Internal Revenue Service

Department of the Treasury
Washington, DC 20224

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Person To Contact:
, ID No.

Telephone Number:

Refer Reply To:
CC:TEGE:EB:QP4
PLR-T-102506-15

Attn:

Date:
June 18, 2015

Employer A =
Company H =
Hospital R =
Hospital S =
Plan P =
State S =

Dear :

This is in response to your request dated November 25, 2013, and followed by correspondence dated November 16, 2014, submitted by your authorized representative, in which you requested a ruling that employees of Company H, a single member LLC, that is treated as a disregarded entity under § 7701 of the Internal Revenue Code ("Code"), will be treated as employees of Employer A, a § 501(c)(3) nonprofit organization which is the sole member of Company H, and thus, eligible to participate in Plan P, a § 403(b) plan maintained by Employer A.

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested:

Employer A is a § 501(c)(3) nonprofit corporation exempt from taxation under § 501(a). Employer A is a multi-facility health system providing medical services to the general public.

Employer A was the sole member of Hospital R, a § 501(c)(3) nonprofit corporation exempt from taxation under § 501(a). Employer A is also the sole member of Hospital S, a § 501(c)(3) nonprofit corporation exempt from taxation under § 501(a).

Employer A maintains Plan P, a defined contribution plan intended to comply with the requirements of § 403(b). Plan P covers employees of Employer A, Hospital R, Hospital S, and other affiliated entities described under § 501(c)(3) that are eligible to participate in Plan P.

Effective January 1, 2014, Employer A merged Hospital R into Hospital S with Hospital S being the surviving legal entity. Employer A will convert the surviving entity 501(c)(3) corporation, Hospital S, into Company H, a nonprofit single member limited liability company under the laws of State S, but not under § 501(c)(3), whose sole member will be Employer A.

You represent that Company H is intended to be a disregarded entity for federal tax purposes pursuant to the default classification rules under § 301.7701-3(b) of the Procedure and Administrations Regulations ("P&A Regulations") and will not file Form 8832 (Entity Classification Election) to change its classification for tax purposes. Company H will not file separate tax returns or a Form 1023 (Application for Recognition of Exemption Under Section 501(c)(3) of the Internal Revenue Code).

Based on the foregoing facts and representations, you have requested a ruling that the employees of Company H, formerly employees of Hospital R and Hospital S, will be treated as employees of Employer A and will be eligible to continue to participate in Plan P.

Section 403(b) provides, in relevant part, that if an annuity contract is purchased for an employee by an employer described in § 501(c)(3) which is exempt from tax under § 501(a), then contributions by such employer to the contract are excluded from the employee's gross income, if specific conditions are met.

Section 1.403(b)-3(a) of the Income Tax Regulations (the "Regulations") provides that amounts contributed by an eligible employer for the purchase of an annuity contract for an employee are excluded from the employee's gross income if certain conditions are met.

Section 1.403(b)-2(b)(8)(i)(B) of the Regulations defines an "eligible employer" as including a § 501(c)(3) organization with respect to any employee of the § 501(c)(3) organization.

Section 1.403(b)-2(b)(8)(ii) further provides that:

> [a] subsidiary or other affiliate of an eligible employer is not an eligible employer under paragraph [(b)](8)(i) of this section if the subsidiary or other affiliate is not an entity described in paragraph [(b)](8)(i) of this section.

Section 1.403(b)-5(b)(1) of the Regulations provides a universal availability requirement for § 403(b) plans. Under the universal availability requirement, all employees of an eligible employer must be permitted to make elective deferrals if any employee of the eligible employer is permitted to make elective deferrals to the § 403(b) plan. Section 1.403(b)-5(b)(4) provides that a plan will not fail to satisfy the universal availability requirement merely because it excludes employees who (i) are eligible to make elective deferrals under another § 403(b) plan, a § 457(b) eligible governmental plan, or a § 401(k) plan of the employer, (ii) are non-resident aliens, (iii) are students performing services described under § 3121(b)(10), or (iv) normally work fewer than 20 hours per week.

Section 301.7701-1(a) of the P&A Regulations states that the classification of various organizations for federal tax purposes is determined under the Code, and does not depend on whether the organization is recognized as an entity under local law.

Section 301.7701-2(a) of the P&A Regulations provides that for purposes of such section and § 301.7701-3, a business entity with only one owner is either 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 P&A Regulations provides that a business entity that is not classified as a corporation under § 301.7701-2(b)(1), (3), (4), (5), (6), (7), or (8) (an "eligible entity") can elect its classification for federal tax purposes, as provided in such section. Section 301.7701-3(a) further provides that an eligible entity with a single owner can elect to be classified for federal tax purpose as an association (and thus a corporation under § 301.7701-2(b)(2)) or to be disregarded as an entity separate from its owner.

Section 301.7701-3(b)(1) of the P&A Regulations provides that, except as provided in § 301.7701-3(b)(3), 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)(1)(i) of the P&A Regulations provides, in part, that an eligible entity may elect to be classified other than as provided under § 301.7701-3(b), or to change its classification, by filing Form 8832 (Entity Classification Election) with the Service.

Section 301.7701-2(c)(iv) of the P&A Regulations provides exceptions to the disregarded entity rules for certain specific purposes, generally including employment taxes and certain excise taxes. No exception is provided for § 403(b).

In this case, you have represented that Company H will be a single-member limited liability company and that Company H will not be classified as a corporation (as defined in § 301.7701-2(b) of the P&A Regulations), nor will Company H file an election

under § 301.7701-3(c) to be classified as a corporation using Form 8832. As a limited liability company with a single member, which has not elected a different classification, Company H is treated as a "disregarded entity" under § 301.7701-3(b)(1). As a disregarded entity under the P&A Regulations, Company H will be treated as a branch or division of Employer A.

We therefore conclude that for purposes of § 403(b), the employees of Company H will be treated as employed by a branch or division of Employer A, an organization exempt from tax under § 501(c)(3). Because the employees of Company H will be treated as employed by a branch or division of Employer A, the inclusion of such employees in Plan P is permitted under § 403(b).

Moreover, employees of Company H will be subject to the universal availability requirement of § 1.403(b)-5(b)(1) because they will be considered employees of Employer A. Accordingly, unless an exception to universal availability applies, employees of Company H must be permitted to make elective deferrals under Plan P if employees of Employer A are permitted to make elective deferrals under Plan P.

This ruling letter expresses no opinion on whether Plan P complies with the requirements of § 403(b).

This ruling letter expresses no opinion on whether Employer A's treatment of Company H as a disregarded entity adversely affects, or will adversely affect, the § 501(c)(3) status of Employer A. This ruling is based on the assumption that the § 501(c)(3) status of Employer A is not and will not be adversely affected.

The ruling contained in this letter is based upon information and representations submitted by the taxpayer and accompanied by a penalties 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.

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. Additionally, no opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of the Code, the P & A Regulations, or the Regulations which may be applicable thereto.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) 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.

Sincerely,

Jason E. Levine
Senior Tax Law Specialist
Qualified Plans Branch 4
(Tax Exempt and Government Entities)