TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

Number: **201336020**
Release Date: 9/6/2013

Contact Person:

Identification Number:

Date: June 13, 2013

Telephone Number:

Employer Identification Number:

U.I.L.: 4958.00-00

Legend:

Date 1	=
Taxpayer	=
Parent	=
Hospital	=
Network	=
State	=
medicine	=
Year 1	=
Doctor	=
Date 2	=
Transaction	=
Date 3	=
Date 4	=
Date 5	=
Tax Year 1	=
w	=
ww	=
x	=
xx	=
y	=
z	=
zz	=
zzz	=
zzzz	=
Tax Year 2	=
Tax Year 3	=

Dear :

This letter is in response to the letter of Date1, from your authorized representative, requesting a ruling concerning whether a particular person was a disqualified person with respect to you (Taxpayer) within the meaning of § 4958(f)(1) of the Internal Revenue Code.

FACTS:

You (Taxpayer) are an organization recognized as exempt from federal income tax under § 501(c)(3) and classified as other than a private foundation since you are described in § 170(b)(1)(A)(iii). Parent, Hospital, and Network are each also recognized as exempt under § 501(c)(3) and each is classified as other than a private foundation since each is described in § 170(b)(1)(A)(iii). Taxpayer, Hospital, and Network are brother-sister corporations, with Parent as the sole corporate member. All are located in State.

You state that Parent is a community based organization comprised of a number of healthcare facilities in the of State. Hospital is a full service general acute care hospital that provides primary, specialty, and subspecialty services to a broad geographic service area, including portions of adjoining States. Hospital is the only facility in a particular city and for 200 miles in any direction which offers around-the-clock emergency room services that include a comprehensive range of medical services and Level II trauma care. The nearest Level 1 trauma facilities are located approximately 400 miles away. You state that demand for emergency services often stretches Hospital's capabilities on evenings, weekends, and holidays in particular.

You state that Taxpayer is the professional services subsidiary of Parent and operates several clinics in State and one specialty hospital. Taxpayer employs a number of specialists, including the medicine practice. Parent management believes that, to meet the needs of its service area for this critical service and to avoid overburdening the physicians, it needs at least four specialists in the medicine practice participating in the on-call coverage. A few years prior to this time, three of the four specialists in medicine practice and the chief doctor resigned from Hospital's Medical Staff, leaving the community and Hospital with only two specialists in medicine practice who were, at the time, age 65 and older but who have continued to provide coverage on at least a part-time basis. Since that time and during the relevant period, Taxpayer or Hospital have employed one additional medicine practitioner or supplemented coverage through temporary medicine practitioners, but at times Hospital has had to divert emergency patients to other facilities due to lack of coverage. The lack of cross-coverage among practitioners in medicine in the community, and burdensome call coverage needs have presented a significant impediment to recruiting.

You state that against this background, Parent is constantly and actively engaged in trying to sustain medicine coverage for the patients in its service area, and it is always working to recruit one or more medicine practitioners to meet the needs for those services in an acute care setting , including ensuring adequate call coverage for Hospital's emergency room.

You state that in Year 1, your group was able to recruit Doctor, who agreed to relocate to your area to join Hospital's medical staff and to practice medicine as a full-time employee of

Taxpayer, effective Date 2. Doctor had been providing call coverage for Hospital on a temporary basis, first under a contract with Hospital and then under a subsequent contract with Taxpayer, before becoming a full-time employee of Taxpayer. Doctor had three written contracts for those temporary services: a one-year term with Hospital, and two one-year terms with Taxpayer. During this time, Taxpayer reimbursed Doctor for various expenses, including malpractice insurance premiums, *per diem* expenses, charter flights to and from his original base of operations, hotel and car rental expenses, apartment rental expenses, and various living expenses. Doctor joined your medical clinic and was appointed to Hospital's Medical Staff as a member of the Department of , medicine subsection. The Date 2 employment agreement between Doctor and Taxpayer contains, among others, the following provisions:

- A term of 36 months with automatic renewals for successive three-year terms on the same terms and conditions, unless either party provided at least 180 days' written notice to the other party of a request to renegotiate or a desire not to renew the agreement.

- Doctor's principal duty is to provide medical services in medicine to Taxpayer's patients, including maintaining "regular office hours" at Taxpayer's clinics, which hours were "subject to written approval, periodic review, and reasonable modification" by Taxpayer. Doctor would not be required to provide more than one-third of all necessary medicine on-call coverage at Hospital. Other duties included supervision of physician assistants and nurse practitioners "upon such terms as are mutually agreed."

- Doctor agrees to provide the above services and that he would "not be entitled to and shall not be paid any prorated Physician Minimum Annual Compensation...for any period of time in excess of twenty-one consecutive calendar days that the Physician is absent from work" except for payments for which he qualified under Taxpayer's Extended Illness Accrual Bank "or unless otherwise mutually agreed."

- Doctor cannot refuse to accept any category of patient or payor without Taxpayer's written consent.

- Taxpayer will provide all necessary managerial and administrative services; however, Taxpayer is required to consult Doctor regarding the hiring of any additional medicine personnel and to allow him to have "input" regarding the hiring decision.

- The contract is terminable before the end of the term for death, disability (unable to perform duties for 180 consecutive days or more), or cause (which includes breach that remains uncured 30 days after notice, and any "unprofessional, unethical, or fraudulent" acts by Doctor).

- Allows Taxpayer to terminate the agreement without cause or penalty on 180 days' notice; provides for payment of prorated Physician Minimum Annual Compensation through the termination date, plus any earned Production Compensation.

- Obligates Doctor to cooperate in transfer of care of patients and for an extension of services post-termination for a reasonable period up to 30 days, or longer if the parties agree. Part or all the obligations do not apply to termination for cause in certain circumstances.

- Doctor will be subject to a two-year post-termination non-compete provision within a 25-mile radius of any of Taxpayer's clinics, unless Taxpayer expressly consents otherwise in writing.

- Doctor is subject to an annual performance evaluation, a semi-annual review, and peer review by "an independent Physician with qualifications and experience similar to that of the Physician," with a review of any or all of Doctor's records and a written report to Taxpayer concerning Doctor's competence. Doctor retains "the right to oppose the Executive Director's designee if [he] deems such designee to be biased, partial or have [a] conflict of interest, etc."

- Provides for minimum annual compensation of $x, for the first two years of the agreement. If Doctor's production determined under the worked Relative Value Units (wRVUs, which are a measure of physician time and effort used by CMS) exceeded the minimum guaranteed annual compensation of $x in either year, the compensation model would be based on his productivity for the following year. Production compensation to be determined by multiplying Doctor's wRVUs by a conversion rate to be established annually, with the initial conversion rate set at $y per wRVU for the first year. After qualifying for production compensation, Doctor would then be paid a minimum guaranteed amount of of projected compensation for the year, with actual compensation to be determined based on the production compensation model. Doctor qualified for production compensation based on his production in his first year; he was therefore compensated based on his productivity

You state that Doctor's employment agreement contained a hybrid compensation arrangement including a fixed salary and the possibility of production compensation based on wRVUs. Negotiations for his agreement included recommendations from an outside compensation consultant. The agreement had a guaranteed base compensation at a rate of of the projected production incentive. Doctor was allowed to elect to draw of the projection as base compensation, though the contract was not formally amended to allow that change. However, the contract provided for quarterly reconciliation of the compensation drawn against the actual production incentive, with repayment of any over payment. In accordance with usual practice in the system at the time, Doctor's contract was approved by management rather than the Taxpayer board, as it was standard procedure that contracts, the expense of which had been approved as a part of the board-approved budget, did not go to the board for separate approval.

You state that during his employment, until his leave of absence from the hospital medical staff, Doctor's productivity was extremely high on a wRVU basis. He worked tremendously long hours both in Hospital and a , and took additional call coverage to

assure that patients would not have to be transferred to facilities that were far from their homes. As a result, he recorded wRVUs that were approximately times the percentile rank established by national survey data, including the work performed in the Hospital. You state that, in other words, Doctor was doing the work of three specialists in medicine. You further state that while his work effort was phenomenal, the nature of the services he provided were costly for Hospital. Although the gross revenues of Taxpayer and Hospital represented by Doctor's practice was approximately 6.6% and 4.3% of total patient service revenues, respectively, for Tax Year 1, his services resulted in a combined net loss for Taxpayer and Hospital of approximately $z.

You state that Doctor had been among the highest paid individuals at Taxpayer since his recruitment. He was the highest paid employee of Taxpayer for the year before Tax Year 1, with total compensation as reported on Form 990 for that year more than twice the amount paid to the second highest compensated employee. Doctor's compensation for the first year of his employment contract approximated the percentile of various independent survey benchmarks, though due to his increased productivity, his compensation during the year before Tax Year 1 exceeded the percentile in various surveys by between approximately $w and $ww. For Tax Year 1, total compensation paid to Doctor with respect to that tax year equaled the highest percentile survey number relied on by Taxpayer. You state that this was true even though Doctor only provided full-time services during that tax year for , and thereafter took a leave of absence and provided only limited clinic services for approximately two days per month. Taxpayer, however, did receive an opinion from an independent compensation consultant confirming that Doctor's compensation package was within the range of reasonable compensation for the period prior to his leave of absence.

You state that during on-going peer review, Doctor announced that he was taking a voluntary leave of absence from most of his duties effective Date 3. The leave of absence was initially for sixty days, but was extended until Date 5. After his leave took effect, Doctor no longer performed procedures at Hospital or provided call coverage, but he continued to provide some services to the area clinic for approximately two days per month. With his leave of absence status continuing longer than anticipated, Taxpayer advised Doctor on Date 4 that his employment was terminated for cause, due to his failure to perform his contracted services. You state that with his employment terminated, Doctor then resigned from Hospital medical staff approximately two weeks later and then voluntarily cancelled his State medical license approximately one and one-half month after that..

You state that from the beginning of Tax Year 1 to Date 3, Doctor received payments from Taxpayer based on of his compensation for the previous year. From Date 3 through Date 4, he received payments based on of his compensation for the previous year. Because he worked full-time only from the beginning of Tax Year 1 through Date 3, Doctor was ultimately paid $xx more than the amounts required by his contract with Taxpayer. Taxpayer continued to pay Doctor during this period because it was believed that Doctor would return to full-time employment during Tax Year 1. It was foreseeable that this compensation would be "trued up" such that he would not receive any amounts beyond what his contract with Taxpayer required. As noted above, Doctor's announced leave was initially for sixty days. He never informed Taxpayer he did not intend to return from leave. Even after the extension of the leave,

Taxpayer hoped to retain Doctor due to the system's historical difficulties in recruiting physicians in medicine to the community. You state that Doctor advised Taxpayer management, via email, that he was "certainly planning to continue [his] practice including care for established patients and will not abandon them." You state that this was about 100 days after he first went on leave. Doctor's total cash compensation for the tax year prior to Tax Year 1, including incentives, was $zz and his wRVUs were zzz. You state that although his production incentive calculation exceeded the minimum guaranteed compensation during July and August of Tax Year 1, it was below the draw in every quarter during Tax Year 1. Pursuant to Doctor's contract, the production incentive was calculated based on the wRVUs he performed multiplied by the fair market value wRVU conversion rate. You state that for Tax Year 1 as a whole, the production incentive amount was less than the guaranteed compensation amount and it does not appear that Doctor provided other substantial services. Accordingly, Doctor would not have been entitled to receive more than:

1. His guaranteed minimum compensation for Tax Year 1 prorated through the date of his leave on Date 3 (or a higher amount if his clinical productivity in all settings exceeded the threshold); plus
2. Any production incentive from that date through Date 4; plus
3. Amounts paid for pre-Date 3 call coverage for which Doctor's contract required payment at the rate of $zzzz per day for any days on call in excess of 10 days per month.

You state that Taxpayer, through both internal and outside counsel, made a number of unsuccessful attempts to persuade Doctor to repay certain amounts that may have been a potential excess benefit if Doctor was a disqualified person. Those discussions ultimately proved unproductive.

To the best of Taxpayer's knowledge, Doctor did not relocate his family to Taxpayer's area and he did not have a permanent address in Taxpayer's area. When Doctor began working for Taxpayer, he was allowed to use a condominium owned by Taxpayer for a short time. Later, there were indications that he and/or his family (when in town) would stay at Taxpayer's clinic.

You state that neither Doctor nor any of his family members served as a founder, member of the board or officer of Taxpayer, Hospital, Network, or Parent at any point before, during, or after his employment by Taxpayer. Likewise, Doctor never served as a department head of any of your affiliates and did not have any business relationships with current or former officers or board members of Taxpayer, Hospital, Network, or Parent outside of his employment by Taxpayer. Moreover, you state that Doctor did not have a managerial or equivalent role over the medicine services or other service provided by Taxpayer. Also, you state that as one of two full-time medicine practitioners, although he did not affect variations in employee compensation, Doctor was, as with any physician employee where there is a significant community need in that specialty, able to *de facto* force reassignment of Physician Assistants with whom he did not wish to work.

RULINGS REQUESTED:

You requested the following rulings:

1. That Doctor, at all times relevant to the Transaction, was not a disqualified person with respect to Taxpayer or your affiliates within the meaning of § 4958(f)(1) and related regulations at any time on or after the effective date of his Employment Agreement with Taxpayer, and thus the excess benefit rules of § 4958 did not apply to any payments made to Doctor by Taxpayer during your tax year ending in Tax Year 2 or in Tax Year 3.

2. If the answer to the first request is that Doctor was a disqualified person with respect to Taxpayer, then you request a ruling that the corrective actions described in your request for a ruling implemented or in process by Taxpayer are sufficient, such that the Transaction will not adversely affect Taxpayer's status as an organization described in § 501(c)(3) and classified as other than a private foundation pursuant to § 509(a)(1) by virtue of being described in § 170(b)(1)(A)(iii).

LAW:

Section 501(c)(3) provides for the exemption from federal income tax of nonprofit organizations that are organized and operated exclusively for charitable and/or exempt purposes described within the section.

Section 4958(f)(1) defines "disqualified person" as (A) any person who was, at any time during the five-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization, (B) a member of the family of a disqualified person, and (C) a 35-percent controlled entity.

Section 4958(a)(1) imposes on each excess benefit transaction a tax equal to 25 percent of the excess benefit (the "first tier tax"). This tax must be paid by any disqualified person with respect to such transaction.

Section 4958(a)(2) provides that if a tax is imposed by § 4958(a)(1), and there is knowing participation in the excess benefit transaction by an organization manager, there shall be imposed on such manager an excise tax equal to 10 percent of the excess benefit, unless such participation is not willful and is due to reasonable cause.

Section 4958(b) provides that where an initial tax is imposed, but the excess benefit involved in such transaction is not corrected within the taxable period, a tax equal to 200 percent of the excess benefit involved is imposed and must be paid by any disqualified person with respect to such transaction (the "second tier tax").

Section 4958(c), in part, defines "excess benefit transaction" as any transaction in which an economic benefit is provided by an "applicable tax-exempt organization" directly or indirectly to or for the use of any disqualified person if the value of the economic benefit provided exceeds

the value of the consideration (including the performance of services) received for providing such benefit.

Section 4958(f)(1)(A) provides that the term "disqualified person" means, with respect to any transaction, any person who was, at any time during the 5-year period ending on the date of such transaction, in a position to exercise substantial influence over the affairs of the organization.

Section 4958(f)(1)(B) and (C) provide that a member of the family and a 35-percent controlled entity of an individual described in § 4958(f)(1)(A) are disqualified persons.

Section 53.4958-1(e)(1) of the Foundation and Similar Excise Taxes Regulations provides that except as otherwise provided, an excess benefit transaction occurs on the date on which the disqualified person receives the economic benefit for federal income tax purposes.

Section 53.4958-3(b) lists the statutory categories of disqualified persons, including family members and thirty-five percent controlled entities.

Section 53.4958-3(c) provides that a person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization: (1) voting members of the governing body, (2) presidents, chief executive officers, or chief operating officers, and (3) treasurers and chief financial officers.

Section 53.4958-3(d)(3) provides that a person is deemed not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization if that person receives economic benefits of less than a specified amount in a taxable year, including any full-time or part-time employee of the applicable tax-exempt organization who (i) receives economic benefits, directly or indirectly from the organization, of less than the amount referenced in § 414(q)(1)(B)(i), (ii) is not described in § 53.4958-3(b) or (c) with respect to the organization, and (iii) is not a substantial contributor to the organization within the meaning of § 507(d)(2)(A), taking into account only contributions received by the organization during its current taxable year and the four preceding taxable years.

Section 53.4958-3(e)(1) provides that whether a person who is not described in § 53.4958-3(b), 3(c), or 3(d) is a disqualified person depends upon all relevant facts and circumstances.

Section 53.4958-3(e)(2) provides that facts and circumstances tending to show that a person has substantial influence over the affairs of an organization include, but are not limited to, the following:

- The person founded the organization;
- The person is a substantial contributor to the organization (within the meaning of § 507(d)(2)(a)), taking into account only contributions received by the organization during its current taxable and the four preceding taxable years;
- The person's compensation is primarily based on revenues derived from activities of the

organization, or of a particular department or function of the organization, that the person controls;

- The person has or shares authority to control or determine a substantial portion of the organization's capital expenditures, operating budget, or compensation for employees;
- The person manages a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole;
- The person owns a controlling interest (measured by either vote or value) in a corporation, partnership, or trust that is a disqualified person; or
- The person is a non-stock organization controlled, directly or indirectly, by one or more disqualified persons.

Section 53.4958-3(e)(3) provides that facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization include, but are not limited to, the following:

- The person has taken a bona fide vow of poverty as an employee, agent, or on behalf of a religious organization;
- The person is a contractor (such as an attorney, accountant, or investment manager or advisor) whose sole relationship to the organization is providing professional advice (without having decision-making authority) with respect to transactions from which the contractor will not economically benefit either directly or indirectly (aside from customary fees derived for the professional advice rendered);
- The direct supervisor of the individual is not a disqualified person;
- The person does not participate in any management decisions affecting the organization as a whole or a discrete segment or activity of the organization that represents a substantial portion of the activities, assets, income, or expenses of the organization, as compared to the organization as a whole; or
- Any preferential treatment a person receives based on the size of that person's contribution is also offered to all other donors making a comparable contribution as part of a solicitation intended to attract a substantial number of contributions.

Section 53.4958-3(g), Example 10 describes a large acute-care hospital, U, that is an applicable tax-exempt organization for purposes of § 4958. U employs X as a radiologist. X gives instructions to staff with respect to the radiology work X conducts, but X does not supervise other U employees or manage any substantial part of U's operations. X's compensation is primarily in the form of a fixed salary. In addition, X is eligible to receive an incentive award based on revenues of the radiology department. X's compensation is greater than the amount referenced for a highly compensated employee in § 414(q)(1)(B)(i) in the year benefits are provided. X is not related to any other disqualified person of U. X does not serve on U's governing body or as an officer of U. Although U participates in a provider-sponsored organization (as defined in § 1855(c) of the Social Security Act), X does not have a material financial interest in that organization. X does not receive compensation primarily based on revenues derived from activities of U that X controls. X does not participate in any management decisions affecting either U as a whole or a discrete segment of U that represents a substantial

portion of its activities, assets, income, or expenses. Under these facts and circumstances, X does not have substantial influence over the affairs of U, and therefore X is not a disqualified person with respect to U.

Section 53.4958-3(g), Example 11, describes an example where W is a cardiologist and head of the cardiology department of the same hospital U described in Example 10. The cardiology department is a major source of patients admitted to U and consequently represents a substantial portion of U's income, as compared to U as a whole. W does not serve on U's governing board or as an officer of U. W does not have a material financial interest in the provider-sponsored organization (as defined in § 1855(c) of the Social Security Act) in which U participates. W receives a salary and retirement and welfare benefits fixed by a three-year renewable employment contract with U. W's compensation is greater than the amount referenced for a highly compensated employee in § 414(q)(1)(B)(i) in the year benefits are provided. As department head, W manages the cardiology department and has the authority to allocate the budget for that department, which includes authority to distribute incentive bonuses among cardiologists according to criteria that W has authority to set. W's management of a discrete segment of U that represents a substantial portion of its income and activities (as compared to U as a whole) places W in a position to exercise substantial influence over the affairs of U. Under these facts and circumstances, W is a disqualified person with respect to U.

ANALYSIS:

Under Doctor's contract, his principal duty was to provide medical services in medicine to Taxpayer's patients. His hours of work were subject to written approval, periodic review, and reasonable modification. He was not required to provide more than one-third of all necessary medicine on on-call coverage. His duties included supervision of physician assistants and nurse practitioner. Taxpayer was to provide all necessary managerial and administrative services (but would consult with Doctor regarding of any additional medicine personnel and to allow him to have "input" regarding the hiring decision). By this measure, Doctor was not a disqualified person with regard to Taxpayer, Hospital, Network, or Parent.

Neither Doctor nor any of his family members served as a founder, member of the board or officer of Taxpayer, Hospital, Network, or Parent at any point before, during, or after his employment by Taxpayer. Doctor never served as a department head of any of the affiliated organizations, and did not have any business relationships with current or former officers or board members of any of the affiliated organizations. By these measures, Doctor was not a disqualified person with regard to Taxpayer, Hospital, Network, or Parent.

Even though the gross revenues of Taxpayer and Hospital represented by Doctor's practice in Year was approximately 6.6% and 4.3% of total patient service revenues, respectively, for Tax Year 1, the only full year of Doctor's employment, his services resulted in a combined net loss for Taxpayer and Hospital of approximately $z. This indicates that Doctor is not to be in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization within the meaning of
§ 53.4958-3(d)(3).

The primary difference between § 53.4958-3(g), Example 10 and Example 11, which shows a determination of disqualified person status, is that in Example 11 the cardiologist is a disqualified person because he manages a department and has the authority to allocate the budget for that department, which includes authority to distribute incentive bonuses among employees according to criteria that the person has the authority to set. His management of a discrete segment of a hospital that represents a substantial portion of its income and activities (as compared to the hospital as a whole) places him in a position to exercise substantial influence over the affairs of the hospital. In contrast, in Example 10 the radiologist is not a disqualified person because he does not supervise other hospital employees, does not manage any substantial part of the hospital's operations, does not participate in any management decisions affecting either the hospital as a whole or a discrete segment of the hospital that represents a substantial portion of its activities, assets, income, or expenses. By these measures, Doctor was not a disqualified person with regard to Taxpayer, Hospital, Network, or Parent.

In the case at hand, Doctor never served as a department head of any of Taxpayer's affiliates and did not have any business relationships with current or former officers or board members of Taxpayer, Hospital, Network, or Parent outside of his employment by Taxpayer. As a result, Doctor was never in a position to exercise substantial influence over the affairs of Hospital or Taxpayer. The gross revenues of Taxpayer and Hospital represented by Doctor's practice were approximately 6.6% and 4.3% of total patient service revenues, respectively, for Tax Year 1, the only full year of Doctor's employment, his services resulted in a combined net loss for Parent and Hospital of approximately $z. This indicates that Doctor was not a disqualified person with regard to Taxpayer, Hospital, Network, or Parent.

Section 53.4958-3(c) provides that a person who holds any of the following powers, responsibilities, or interests is in a position to exercise substantial influence over the affairs of an applicable tax-exempt organization: (1) voting members of the governing body, (2) presidents, chief executive officers, or chief operating officers, and (3) treasurers and chief financial officers. Doctor never held any of these positions in Taxpayer, Hospital, Network, or Parent during the period in question. By these measures, Doctor was not in a position to exercise substantial influence over the affairs of Taxpayer, Hospital, Network, or Parent and is not a disqualified person with respect to the affiliated organizations.

Section 53.4958-3(e)(2) lists seven facts and circumstances tending to show that a person has substantial influence over the affairs of an organization. Based on the facts presented about Doctor and his compensation, above, he does not meet any of the seven points listed in that section.

Section 53.4958-3(e)(3) lists five facts and circumstances tending to show that a person does not have substantial influence over the affairs of an organization. Based on the facts presented about Doctor, above, the five listed facts and circumstances indicate that he does not have substantial influence of the affairs of the organizations in question.

RULINGS:

Accordingly, based on the foregoing, we rule as follows:

1. That Doctor, at all times relevant to the Transaction, was not a disqualified person with respect to Taxpayer or your affiliates within the meaning of § 4958(f)(1) and related regulations at any time on or after the effective date of his Employment Agreement with Taxpayer, and thus the excess benefit rules of § 4958 did not apply to any payments made to Doctor by Taxpayer during your tax year ending in Tax Year 2 or in Tax Year 3.

2. Based on the decision on your first ruling request, your second request is rendered moot.

This ruling will be made available for public inspection under § 6110 after certain deletions of identifying information are made. For details, see enclosed Notice 437, *Notice of Intention to Disclose*. A copy of this ruling with deletions that we intend to make available for public inspection is attached to Notice 437. If you disagree with our proposed deletions, you should follow the instructions in Notice 437.

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

This ruling is based on the understanding there will be no material changes in the facts upon which it is based. Any changes that may have a bearing upon your tax status should be reported to the Service. This ruling does not address the applicability of any section of the Code or regulations to the facts submitted other than with respect to the sections described. Because this letter could help resolve any future questions about tax consequences of your activities, you should keep a copy of this ruling in your permanent records.

If you have any questions about this ruling, please contact the person whose name and telephone number are shown in the heading of this letter. In accordance with the Power of Attorney and Declaration of Representative currently on file with the Service, we are sending a copy of this letter to your authorized representative.

Notice 437

Sincerely yours,

Ronald J. Shoemaker
Manager, Exempt Organizations
Technical Group 2