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LEGEND
Bonds =

County =

Date 1 =

District =

Entity D =

Entity E =

Entity F =

Entity G =

Entity H =

Entity I =

Entity J =

State =

System A =

University =

Dear :

This letter is in reply to your request for a ruling regarding the effect of the strategic alliance agreement described below. Specifically, you request that the strategic alliance agreement will not cause private business use of the District's tax-exempt bond financed facilities under § 141 of the Internal Revenue Code (the "Code").

Facts and Representations

The District is a public hospital district organized under the laws of the State and a political subdivision of the State. The University is also a political subdivision of the State. System A includes Entities D, E, F, G, H, I, and J (each referred to hereafter as a "Component Entity") each of which is either managed by the University or controlled, within the meaning of § 1.150-1(e), by the University. The District represents that each Component Entity is a political subdivision of the State or an instrumentality of the University.

The District and the University, acting through System A, entered into a strategic alliance agreement as of Date 1(the "Agreement"), which created an alliance to promote the common goal of providing high quality healthcare services to the public. The expected advantages of the Agreement include reductions in costs, increased efficiency through shared services, and improved clinical service through the alignment and growth of clinical programs.

The Agreement establishes a board of trustees (the "Board") for overseeing the operation of the District's healthcare facilities, including its facilities financed with the Bonds (the "Facilities"), and services rendered by the District (collectively, the services provided by the District and the District's health care facilities are referred to herein as District Health), as an additional component of System A and branded as System A. The Board members are comprised of officers of the District or appointees of the District or a Component Entity of System A. During the term of the Agreement, District Heath

will serve as the primary vehicle through which healthcare services are rendered by System A to patients residing within the District service area.

The Agreement covers three types of integrated activities: (i) business activities including but not limited to activities related to patient safety, quality metrics, compliance activities, business planning processes, and strategic planning, where there is no sharing of either revenues or expenses between the participating entities; (ii) the delivery of goods and services through one or more of the Component Entities, which may relate to shared administrative, technical, and other support services, where the participating entities share the costs but do not share the revenues of such arrangement; and (iii) an alignment of the clinical activities and programs of District Health with those of one or more of the Component Entities through the creation of new or expanded programs providing for patient care, where there is a sharing of revenues and expenses among the participating entities.

Pursuant to the Agreement, the District's assets will remain as presently owned and titled, and the District's liabilities will remain exclusively liabilities of the District. The University and System A also currently intend to operate District Health through employees of District; however, the employment status of those employees may change as staffing needs evolve over time.

The Agreement grants to the Board broad powers of management over the District assets, including the limited ability, in the ordinary course of the operation of District Health, to dispose of assets owned, leased, licensed, and/or otherwise controlled by the District if the disposition proceeds are used exclusively for the purpose of managing, growing, and operating District Health. Disposal of any of the Facilities must be consistent with the continued tax-exempt status of the Bonds. The Agreement also authorizes the Board to incur certain liabilities, consistent with the budget of District Health, on behalf of the District.

Certain actions by the Board may not occur without the prior approval of the District's board, including but not limited to the transfer or encumbrance of any material asset of District Health; any decision to spend more than twice the average annual capital on annual capital improvements or equipment acquisition; the exercise of the District's power to raise revenues through the property tax levy; the relocation of the District's hospital; the sale or transfer of any bed license or certificate of need or other hospital licenses applicable to District Health; and the incurrence of certain indebtedness and the issuance of bonds by the District.

The Board will maintain separate bank accounts, in the name of and for the benefit of the District, for receipt of all the District revenues derived from the operation of District Health. Those funds will not be commingled with the accounts maintained for the University or System A, but the District assets and revenues will be managed by the

Board during the term of the Agreement and used exclusively for the benefit of District Health.

Law and Analysis

Section 103(a) provides that, except as provided in § 103(b), gross income does not include interest on any state or local bond.

Section 103(b) provides, in part, that § 103(a) shall not apply to any private activity bond that is not a qualified bond within the meaning of § 141.

Section 141(a) provides that the term "private activity bond" includes any bond issued as part of an issue that meets the private business use test of § 141(b)(1) and the private security or payment test of § 141(b)(2), or meets the private loan financing test of § 141(c).

Section 141(b)(1) provides that, except as otherwise provided in the subsection, an issue meets the private business use test if more than 10 percent of the proceeds of the issue are to be used for any private business use.

Section 141(b)(6)(A) provides that for purposes of § 141(b), the term "private business use" means use (directly or indirectly) in a trade or business carried on by any person other than a governmental unit. Section 141(b)(6)(B) provides that any activity carried on by a person other than a natural person is treated as a trade or business.

Section 1.141-3(a)(1) of the Income Tax Regulations provides that the 10 percent private business use test of § 141(b) is met if more than 10 percent of the proceeds of an issue is used in a trade or business of a nongovernmental person. For this purpose, the use of the financed property is treated as direct use of proceeds. Section 1.141-1(b) defines a "nongovernmental person" as a person other than a governmental person.

Section 1.141-1(b) provides that a "governmental person" means a state or local governmental unit as defined in § 1.103-1 or any instrumentality thereof (but does not include the United States or any agency or instrumentality thereof). Section 1.103-1(a) describes a "state or local governmental unit" as a state, territory, a possession of the United States, the District of Columbia, or any political subdivision thereof.

Section 7701(a)(1) provides that, where not otherwise distinctly expressed or manifestly incompatible with the intent thereof, the term "person" includes a partnership or association. Under § 7701(a)(2), the term "partnership" includes any group, joint venture, or other unincorporated organization, through or by means of which any business, financial operation, or venture is carried on, and which is not a trust, estate, or corporation.

Under subchapter K of the Code, a partnership is considered for various purposes to be either an aggregate of its partners or an entity independent of its partners. S. Rep. No. 83-1622, at 89 (1954); H.R. Rep. No. 83-2543, at 59 (1954). Under the aggregate approach, each partner is treated as an owner of an undivided interest in partnership assets and operations. Under the entity approach, the partnership is a separate entity in which partners have no direct interest in the partnership's assets and operations. Revenue Ruling 75-62, 1975-1 C.B. 188, provides that there is no exclusive rule as to when a partnership will be viewed as an entity or an aggregate. The resolution is generally dependent upon the question to be resolved.

In this case, the issue is whether the Agreement causes the Facilities to be used for a private business use. Here, the District, the University, and the Component Entities are each either a governmental entity or an instrumentality of a governmental entity. However, if the Agreement creates a partnership between the District and the University, and the partnership is viewed as an entity, then the partnership would cause private business use of the Facilities. Although we are not expressing an opinion as to whether a partnership has been created, nevertheless, if it were created we conclude, that the purposes of § 141 would be furthered by treating any such partnership as an aggregate of the separate entities entering into the Agreement. Under the aggregate approach, the persons using the Facilities as a result of the Agreement are all governmental persons.

Conclusion

We conclude that the Agreement does not cause the Facilities to be used for a private business use under § 141. This conclusion is based upon information and representations submitted by the District and accompanied by a penalty of perjury statement executed by an appropriate party. This ruling is specifically made contingent upon the above-described provisions of the Agreement being effective and binding upon the District and the University. While this office has not verified any of the material submitted in support of the request for a ruling, it is subject to verification on examination.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any transaction or item discussed or referenced in this letter, including whether any agreements other than the Agreement fail to meet the private business use test under § 141 or whether the interest on the Bonds is excludable from gross income under § 103 of the Code.

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 a Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

Associate Chief Counsel
(Financial Institutions and Products)

By:_____
Timothy L. Jones
Senior Counsel
Branch 5

cc: