



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

200827036

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

APR 9 2008

T:EP:RA:T:A2

Re:

Hospital =
Health System =
Nursing Home =
Child Care Facility =

Dear

This letter is to inform you that Hospital's request for modifications of the conditional waivers of the minimum funding standard granted for the Plan for the plan year ending December 31, (granted in a ruling letter dated April 18, 2003, and modified in a ruling letter dated March 10, 2006), and for the plan years ending December 31, and December 31, (granted in a ruling letter dated March 10, 2006), have been approved. Accordingly, we are replacing the conditions outlined in our ruling letter dated March 10, 2006, with the conditions below:

- (1) Collateral acceptable to the is maintained for the Plan for the full amount of the funding waivers. It is anticipated that the security will automatically be moved to the first position upon the expiration of the liens currently held by Furthermore, it is anticipated that the will be notified in advance of any disposition of Hospital assets or merger of the Hospital with another organization, and that the will be given an opportunity to protect its financial interests in the Hospital.
- (2) The Hospital makes the following contributions to the Plan:
 - (i) Contributions of at least \$150,000 each will be paid by each due date for required quarterly contributions under section 412(m) or 430(j)(3) of the Internal Revenue Code ("Code"), as applicable, beginning April 15, 2008. Such contributions will continue until the Plan's enrolled actuary certifies that the Plan is fully funded according to the provisions of section 404 of

the Code (for plan years beginning before January 1, 2008), or that the Plan's funding shortfall is zero according to the provisions of section 430(d)(6) of the Code, but without reducing Plan assets for carryover or prefunding balances (for plan years beginning after December 31, 2007). Proof of such contributions must be provided within 15 days after each contribution is due or 15 days after the date of this ruling letter, if later, beginning with the April 15, 2008, payment.

- (ii) In addition, quarterly contributions will be made to eliminate the \$ shortfall in contributions over a period of two years. These contributions will be at least \$ each, and will be made by each due date for required quarterly contributions under section 412(m) or 430(j)(3) of the Code, as applicable. The first such contribution will be due April 15, 2008, and the last such contribution will be due January 15, 2010. However, no such contributions will be required after the date the enrolled actuary certifies that the Plan is fully funded according to the provisions of section 404 of the Code (for plan years beginning before January 1, 2008), or that the Plan's funding shortfall is zero according to the provisions of section 430(d)(6) of the Code, but without reducing Plan assets for carryover or prefunding balances (for plan years beginning after December 31, 2007). Proof of such contributions must be provided within 15 days after each contribution is due.
- (3) The Hospital files Forms 5330 to report any accumulated funding deficiencies that may arise while the Plan is subject to a waiver of the minimum funding standard or, if later, any year in which there is an accumulated funding deficiency (for years beginning before January 1, 2008) or in which there is any remaining unpaid minimum contribution (for years beginning after December 31, 2007) and pays the applicable 10% excise tax that is due under section 4971(a) of the Code for those plan years, in a timely manner. A copy of Form 5330 and proof of payment of the excise tax will be provided to the Service within 15 days after the Form 5500 is filed or 15 days after the date of this letter ruling, if later, beginning with the Form 5330 filed for the plan year ending December 31, . Furthermore, for each plan year that a deficiency exists in the funding standard account of the Plan (beginning with the plan year ending December 31,), the Hospital requests a waiver of the 100% excise tax under section 4971(b) of the Code, according to the procedures and timing specified in applicable guidance published by the Service.
- (4) The Hospital provides the following information for each plan year that the Plan is subject to a waiver of the minimum funding standard or, if later, any year in which there is a deficiency in the funding standard account (for plan years beginning before January 1, 2008) or if there is any remaining unpaid minimum contribution (for plan years beginning after December 31, 2007):

- (i) A copy of the annual actuarial valuation report, Form 5500 (including attachments) and December 31 statement of Plan assets, to be provided within 15 days after the Form 5500 is filed or 15 days after the date of this ruling letter, if later, beginning with the information filed for the plan year ending December 31,
 - (ii) Copies of consolidating and consolidated quarterly financial results including balance sheet, income and expense statement and cash flow information for the Health System, to be provided within 45 days after the end of each quarter or 15 days after the date of this letter ruling, if later, beginning with the quarter ending December 31, 2007.
 - (iii) Copies of audited annual reports, including consolidated and consolidating statements for the Health System, to be provided by April 15 after the end of each fiscal year or 15 days after the date of this ruling letter, if later, beginning with the fiscal year ending December 31, 2007.
 - (iv) A copy of the document that outlines the Hospital's long-term strategic plan and financial forecast, to be provided by December 15 of each year or 15 days after the date of this ruling letter, if later, beginning with December 15, 2007.
- (5) For any plan year that the Plan is subject to a waiver of the minimum funding standard or, if later, any year in which there is a funding deficiency (for years beginning before January 1, 2008) or in which there is any remaining unpaid minimum contribution (for years beginning after December 31, 2007), the Hospital does not establish a new defined benefit or defined contribution plan, nor does it increase the benefits payable under the existing plans. Based on information provided by the Hospital, benefits under the Plan ceased accruing as of April 15, , and the only defined contribution plan is a plan described under section 403(b) of the Code that provides employer matching contributions of 50% of employee contributions up to 3% of compensation.

It is not necessary for the Hospital to resubmit any information that has already been provided to the Service.

Please note that the Hospital has received three funding waivers, beginning with the plan year ending December 31, . Section 412(d) of the Internal Revenue Code and section 303(a) of ERISA limit the number of funding waivers to three in any fifteen-year period; therefore, the Hospital will not be able to request any additional funding waivers until the plan year ending December 31, . This limit continues to remain in effect after amendment by the Pension Protection Act of 2006 ("PPA '06") in section 412(c) of the Code and section 302(c) of ERISA, as amended.

Information must be provided to both _____ of our office and to _____ of the _____ or other individuals designated by the respective agencies), using the address numbers or fax numbers below:

You agreed to these conditions in a letter dated March 12, 2008. If any one of these conditions is not satisfied, all three waivers are retroactively null and void.

The conditional waivers were granted in accordance with section 412(d) of the Code and section 303 of the Employee Retirement Income Security Act of 1974 ("ERISA") prior to amendment by PPA '06.

The Hospital is a small independent facility located in _____ It is a general short-term acute care hospital, and is part of the Health System along with the Nursing Home and Child Care Facility.

The Hospital experienced a significant decrease in operating cash flow beginning in 2001, primarily due to decreased patient volume and the loss of one of its general surgeons and, later, the loss of its entire orthopedic and urological surgical groups. The Hospital was able to replace both groups and return surgical volumes to their previous levels by the end of 2003.

The Hospital has taken a number of steps to address its financial difficulties, including the review of referral patterns and employed physician contracts, the identification of cost-saving opportunities, the recruitment of surgical specialties in order to increase patient volume and revenue, and the renegotiation of HMO contracts in order to gain better reimbursement terms. In addition, the Hospital froze the pension plan effective April 15, _____, to eliminate the cost of continuing benefit accruals.

Despite the Health System's financial difficulties, they continued to make contributions to the Plan for the plan years ending December 31, _____ and _____, and have funded \$ _____ of the approximately \$ _____ contributions that would have been required for those plan years in the absence of funding waivers. The Hospital has contributed \$ _____ under the waiver agreement, from October 2005 through October 15, 2007.

The Hospital requested a modification of the funding waiver on the basis that they had not fully understood that the condition regarding required contributions for the _____ plan year referenced contributions credited to the _____ plan year, as opposed to

contributions made during the plan year. The Hospital has shown good faith in complying with the other conditions imposed on these funding waivers.

Hence, the waivers of the minimum funding standards for the Plan for the plan years ending December 31, , and have been modified, subject to the conditions listed above.

Your attention is called to section 412(f) of the Code and section 304(b) of ERISA which describe the consequences that would result in the event the plan is amended to increase benefits, change the rate in the accrual of benefits or to change the rate of vesting, while any portion of the waived funding deficiency remains unamortized. These rules are continued after amendment by PPA '06, in section 412(c)(7) of the Code and section 302(c)(7) of ERISA, as amended. Please note that any amendment that increases the liabilities of a profit sharing plan or any other retirement plans (covering employees covered by this Plan) maintained by the Health System would be considered an amendment for purposes of these sections of the Code and ERISA. Similarly, the establishment of a new profit sharing plan or any other retirement plan by the Health System (covering employees covered by this Plan) would be considered an amendment for purposes of these sections of the Code and ERISA. In addition, any such amendments would violate the above conditions upon which the waivers are granted.

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.

We have sent a copy of this letter to the to the and to your authorized representative pursuant to a power of attorney on file in this office.

If you require further assistance in this matter, please contact at

Sincerely yours,



Andrew E. Zuckerman, Director
Employee Plans Rulings and Agreements