company B is treated as a "disregarded entity" under § 301.7701-3(b)(1). As a disregarded entity, Company B is treated as a branch or division of Company A.

We therefore conclude that, for purposes of § 403(b), the employees of Company B are treated as employed by a branch or division of Company A, an organization exempt from tax under § 501(c)(3). Because the employees of Company B are treated as employed by a branch of division of Company A, the inclusion of such employees in Plan C is permissible under § 403(b).

Moreover, employees of Company B are subject to the universal availability requirement of § 1.403(b)-5(b)(1) of the Regulations because they are considered employees of Company A. Accordingly, unless an exception to universal availability applies, employees of Company B must be permitted to make elective deferrals under Plan C because employees of Company A are permitted to make elective deferrals under Plan C.

This ruling letter expresses no opinion on whether Plan C complies with the requirements of § 403(b).

This ruling letter expresses no opinion on whether Company A's treatment of Company B as a disregarded entity adversely affects, or will adversely affect, the § 501(c)(3) status of Company A. This ruling is based on the assumption that the § 501(c)(3) status of Company A is not and will not be adversely affected.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. Additionally, no opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

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

Sincerely yours,

Jason E. Levine
Senior Tax Law Specialist,
Qualified Plans Branch 4
(Tax Exempt & Government Entities)

cc: