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Date:

March 5, 2003

LEGEND

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Issuer A =

A Bonds =

B Bonds =

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State =

Date 1 =

X =

Dear

This letter is in response to your request on behalf of Issuer A for a ruling that the Agreement (hereinafter defined) will not cause the property financed by the A Bonds to be treated as owned or used by other than a governmental unit or a § 501(c)(3) organization for purposes of § 145(a) of the Internal Revenue Code (the "Code").

FACTS AND REPRESENTATIONS

Entity A is an organization described in § 501(c)(3). Entity A owns and operates certain hospital facilities ("Hospital A"). Issuer A issued the A Bonds as qualified 501(c)(3) bonds under § 145 and lent the proceeds to Entity A, which used the proceeds to finance additions and renovations to Hospital A.

Entity B is a governmental unit within the meaning of § 141 as well as an organization described in § 501(c)(3). Entity B owns and operates certain hospital facilities ("Hospital B"). Entity B issued the B Bonds as qualified 501(c)(3) bonds under § 145, and used the proceeds to finance or refinance the construction and acquisition of additions and improvements to Hospital B.

Entity C is an organization described in § 501(c)(3). Entity B is the sole member of Entity C. Entity C was created in order to facilitate the transaction described herein.

Entity D is an organization described in § 501(c)(3). Entity D was created in accordance with a joint operating agreement (the "Existing Agreement") between Entity B and Entity E that provides for the common management of certain hospital facilities owned by Entity B, including Hospital B, and clinical facilities owned by Entity E. Entity E is an organization described in § 501(c)(3). We previously issued a letter ruling to Entity B concluding that the Existing Agreement would not cause any bond financed property that is subject to that agreement be treated as owned or used by other than a governmental unit or a § 501(c)(3) organization for purposes of § 145(a).

Entity F is an organization described in § 501(c)(3). Entity F was created in order to facilitate the transaction described herein. Entity A and Entity C are the only two members of Entity F.

Entity A, Entity C, and Entity D entered into a joint operating agreement (the "Agreement") dated Date 1, that will not become operational until, among other matters,

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the IRS has issued this ruling letter. The purpose of the Agreement is to provide for the common management of certain healthcare services and facilities owned by either Entity A or Entity B (the "Joint Operations"). The Joint Operations include operations conducted at the facilities financed with the A Bonds and the B Bonds. While the Existing Agreement will remain in existence, to the extent there is conflict between the Existing Agreement and the Agreement, the Agreement will control.

The Agreement provides that the Joint Operations will be managed by Entity F. The entities that own the particular facilities that comprise Hospital A and Hospital B, including the facilities financed with the A Bonds and the B Bonds, will not change. Newly acquired facilities or enterprises may be owned by Entity F or by Entity A or Entity B.

The Agreement provides for the equal sharing between Entity A and Entity C of the net income from the operation of the Joint Operations, subject to certain adjustments. At the end of each fiscal year, Entity A and Entity C shall each determine its net income with respect to the Joint Operations. The aggregate net income from the Joint Operations shall be equalized between Entity A and Entity C by having the entity with the greater net income from the Joint Operations make a payment to the other entity. Such payment may be deferred if the payment would cause or would reasonably be expected to cause the entity making the payment (or any of its affiliates or operating entities) to violate certain contractual obligations or covenants. Entity A and Entity C are each free to utilize the first \$X of its share of the net income from the Joint Operations in any manner it deems appropriate. Amounts in excess of \$X must be kept available by Entity A and Entity C to satisfy any obligations to make additional capital contributions as required by the board of directors of Entity F.

Prior to this letter ruling, we issued private letter rulings concluding that (1) the status of Entities A, C, D, and F as a 501(c)(3) organization will not be adversely affected as a result of entering into the Agreement and the consummation of the transactions contemplated thereby, and (2) entering into the Agreement will not result in Entities A, C, D, and F being engaged in an unrelated trade or business under 513(a).

LAW AND ANALYSIS

Section 103(a) provides that gross income does not include interest on a State or local bond. Section 103(b)(1) provides that § 103(a) does not apply to any private activity bond, unless it is a qualified bond under § 141.

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

Section 141(b)(1) provides in general that 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. Private business use is defined in § 141(b)(6) as use (directly or indirectly) in a trade or business carried on by any person other than a governmental

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unit. For this purpose, any activity carried on by a person other than a natural person is treated as a trade or business.

Section 141(b)(2) provides in general that an issue meets the private security or payment test if the payment of the principal of, or the interest on, more than 10 percent of the proceeds of the issue is (under the terms of the issue or any underlying arrangement) directly or indirectly (A) secured by any interest in property used or to be used for a private business use, or payments in respect of such property, or (B) to be derived from payments (whether or not to the issuer) in respect of property, or borrowed money, used or to be used for a private business use.

Section 141(e) provides that a qualified bond includes a qualified 501(c)(3) bond.

Section 145(a) provides that, except as otherwise provided in § 145, the term qualified 501(c)(3) bond means any private activity bond issued as part of an issue if all of the property that is to be provided by the net proceeds of the issue is to be owned by a 501(c)(3) organization or a governmental unit, and such bond would not be a private activity bond if § 501(c)(3) organizations were treated as governmental units with respect to their activities that do not constitute unrelated trades or businesses, determined by applying § 513(a). For this purpose, paragraphs (1) and (2) of § 141(b) are applied by substituting "5 percent" for "10 percent" each place it appears and "net proceeds" for "proceeds" each place it appears.

Section 513(a) provides that the term "unrelated trade or business" includes 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, educational or other purpose or function constituting the basis for its exemption under § 501.

Under § 7701(a)(1), where not otherwise distinctly expressed in or manifestly incompatible with the intent of the provision under Title 26 where the term is used, the term person includes a partnership. 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. 1622, 83d Cong., 2d Sess. 89 (1954); H.R. Rep. 2543, 83d Cong., 2d Sess. 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.

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In this case, one issue is whether the Agreement creates a partnership which is a private business user of the facilities financed with the A Bonds and the B Bonds. Issuer A and Entity B argue that the Agreement does not create a partnership. In this case, we do not need to determine whether the Agreement creates a partnership. Even if the Agreement resulted in a partnership, because all of the partners would be 501(c)(3) organizations, the purposes of § 145 would be furthered if any partnership created as a result of the Agreement were treated as an aggregate of separate entities using the tax-exempt financed facilities. Moreover, regardless of whether a partnership is created, we have previously issued private letter rulings indicating that entering into the Agreement will not result in Entities A, C, D, and F being engaged in an unrelated trade or business under § 513(a). Accordingly, the Agreement will not cause property financed with the A Bonds to be owned or used by other than a governmental unit or a § 501(c)(3) organization for purposes of § 145(a).

CONCLUSION

The Agreement will not cause the property financed by the A Bonds to be treated as owned or used by other than a governmental unit or a § 501(c)(3) organization for purposes of § 145(a).

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.

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

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty 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.

Sincerely,

Assistant Chief Counsel
(Exempt Organizations/Employment Tax
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By:

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