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PLR-110882-04

Date: June 29, 2004

LEGEND

University =

Practice Plan =

Medical School =

State A =

Year 1 =

Date 1 =

Dear :

This letter responds to your request for a private letter ruling on behalf of Practice Plan dated February 9, 2004 and your subsequent letters dated April 27, 2004 and June 7, 2004. You provided the following facts and representations.

FACTS

Practice Plan is exempt from federal income tax under Internal Revenue Code (the Code) § 501(a) as an organization described in Code § 501(c)(3). Practice Plan is incorporated as a nonprofit corporation under the law of State A.

University, a State A university, is exempt from federal income tax under Code § 501(a) as an organization described in Code § 501(c)(3) and recognized as a public charity under Code §§ 509(a)(1) and 170(b)(1)(A)(ii). University is incorporated as a nonprofit corporation under the law of State A. University provides medical training and education to students through various schools including Medical School.

All of the physician employees of Practice Plan are also faculty members of Medical School. The Practice Plan employee physicians (the Physicians) are concurrently employed by two employers. The Physicians are employed by University as faculty members to teach classes and provide training to students at Medical School. Additionally, the Physicians are employed by Practice Plan to provide patient services and perform other clinical activities. Practice Plan has _____ employees, and approximately forty-two percent (_____) of these employees are also employed by University.

Currently, University disburses remuneration to the Physicians for teaching classes and providing training, and Practice Plan disburses remuneration to the Physicians for patient care and other clinical activities. For Old Age, Survivors, and Disability Insurance (OASDI) tax liability purposes, University and Practice Plan operate under a special rule (§ 125 of the Social Security Amendments of 1983, hereinafter P. L. 98-21, § 125). Under this special rule, University acts as a common paymaster for University and Practice Plan, and amounts disbursed by Practice Plan to the Physicians for patient care and other clinical activities are deemed to be disbursed by University. Under this arrangement, wages paid to the Physicians are subject to a single OASDI wage base even though payments are disbursed by two separate employers.

University and Practice Plan propose to alter their payment operations with regard to those Physicians who primarily provide patient care and treatment services (the Clinical Physicians). Under the proposed arrangement (the Practice Plan Common Paymaster Agreement), beginning on Date 1, Practice Plan will act as a common paymaster pursuant to Code § 3121(s) with regard to remuneration for services performed for University and Practice Plan by the Clinical Physicians. As part of the arrangement, after Date 1, the Clinical Physicians' wages will be disbursed by Practice Plan as a common paymaster by separate checks (or by substitute electronic procedures) drawn by the Practice Plan on separate bank accounts. Specifically, remuneration to the Clinical Physicians for patient care and other clinical activities will be disbursed by Practice Plan from its own payroll account, and remuneration to the Clinical Physicians for teaching classes and providing training will be disbursed by the Practice Plan from a University payroll account over which Practice Plan has sole and exclusive signature authority to draw and disburse funds. University will continue to be considered the common paymaster for the University and the Practice Plan under the special rule at P.L. 98-21, § 125, with regard to remuneration for services performed by those non-clinical Physicians who primarily teach and perform research (the Teaching and Research Physicians).

Taxpayer requests rulings with regard to:

- (1) Whether, after Date 1, Practice Plan qualifies as a common paymaster under Code § 3121(s) with respect to remuneration it disburses to the Clinical Physicians;

- (2) Whether, after Date 1, Practice Plan may take into account the wages paid to the Clinical Physicians by University in Year 1 prior to Date 1 for purposes of meeting the OASDI wage base limitation in Code § 3121(a);
- (3) The Form W-2, *Wage and Tax Statement*, reporting requirements for wages paid by University as a common paymaster after Date 1, and the Form W-2 reporting requirements for wages paid by Practice Plan as a common paymaster after Date 1;
- (4) The Form 990, *Return of Organization Exempt from Income Tax*, reporting requirements for University after Date 1, and the Form 990 reporting requirements for Practice Plan after Date 1.

LAW AND ANALYSIS

The Federal Insurance Contributions Act (FICA) tax is composed of two parts: the OASDI tax and the Medicare tax. An equal share of the FICA tax is paid by the employer and the employee. Code § 3101(a) imposes a 6.2 percent tax on an individual's wages for OASDI, and Code § 3111(a) imposes an excise tax on an employer equal to 6.2 percent of the wages paid by the employer for OASDI. Code § 3101(b) imposes a 1.45 percent tax on an individual's wages for Medicare, and Code § 3111(b) imposes an excise tax on an employer equal to 1.45 percent of the wages paid by the employer for Medicare.

Code § 3102(a) provides that the employee portion of the FICA tax shall be collected by the employer by deducting the amount of the tax from the employee's wages. Code § 3102(b) provides that every employer required to deduct the tax shall be liable for the payment of such tax. Accordingly, both the employee and employer are subject to the FICA tax, but the employer is responsible for collection and payment.

The OASDI portion of FICA taxes applies only to a certain amount of wages in a tax year. Code § 3121(a)(1) limits the amount of wages subject to the OASDI tax to an amount equal to the contribution and benefit base (the wage base) as determined under § 230 of the Social Security Act. After an employee's wages exceed this annually-adjusted wage base, the OASDI portion of the FICA tax does not apply. If an employee has covered wages from more than one employer, each employer is generally liable for employer social security tax on wages up to the wage base.

Code § 3121(s) provides that, for purposes of Code §§ 3102, 3111, and 3121(a)(1), if two or more related corporations concurrently employ the same individual and compensate that individual through a common paymaster that is one of the corporations, each such corporation shall be considered to have paid as remuneration to such individual only the amounts actually disbursed by it to such individual and shall not be considered to have paid as remuneration to the individual amounts actually disbursed to the individual by another of the corporations.

If all remuneration received by an individual from related corporations is disbursed through a common paymaster, the total amount of taxes imposed with respect to the remuneration under §§ 3102 and 3111 is determined as though the individual has only one employer (the common paymaster). Under such an arrangement, all wages paid to an employee are subject to a single OASDI wage base. However, if some remuneration is disbursed by a related corporation which is not the common paymaster, the provisions of Code § 3121(s) do not apply to such remuneration. Thus, a separate OASDI wage base applies to any remuneration that is not disbursed through the common paymaster. See Regulation § 31.3121(s)-1(b)(2).

Code § 3121(s) does not provide a particular definition for the term "corporation" for these purposes. The general definition appears in Code § 7701(a)(3): the term "corporation" includes associations, joint-stock companies, and insurance companies. Regulation § 301.7701-2(b)(1) provides that, for federal tax purposes, the term corporation means a business entity organized under a federal or state statute, if the statute describes or refers to the entity as incorporated or as a corporation.

Corporations shall be considered related corporations if they satisfy one of four tests provided under Regulation § 31.3121(s)-1(b)(1). The relevant test in this case provides that corporations are related if thirty percent or more of one corporation's employees are concurrently employees of the other corporation.

The term "concurrent employment" means the contemporaneous existence of an employment relationship (within the meaning of Code § 3121(b)) between an individual and two or more corporations. Such a relationship contemplates the performance of services by the employee for the benefit of the employing corporation (not merely for the benefit of the group of corporations), in exchange for remuneration which, if deductible for the purposes of federal income tax, would be deductible by the employing corporation.

A common paymaster is not required to disburse remuneration to all the employees of the related corporations, but the common paymaster rules do not apply to any remuneration that is not disbursed through a common paymaster. The common paymaster is responsible for filing information and tax returns and issuing Forms W-2 with respect to wages it is considered to have paid as a common paymaster.

A group of related corporations may have more than one common paymaster. Some of the related corporations may use one common paymaster and others of the related corporations use another common paymaster with respect to a certain class of employees. A corporation that uses a common paymaster to disburse remuneration to certain of its employees may use a different common paymaster to disburse remuneration to other employees. The common paymaster may pay concurrently employed individuals by one combined paycheck, drawn on a single bank account, or by separate paychecks, drawn by the common paymaster on the accounts of one or more employing corporations.

Code § 3121(s) was amended by P. L. 98-21, § 125 effective for wages paid after December 31, 1983, to provide a special rule for certain medical faculty practice plans. For purposes of Code § 3121(s), P. L. 98-21, § 125(a)(1) provides that the following entities shall be deemed to be related corporations:

(A) a State university that employs health professionals as faculty members at a medical school, and

(B) a faculty practice plan described in Code § 501(c)(3) and exempt from tax under Code § 501(a)

(i) that employs faculty members of such medical school, and

(ii) 30 percent or more of the employees of which are concurrently employed by the medical school.

Pursuant to P.L. 98-21, § 125(a)(2), remuneration that is disbursed by the faculty practice plan to a health professional employed by both entities shall be deemed to have been actually disbursed by the university as a common paymaster and not to have been actually disbursed by the faculty practice plan. Thus, if a faculty practice plan meets the requirements of P. L. 98-21, § 125, all remuneration disbursed by the plan to the health professionals is treated, for FICA purposes, as if it were disbursed by the university as a common paymaster. All other remuneration disbursed by the faculty practice plan is treated as disbursed by the faculty practice plan. Code § 3121(s), as modified by P. L. 98-21, § 125, shifts the obligation to withhold the employee portion of the FICA tax under Code § 3102 and to pay the employer portion of FICA tax under Code § 3111 from faculty practice plans to the associated university. Code § 3121(s) also aggregates the remuneration paid to an employee by concurrent employers for purposes of determining the OASDI wage base under Code § 3121(a)(1).

(1) Common Paymaster

University is a State A university for purposes of P.L. 98-21, § 125(a)(1). Both Practice Plan and University are “corporations” under the law of State A and Code § 7701(a)(3). Prior to Date 1, remuneration disbursed by the Practice Plan to Clinical Physicians employed by both entities is deemed to have been disbursed by the University as a common paymaster under P. L. 98-21, § 125(a)(2). You have requested a ruling that, after Date 1, the Practice Plan may begin acting as a common paymaster with respect to remuneration that it disburses on behalf of the University to Clinical Physicians who are concurrently employed by the Practice Plan and the University.

The first issue to be addressed is whether entities that are “State universities” and “faculty practice plans” must meet the terms of the special rule in P. L. 98-21, § 125 in order to avail themselves of the single OASDI wage base treatment afforded by the common paymaster provisions or, alternatively, whether State universities and faculty

practice plans may instead opt to utilize the more general common paymaster provisions of Code § 3121(s).

We conclude that the existence of the special rule set forth in P.L. 98-21, § 125 does not foreclose a faculty practice plan from serving as a common paymaster under Code § 3121(s) with respect to remuneration it disburses to health professionals on behalf of a State university, provided that all of the requirements for serving as common paymaster under Code § 3121(s) are satisfied. The legislative history indicates that P.L. 98-21, § 125 was enacted as a remedial provision to enable certain entities (State universities and faculty practice plans) to qualify for common paymaster treatment that would not otherwise be able to satisfy the general requirements of Code § 3121(s). For example, the Congressional Record reads as follows:

...The reason for this amendment stems from the unavailability of the so-called common paymaster doctrine to the unique circumstances at the regionalized school – the University of Washington School of Medicine. Professors of clinical medicine receive two paychecks – one from the university, and one from the medical school practice plan – a 501(c)(3) organization. Both organizations would have to pay FICA taxes...Because this school uniquely functions as the State medical school for four States, with diverse Federal research funding and appropriations from four separate States, the doctrine of related corporations using a common paymaster is not available to avoid the double taxation of the unreimbursable employer FICA contribution.

129 Cong. Rec. 6092-93 (1983) (statement of Sen. Gorton). In light of the fact that P.L. 98-21, § 125 was enacted in order to expand applicability of the common paymaster provisions, we see no reason to interpret that provision as limiting or foreclosing the ability of certain organizations to qualify for common paymaster treatment under Code § 3121(s).

The University and the Practice Plan are related corporations under Code § 3121(s) and Regulation § 31.3121(s)-1(b)(1)(iv) because approximately forty-two percent of Practice Plan's employees are also employees of University. The Clinical Physicians and the Teaching and Research Physicians are concurrently employed by the Practice Plan and the University. After Date 1, Practice Plan meets the requirements of the common paymaster rules with regard to remuneration it disburses to the Clinical Physicians under Code § 3121(s) without application of P. L. 98-21, § 125. After Date 1, the Clinical Physicians' wages may be disbursed by Practice Plan as a common paymaster by separate checks (or by substitute electronic procedures) drawn by the Practice Plan on separate bank accounts.

After Date 1, you have advised that University will continue to act as common paymaster with regard to the remuneration disbursed to Teaching and Research Physicians under the special rule at P. L. 98-21, § 125. Accordingly, after Date 1, we

understand that the Teaching and Research Physicians who are concurrently employed by the Practice Plan and the University will continue to receive one disbursement from the University and one disbursement from the Practice Plan and both disbursements will be deemed to have been made by the University as common paymaster.

(2) OASDI Wage Base

You have requested a ruling that, for purposes of the Code § 3121(a)(1) wage base limitation with respect to wages it disburses as common paymaster in Year 1, the Practice Plan may take into account all wages disbursed to the Clinical Physicians by the University as common paymaster in Year 1 prior to Date 1. We conclude that a separate OASDI wage base applies to remuneration disbursed by the Practice Plan as common paymaster after Date 1, and the Practice Plan may not take into account wages disbursed by the University as common paymaster prior to Date 1 for purposes of computing the OASDI wage base.

As a general rule, if an employee has covered wages from more than one employer during the same calendar year, each separate employer is liable for employer social security tax on wages up to the wage base. In very limited circumstances, an employer may aggregate the wages it pays to the employee with the wages paid by another employer for purposes of applying the OASDI wage base. For example, Code § 3121(a)(1) provides that when an employer (the successor) in a calendar year acquires substantially all of the property used in a trade or business of another employer (the predecessor), and immediately after the acquisition employs in the trade or business an individual who immediately prior to the acquisition was employed by the predecessor, then for purposes of applying the OASDI wage base to such an individual during the calendar year, any remuneration paid to the individual for employment by the predecessor during such year and prior to acquisition will be considered to have been paid by the successor. Taxpayer seeks to have amounts paid and deemed paid by the University to the Clinical Physicians during Year 1 prior to Date 1 be considered amounts paid by Taxpayer. However, Taxpayer does not meet the requirements of the predecessor/successor exception provided in Code § 3121(a)(1).

Moreover, one common paymaster corporation is not permitted to aggregate the wages paid by another common paymaster corporation in the same calendar year for purposes of the OASDI wage base, even if the common paymaster corporations are "related corporations" within the meaning of Code § 3121(s) and/or P.L. 98-21, § 125. Although the common paymaster provisions provide for a single wage base with respect to remuneration disbursed by the common paymaster, a separate OASDI wage base applies to any remuneration that is not disbursed through the common paymaster. See Regulation § 31.3121(s)-1(b)(2). Thus, in the instant case, a separate wage base would apply to any remuneration (e.g., noncash fringe benefits) disbursed to the Clinical Physicians by the Practice Plan prior to Date 1 that was not disbursed by the University as common paymaster. Because the common paymaster provisions contemplate a separate wage base for remuneration not disbursed through the common paymaster, it

is inappropriate to allow a related corporation that takes over as common paymaster after the beginning of the year to aggregate the wages paid by a previous common paymaster corporation in applying the OASDI wage base.

(3) W-2 Reporting

Code § 6051(a) requires every person who is obligated to deduct and withhold from an employee a tax under Code § 3101 (i.e., employee FICA) or Code § 3402 (i.e., income tax withholding) to furnish each employee with respect to remuneration paid by such person to such employee during the calendar year a written statement reflecting, among other items, the amount of wages paid and amounts withheld for income tax purposes and the amount of wages paid and amounts withheld for FICA purposes. Regulation § 31.6051-1(a)(1)(i) provides that every employer, as defined in Code § 3401(d), required to deduct and withhold from an employee a tax under Code § 3402 shall furnish Form W-2 to each such employee with respect to the remuneration paid by such employer to such employee during the calendar year. Regulation § 31.6051-1(b)(1) provides that if during the calendar year an employer pays to an employee wages subject to the employee tax imposed by Code § 3101, but not subject to income tax withholding under Code § 3402, the employer shall furnish Form W-2 for such calendar year. Regulation 31.3121(s)-1(a) provides that a common paymaster is responsible for filing information and tax returns and issuing Forms W-2 with respect to wages it is considered to have paid under Code § 3121(s).

Accordingly, University will report for FICA purposes (Boxes 3, 4, 5, and 6) the aggregate amount of wages it paid or was deemed to have paid and amounts withheld in year 1 as a common paymaster. Similarly, Practice Plan will report for FICA purposes (Boxes 3, 4, 5, and 6) the aggregate amount of wages it paid and amounts withheld as a common paymaster.

For income tax withholding purposes, University is the employer of the Physicians for services provided by the Physicians as employees of the University such as teaching classes and providing training to students at Medical School. University is responsible for withholding income tax on the wages (as defined for income tax withholding purposes under Code § 3401(a)) attributable to services performed for the University and for reporting the appropriate amounts on Forms W-2 (Boxes 1 and 2) without regard to whether Practice Plan provided Forms W-2 reflecting a payment of wages for FICA purposes.

Similarly, Practice Plan is the employer of the Physicians for services provided by the Physicians as employees of the Practice Plan such as providing patient care and treatment. Practice Plan is responsible for withholding income tax on the wages (as defined for income tax withholding purposes under Code § 3401(a)) attributable to services performed for the Practice Plan and for reporting the appropriate amounts on Forms W-2 (Boxes 1 and 2) without regard to whether University provided Forms W-2 reflecting a payment of wages for FICA purposes.

(4) Form 990

Filing requirements for exempt organizations are set forth in Code § 6033(a)(1). Unless specifically excepted, every organization exempt from taxation under Code § 501(a) must file an annual return stating specifically the items of gross income, receipts, and disbursements, and such other information for the purpose of carrying out the internal revenue laws as the Secretary may by forms or regulations prescribe, and shall keep such records, render under oath such statements, make such other returns and comply with such rules and regulations as the Secretary may from time to time prescribe.

Regulation § 1.6033-2(a)(2) sets forth the information generally required to be furnished by an organization described in Code § 501(a) in its annual return.

Regulation § 1.6033-2(a)(2)(g) requires the names and addresses of all officers, directors, or trustees (or any person having responsibilities or powers similar to those of officers, directors, or trustees) of the organization even if they did not receive any compensation from the organization. The exempt organization must show all forms of cash and noncash compensation received by each listed individual, whether paid currently or deferred. Organizations described in Code § 501(c)(3) are also required to attach a schedule showing the names and addresses of the five employees (if any) who received the greatest amount of annual compensation in excess of \$30,000; the names and addresses of the five independent contractors, if any, who performed personal services of a professional nature for the organization (such as attorneys, accountants, and doctors, whether such services are performed by such persons in their individual capacity or as employees of a professional service corporation) and who received the greatest amount of compensation in excess of \$30,000 from the organization for the year for the performance of services and the total number of other such independent contractors who received in excess of \$30,000 for the year of the performance of such services.

Regulation § 1.6033-2(a)(2)(ii)(h) requires an exempt organization to attach a schedule to its return showing the compensation and other payments made during the organization's annual accounting period (or during the calendar year ending within such period) which are includible in the gross income of each individual whose name is required to be listed in (g) of this subdivision.

With respect to Line 75 of the Form 990, the instructions provide that compensation paid by related organizations must be reported if the total compensation from the organizations related to the exempt organization exceeds \$10,000 and the total compensation from the reporting exempt organization and the related organizations exceeds \$100,000.

The instructions define a “related” organization. Generally speaking, a related organization is any entity that owns or controls or is owned or controlled by (directly or indirectly) the filing organization, or that supports or is supported by the filing organization. A 50% test is used for ownership or control. The rules look at commonality of officers, directors, trustees, and key employees, and the power to appoint such, in determining “control.” As in Code § 509(a)(3), “support” includes furthering the purposes of the supported organizations.

Code § 3121(s), as amended, applies specifically to Code §§ 3102, 3111, and 3121(a)(1), which relate to employment taxes. Thus, Code § 3121(s) would not effect the filing requirements of an organization described in Code § 501(c)(3) or the definition of the term “related” as described in Form 990.

Based on the foregoing, we conclude that Practice Plan and University should each separately take into account only their respective shares of compensation attributable to services performed for the respective organizations by a physician covered under the Practice Plan Common Paymaster Agreement for purposes of disclosure on their separate Forms 990.

No opinion is expressed relating to the tax consequences of the above transaction under any other provisions of the Code. This ruling is directed to the taxpayer requesting it. Code § 6110(k)(3) provides that it may not be used or cited as precedent.

Sincerely,

Lynne Camillo
Branch Chief, Employment Tax Branch 2
Office of the Division Counsel/
Associate Chief Counsel
(Tax Exempt and Government Entities)