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

200341023

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

SIN 403.00-00, 7701.00-00

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JUL 18 2003

Attention: XXXXXXXXXXXXXXXXX

LEGEND:

Employer M	=	XXXXXXXXXXXXXXXXXXXXXXXXXXX
Company N	=	XXXXXXXXXXXXXXXX
State C	=	XXXXXXXXXXXXXXXXXX
State D	=	XXXXXXXXXXXXXXXXXX
Plan X	=	XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX XXXXXXXXXXXXXXX

Dear XXXXXXXXXXXXX:

This letter is in response to a request for a private letter ruling dated XXXXXXXXXXXXXX, supplemented by letter dated XXXXXXXXXXXXXXXXX submitted on your behalf by your authorized representative concerning sections 403(b) and 7701 of the Internal Revenue Code ("Code").

The following facts and representations have been submitted:

Employer M is a nonprofit public benefit corporation providing services as an acute hospital and health system in State C. Employer M is an organization described in section 501(c)(3) which is exempt from tax under section 501(a) of the Internal Revenue Code ("Code"). Approximately 10,000 individuals render services to Employer M as employees.

Employer M organized Company N under the laws of State D, effective as of XXXXXXXXXXXXXX. Company N is engaged in the business of developing and supporting physician order entry and

financial computer systems of Employer M. Approximately 20 individuals render services to Company N as employees. At all times since Company N's formation Employer M had owned one hundred percent (100%) of Company N's membership interests. Company N has not made an election to be classified as an association under the rules of section 301.7701-3(a) of the Procedural Income Tax Regulations (the "Regulations"). You represent that Company N is not classified as a corporation under section 301.7701-2(b) of the Regulations. You have also asserted that Company N has not filed Form 8832 to changes its classification under section 301.7701-3(b) of the Regulations and will be disregarded for federal tax purposes pursuant to the default classification under section 301.7701-3(b). Employer N has not filed an Application for Recognition Exemption on Form 1023.

Employer M sponsors Plan X for the benefit of its employees. Plan X is intended to meet all the requirements of an annuity purchase plan under section 403(b) of the Code. All employees of Employer M are currently eligible to make contributions pursuant to salary reduction agreements under Plan X.

Employer M proposes to extend participation in Plan X to employees of Company N in order to provide them with an opportunity to electively defer income under section 403(b) of the Code on the same basis as employees of Employer M. However, under Code section 403(b)(1)(A)(i), participation in Plan X is conditioned on employment by an organization described in section 501(c)(3) that is exempt from tax under section 501(a). You represent that although Company N is an entity whose status is disregarded from an organization described in section 501(c)(3) that is exempt from tax under section 501(a), Company N itself is not an organization described in section 501(c)(3) of the Code that is exempt from tax under section 501(a) of the Code. Subject to its receipt of a favorable ruling, Employer M plans to have Company N adopt Plan X with Employer M's consent, and permit employees of Company N to participate in Plan X subject to the terms and conditions of Plan X.

Based on these facts and representations you request the following rulings:

(1) That for purposes of the requirements of Code section 403(b)(1)(A)(i), employees of Company N will be treated as employees of Employer M for so long as (a) Employer M owns one hundred percent (100%) of Company N's membership interests and (b) Company N does not elect to be taxed as a corporation; and

(2) That participation in Plan X by employees of Company N will not, by itself, cause Plan X to cease to qualify as an annuity purchase plan described in Code section 403(b) for so long as (a) Employer M owns one hundred percent (100%) of Company N's membership interests and (b) Company N does not elect to be taxed as a corporation.

Section 403(b) of the Code provides, in part, that, if an annuity contract is purchased for an employee described in section 501(c)(3) of the Code, which is exempt from tax under section 501(a) the amounts contributed by the employer for such annuity contract, on or after such rights become nonforfeitable, shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415.

The Treasury Regulations (the "Regulations") under section 7701 allow single owner organizations to choose to be recognized or disregarded as entities separate from their owners for all federal tax purposes. If an election is not made, the association will be disregarded as an entity separate from its owner for all purposes of the Code and deemed to liquidate by distributing the assets and liabilities of its sole owner.

Section 301.7701-1(a)(1) of the Regulations provides that the Code prescribes the classification of various organizations for federal tax purposes.

Section 301.7701-1(a)(4) of the Regulations provides that under section 301.7701-2 and 301-7701-3 certain organizations that have a single owner can choose to be recognized or disregarded as entities separate from their owners.

Section 301.7701-2(a) of the Regulations provides that "a business entity with only one owner is classified as a corporation or is disregarded; if the entity is disregarded, its activities are treated in the same manner as a sole proprietorship, branch or division of the owner.

Section 301.7701-3(a) of the Regulations provides that a business entity that is not classified as a corporation under section 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) is deemed to be an eligible entity that can elect its classification for federal income tax purposes. Under section 301.7701-2(b), a business entity is any entity recognized for federal income tax purposes that is not properly classified as a trust or otherwise subject to special treatment under the Code.

Section 301.7701-3(a) of the Regulations also provides, in part, that an eligible entity with a single owner can elect to be classified as an association or to be disregarded as an entity separate from its owner. Paragraph (b) of section 301.7701-3 provides a default classification for an eligible entity that does not make an election.

Section 301.7701-3(b)(1) of the Regulations provides that unless the entity elects otherwise, a domestic eligible entity is disregarded as an entity separate from its owner if it has a single owner.

Section 301.7701-3(c) of the Regulations provides that an eligible entity may elect to be classified other than as provided in paragraph (b) above by filing Form 8832.

Announcement 99-102, 1999-43 I.R.B. 545, provides that when the "owner" of an eligible entity that is treated as a disregarded entity is exempt from taxation under section 501(a) of the Code, it must include, as its own, information pertaining to the finances and operation of the disregarded entity in its annual information return. Announcement 99-102 further states that "when an entity is disregarded as separate from its owner, its operations are treated as a branch or division of the owner."

Since Company N has not filed IRS Form 8832 making an election to be classified as an association under the rules of section 301.7701-3(a) of the Regulations; it is disregarded for federal tax purposes pursuant to the default classification under section 301.7701-3(b) of the Regulations. Company N also has not filed IRS Form 1023 seeking a determination letter of exempt status. Thus for purposes of section 301.7701 of the Regulations, Company N is treated in the same manner as a sole proprietorship, branch or division of its owner Employer M.

Since Company N will be treated as a disregarded entity, and Company N is treated in the same manner as a sole proprietorship, branch or division of Employer M, the employees of Company N will be treated as employees of Employer M for purposes of section 403(b) of the Code.

Accordingly, we conclude with respect to ruling number one that for purposes of the requirements of Code section 403(b)(1)(A)(i), employees of Company N will be treated as employees of Employer M for so long as (a) Employer M owns one hundred percent (100%) of Company N's membership interests and (b) Company N does not elect to be taxed as a corporation. With respect to ruling number two, we conclude that assuming Plan X otherwise satisfies the requirements of section 403(b) of the

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Code, participation in Plan X by employees of Company N will not, by itself, cause Plan X to cease to qualify as an annuity purchase plan described in Code section 403(b) for so long as (a) Employer M owns one hundred percent (100%) of Company N's membership interests and (b) Company N does not elect to be taxed as a corporation.

This ruling is based on the assumption that Plan X, prior to and subsequent to the inclusion of Company N's employees as participants, meets the requirements of section 403(b) of the Code.

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

A copy of this letter is being sent to your authorized representative in accordance with a power of attorney on file in this office.

If you have any questions concerning this ruling, please contact XXXXXXXXXXXXXXXXXXX, ID # XXXXXXXX, T:EP:RA:T2, at XXXXXXXXXXXXX.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd.
Manager, Employee Plans
Technical Group 2
Tax Exempt and Government
Entities Division

Enclosures:
Deleted copy of letter ruling
Notice 437

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