

Dear _____ :

This is in response to your request for a ruling that the University is eligible to issue tax-exempt debt to finance or refinance items used by the Hospital Corporation in furtherance of the Hospital Corporation's exempt purposes.

The University is a nonprofit corporation created by the State on Date 1. The University is a qualified educational organization as defined in the Tax Act. Since Decade X, the University has operated the Medical School. The faculty of the Medical School provides clinical services through outpatient clinics and a teaching hospital.

On Date 2, the University incorporated the Hospital Corporation as a State nonprofit corporation. The Hospital Corporation operates the clinical operations of the Medical School and is an organization described in § 501(c)(3) of the Internal Revenue Code (the "Code"). The articles of incorporation of the Hospital Corporation (the "Articles of Incorporation") provide that the Hospital Corporation's activities shall, at all times, be consistent with and in furtherance of (i) the obligation of the University under the Decree and (ii) the mission of the University with respect to education, research, public service, and patient care. The Articles of Incorporation further provide that the business and affairs of the Hospital Corporation shall be managed by, or under the direction of, the board of directors of the Hospital Corporation (the "Board"). Pursuant to the Articles of Incorporation, the number, term of office, method of selection and manner of removal of members of the Board shall be set forth in the bylaws of the Hospital Corporation (the "Bylaws") except that, notwithstanding any other provision of the Articles of Incorporation or the Bylaws, the board of trustees of the University (the "University Trustees") has the right to appoint two-thirds of the members of the Board.

The Bylaws provide that the Hospital Corporation shall be managed by the Board which shall initially consist of a members, b of which shall be appointed by the University Trustees. The Bylaws also provide that c independent directors shall be initially appointed by the incorporator and thereafter by the remaining independent directors as a group. In addition, the Bylaws provide that one member of the Board must be a chair of a clinical department of the Medical School, as recommended by the chairs of all clinical departments of the Medical School and approved by the chief executive officer of the Hospital Corporation. Finally, the Bylaws provide that the president and chief executive officer of the Hospital Corporation shall serve as an ex-officio director with full voting and other powers of a director. The Bylaws authorize the Board to increase the number of directors to not more than d members.

The Bylaws provide that any vacancy on Board shall be filled either by the University or the remaining independent directors, depending on the source of the appointment of the director who created the vacancy. The Bylaws provide that the University may remove any director appointed by the University at any time for any reason.

The University represents that the proceeds of debt to be issued pursuant to this ruling will not be used with respect to any unrelated trade or business of the University or the Hospital Corporation within the meaning of § 513(a).

LAW

Section 103(a) of the Code provides that, except as provided in § 103(b), gross income does not include interest on any state or local bonds. Section 103(c) provides that the term state or local bond means an obligation of a state or a political subdivision thereof.

Section 1.103-1(a) of Income Tax Regulations provides, in part, that interest upon obligations of a state, territory, possession of the United States, the District of Columbia, or any political subdivision thereof (hereinafter collectively or individually called “state or local government unit”) is not includable in gross income.

Section 1.103-1(b) provides, in part, that an obligation issued by or on behalf of any governmental unit by a constituted authority empowered to issue such obligation is the obligation of such a unit.

Section 1.141-1(d) provides that for purposes of § 141 and §§ 1.141-1 through 1.141-16, except as otherwise provided, all related parties are treated as one person and any reference to “person” includes any related party. Similar rules attributing actions of one related party to another apply for purposes of other rules applicable to tax exempt bonds. See, e.g., § 144(a)(10)(E) (attributing use of bond proceeds between related taxpayers for purposes of the limitation on the amount of qualified small issue bonds which may be issued for use of an entity); § 147(a) (providing that a private activity bond is not treated as a qualified private activity bond during such period that the bond is held by a related party to a substantial user); and § 1.148-6(d)(7) (providing that a payment of gross proceeds to a related party of the payor is not an expenditure of those gross proceeds).

Section 1.150-1(b) provides that the term related party means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group. Section 1.150-1(e) provides that a controlled group means a group of entities controlled directly or indirectly by the same entity or group of entities within the meaning of § 1.150-1(e). Section 1.150-1(e)(1) provides that the determination of direct control is made on the basis of all the relevant facts and circumstances. Section 1.150-1(e)(1) further provides that one entity or group of entities (the controlling entity) generally controls another entity or group of entities (the controlled entity) for purposes of § 1.150-1(e) if the controlling entity possesses either of the following rights or powers and the rights or powers are discretionary and non-ministerial: (i) The right or power both to approve and to remove without cause a controlling portion of the governing body of the

controlled entity, or (ii) the right or power to require the use of funds or assets of the controlled entity for any purpose of the controlling entity.

The Tax Act provides that, for purposes of the tax-exempt bond provisions, a qualified educational organization shall be treated as a state governmental unit, but only with respect to a trade or business carried out by such organization which is not an unrelated trade or business (determined by applying § 513(a) to such organization). The Tax Act provides a definition of qualified educational organization for purposes of this special rule.

The University is a qualified educational organization as defined by the Tax Act. Further, the University represents that the proceeds of debt to be issued pursuant to this ruling will not be used with respect to any unrelated trade or business of the University. Thus, the question presented here is whether the activities of the Hospital Corporation are a trade or business carried out by the University, so that the debt to be issued by the University to finance items used by the Hospital Corporation is treated as the debt of a state governmental unit.

The University controls the Hospital Corporation within the meaning of § 1.150-1(e)(1), because the University has the power to both appoint and remove without cause a controlling portion of the Board. Applying the attribution rule of § 1.141-1 by analogy, it is proper to treat the Hospital Corporation's activities as those of the University for purposes of the Tax Act.

CONCLUSION

Because we determine that the Hospital Corporation's activities are to be treated as carried out by the University and based upon the University's representation that use of the proceeds by the Hospital will not be in an unrelated trade or business of the University or of the Hospital Corporation, we conclude that bonds to be issued by the University to finance or refinance items used by the Hospital Corporation, will be obligations of a state governmental unit for purposes of § 103.

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. In particular, no opinion is expressed or implied as to whether the interest on the bonds to be issued by the University will be excludable from gross income.

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

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,

Associate Chief Counsel
Financial Institutions & Products

By _____
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