Uniform Issue List No. 414.07-00

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JUL 2 2003

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Attention: **********
President and Chief Executive Officer

Legend:

Agency A = **********

Endowment E = **********

= **********

Hospital H = **********

Plan V = **********

Plan W = **********

Plan X = **********

Plan Y = **********

Plan Z = **********

State N = **********

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Ladies and Gentlemen:

This letter is in response to a request for a letter ruling dated April 26, 2001, as supplemented by correspondence dated June 15, 2001, January 8, 2002, October 31, 2002, February 28, 2003, April 15, 2003, and June 16, 2003, which was submitted by your authorized representative regarding whether Plans V, W, X,Y and Z which has established and maintained for the employees of Hospital H are governmental plans for purposes of Section 414(d) of the Internal Revenue Code ("Code').

Your authorized representative has submitted the following facts and representations:

Agency A was established by State N statute effective to provide patient care, facilitate the education of physicians and other health care providers, conduct research collaboratively with the health sciences schools of State N, and render other services designed to promote the health and well-being of the citizens of State N. The statute provides that Agency A shall be governed and administered as an affiliated enterprise of The University of State N. It is represented that Agency A is an agency or instrumentality of State N because the members of its board of directors are appointed by the President of the University and ratified by the of the University of State N, and its employees are deemed to be employees of State N.

Endowment E was formed as an organization exempt from tax under section 501(c)(3) of the Code. Endowment E transferred one hundred percent of (and its affiliates) to Agency A pursuant to an acquisition agreement effective

Prior to entering the acquisition agreement with Endowment E, Agency A sought an advisory opinion from the Attorney General of State N. In a letter dated , the Attorney General stated that it is our understanding that Agency A will not directly acquire the physical facilities, real property or other tangible assets of and its affiliates. Agency A will instead acquire corporate control through its contractually acquired status as sole corporate member of and its power to control the process of appointing board members. The letter indicates that State N statute authorizes Agency A to exercise such authority and responsibility and adopt policies, rules and regulations as deemed necessary and appropriate to achieve its patient care, educational, research and public service goals. The Attorney General concluded that Agency A has the legal authority necessary to acquire corporate control of .

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is a non-profit corporation organized under the laws of State N. has received a letter from the Internal Revenue Service (the "Service") recognizing it as exempt from federal income tax under Code section 501 as an organization described in Code section 501(c)(3). Hospital H is organized as a non-profit corporation under the laws of State N and also is tax-exempt under Code section 501(c)(3). is the sole member of Hospital H and is recognized as a supporting organization of Hospital H under Code section 509(a)(3).

Pursuant to amended articles of incorporation, its purposes are: (i) to participate in and promote the statutory goals of Agency A; (ii) to make donations, transfer assets and provide other forms of aid and assistance to Agency A and its charitable, tax-exempt affiliates; (iii) to promote and advance charitable, educational and scientific purposes by supporting and operating for the benefit of Agency A; and (iv) to engage in activities ordinarily carried on by a non-profit corporation.

In correspondence dated April 15, 2003, your representative stated that the Bylaws of have been amended so that the board of directors of Agency A now elects all of the trustees of without any involvement from Endowment E. The board of trustees manages the business affairs of , but prior approval of Agency A is required for the exercise of many of the trustees' powers. Under Section 1.1 of Article III of the Amended Bylaws of , Agency A must approve actions to: (i) establish and maintain accounting policies; (ii) approve capital budgets, operating budgets and non-budgeted material expenditures; (iv) develop human resource plans; (v) authorize the organization or formation of a new subsidiary or joint venture; (vi) authorize the incurrence or guarantee of any material indebtedness; (vii) approve investment policies; (viii) approve strategic plans and mission statements; (ix) approve any addition or deletion of a health care service or the expansion of an existing health care service or a new or additional location for the delivery of health care services; and (x) negotiate, develop and approve all managed care agreements.

receives no support from legislative appropriations from State N, but is financially accountable to and must submit its financial statements (to show financial information of each of the entities of which is a sole member) to Agency A. Once Agency A receives financial statements, Agency A includes them as a supplementary statement in Agency A's financial statements.

Hospital H is controlled by Agency A, through , because Agency A also elects the members of Hospital H's board of directors, which consists of between

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nine and thirteen members, as determined by Agency A from time to time. Agency A appoints the chairman and vice chairman of Hospital H from the members of the board of directors. The person serving as president of also serves as president of Hospital H. All other officers of Hospital H are nominated by Agency A and appointed by the president. is the sole member of Hospital H. Since 1995 the name started to be used by the employees and others to refer to both and to Hospital H. As a result, Hospital H does business as and has made an assumed name filing regarding its use of the name In addition, it will soon be clarified through plan amendments and adoption agreements, that Hospital H is the sponsoring employer of or a participating employer in Plans V, W, X, Y and Z.

Agency A controls Hospital H's operations. Hospital H's amended Bylaws limit the powers of the board of directors and expressly reserve to Agency A the right to approve many actions of Hospital H's board. Although Agency A oversees and monitors the finances and overall performance of Hospital H, Hospital H is funded primarily from patient service revenue.

Agency A controls and Hospital H through its authority to elect board of trustees and Hospital H's boards of directors and to appoint and remove their chairmen and other officers. Upon dissolution, the remaining assets of and Hospital H will be distributed to Agency A.

is a holding company. established and maintains Plan V through Plan Z for the benefit of Hospital H employees. Plan V, a defined benefit plan was established effective April 1, 1962. Plan V has been amended and restated at various times, and its most recent favorable determination letter was received from the Service on April 12, 1993. Plan W was established effective October 1, 1982, as a tax-deferred annuity plan pursuant to section 403(b) of the Code. Plan X, a welfare plan, provides life, short-term disability and long-term disability benefits. It is represented that Plan Y provides wrap-around welfare benefits including a group health plan, a dental plan, an employee assistance plan, a tuition reimbursement plan, an adoption assistance plan, a wellness program, and an employee discount program. Plan Z is a Code section 125 cafeteria plan that provides premium payments for health care and dependent care expense reimbursement accounts.

A ruling is requested that Plans V, W, X, Y and Z which were established and are maintained by for the benefit of Hospital H employees are governmental plans within the meaning of section 414(d) of the Code.

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Section 414(d) of the Code provides that, for purposes of this part, the term "governmental plan" means a plan established and maintained for its employees by the Government of the United States, by the government of any state or political subdivision thereof, or by any agency or instrumentality of any of the foregoing.

Rev. Rul. 89-49, 1989-1 C.B. 117, provides that a plan will not be considered a governmental plan merely because the sponsoring organization has a relationship with a governmental unit or some quasi-governmental power. One of the most important factors to be considered in determining whether an organization is an agency or instrumentality of the United States or any state or political subdivision is the degree of control that a governmental entity (or entities) exercises over the organization's everyday operations. Other factors include: (1) whether there is specific legislation creating the organization; (2) the source of funds for the organization; (3) the manner in which the organization's trustees or operating board are selected; and (4) whether the applicable governmental unit considers the employees of the organization to be employees of the applicable governmental unit. Although all of the above factors are considered in determining whether an organization is an agency of a government, the mere satisfaction of one or all of the factors is not necessarily determinative.

Agency A has ultimate control over the everyday operations of through its authority to elect the board of trustees and appoint the officers of , its authority to develop and implement standards and strategic plans that must observe, its oversight over finances, its power to approve the addition, deletion or expansion of health care services, and its power to negotiate and approve managed care contracts. Also, the exercise of many of the board's substantive powers require the prior approval of Agency A, and Bylaws cannot be altered or amended without Agency A's approval.

Agency A controls the operations of Hospital H in a similar fashion. Agency A elects the board of directors of Hospital H and appoints its officers. Agency A has the same oversight and approval controls over the finances and decisions of Hospital H as it does over Also, because of the powers granted to Agency A in Hospital H's amended Bylaws and because is the sole member of Hospital, Agency A has additional control over Hospital H's everyday operations.

Agency A was created by statute. The Attorney General of State N found that the authorized Agency A to exercise such authority and responsibility and adopt policies, rules and regulations as deemed necessary and appropriate to achieve its patient care, educational, research and public service goals, and the Attorney General

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concluded that Agency A had the legal authority necessary to acquire corporate control of Agency A monitors the finances of and Hospital H.

Agency A elects all of trustees, and has the power to appoint and remove the chairman of the board, vice chairman, president, executive vice presidents, secretary and treasurer and other corporate officers.

Similarly, Agency A also elects the members of Hospital H's board of directors, and appoints its chairman, and vice chairman. All other officers of Hospital H are nominated by Agency A and appointed by the president. The person serving as president of also serves as president of Hospital H.

Accordingly, we conclude that Plans V, W, X, Y and Z which were established and are maintained by for the benefit of Hospital H employees are governmental plans within the meaning of section 414(d) of the Code.

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

The original of this letter has been sent to your authorized representative in accordance with the current power of attorney (Form 2848) on file in this office.

If you have any questions please contact , at

Sincerely yours,

Alan C. Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437