

INTERNAL REVENUE SERVICE
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CC:EBEO-PLR-116391-98

Re:
EIN:

University =
Medical School =
Account =
State A =
Board =
Pronouncement =
Faculty Practice
Plan =
Statutory
Provisions =

Dear:

This is in response to your request for a letter ruling dated August 11, 1998, and subsequent correspondence, concerning the application of section 1802 of the Small Business Job Protection Act of 1996, Pub. L. 104-188, 110 Stat. 1892 (section 1802), effective for remuneration paid after December 31, 1996. Congress adopted section 1802 to clarify the application of section 3121(s) of the Internal Revenue Code (the Code).

FACTS

Medical School is part of University, which forms part of the State A University system, established pursuant to State A statute and governed by the Board. You have represented that Medical School faculty members are employed by State A, which is contractually obligated to pay their compensation. Faculty members, as part of their duties as Medical School professors,

treat patients at hospitals and other clinical sites affiliated with the Medical School, under the auspices of the Faculty Practice Plan, which was created pursuant to State A statute.

The Faculty Practice Plan is a State A not-for-profit corporation determined by the Internal Revenue Service to be described in Code section 501(c)(3) and exempt from tax under Code section 501(a). At least 30 percent of the members of the Faculty Practice Plan are faculty members of the Medical School.

Pursuant to a delegation of authority in the Statutory Provisions, the Board governs University and has authority to establish University policies. Specifically, the Board is given authority in the Statutory Provisions to authorize University-controlled agency accounts outside the State A treasury. In the Pronouncement, the Board exercised this authority to authorize the Account. The Faculty Practice Plan deposits funds generated by the practice of medicine by Medical School faculty members into the Account. Faculty members' compensation from State A is paid in part by State A and in part from the Account. Taxes under the Federal Insurance Contributions Act (FICA taxes) are withheld from faculty members' salaries by State A, pursuant to an agreement under section 218 of the Social Security Act.

LAW AND ANALYSIS

Sections 3101 and 3111 of the Code impose FICA taxes on the wages paid by employers to employees with respect to employment. Sections 3101(a) and 3111(a) impose the Old-Age, Survivors, and Disability Insurance (OASDI) taxes on the wages of employees. Sections 3101(b) and 3111(b) impose Medicare taxes on the wages of employees. In general, all payments of remuneration by an employer for services performed by an employee are subject to FICA taxes, unless the payments are specifically excepted from the term "wages" or the services are specifically excepted from the term "employment."

Section 3121(a)(1) provides an exclusion from the taxes imposed by sections 3101(a) and 3111(a), the employee and employer portions of the OASDI tax, for that part of remuneration which exceeds the contribution and benefit base as determined under section 230 of the Social Security Act. The exclusion in section 3121(a)(1) does not apply for purposes of Medicare taxes.

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

considered to have paid as remuneration to such individual amounts actually disbursed to the individual by another of such corporations. When section 3121(s) applies to a worker, the OASDI portion of the FICA taxes on wages up to the amount of the contribution and benefit base is paid only once with respect to the remuneration of that worker by the common paymaster.

Section 1802 provides that, for purposes of Code section 3121(s), the following entities shall be deemed to be related corporations that concurrently employ the same individual: (A) a state university which employs health professionals as faculty members at a medical school and (B) an agency account of such state university from which payments to such faculty members are distributed forming part of the compensation that the state or state university, as the case may be, agrees to pay to such faculty members. The agency account must be authorized by state law and must receive funds for the payments from a faculty practice plan described in Code section 501(c)(3) and exempt from tax under Code section 501(a). The payments must be distributed by the agency account as remuneration to faculty members who render patient care at the medical school, and the faculty members must comprise at least 30 percent of the membership of the faculty practice plan. Remuneration disbursed by the agency account to any such faculty member of the medical school shall be deemed to have been actually disbursed by the state or state university, as the case may be, as a common paymaster and not to have been actually disbursed by the agency account.

On the basis of your representations, the requirements of section 1802 appear to be satisfied. The Faculty Practice Plan is described in Code section 501(c)(3) and exempt from tax under section 501(a). State A employs faculty members who render patient care at a state university medical school, and such faculty members comprise at least 30 percent of the Faculty Practice Plan's membership. The faculty members are paid by both the State and the Account, which is authorized by state law.

In a factual situation described in section 1802, the OASDI portion of the FICA tax applies only once with respect to each faculty member on wages paid by the State and the Account up to the amount of the contribution and benefit base. If State A and the Account have paid the OASDI portion of the FICA taxes up to the amount of the wage base with respect to any faculty member, additional wages paid to that faculty member are not subject to the OASDI portion of FICA taxes. Medicare taxes would still apply with respect to that faculty member's wages, unless some other exception applied.

CONCLUSION

For purposes of section 3121(s), State A and the Account are deemed, pursuant to section 1802, to be related corporations that concurrently employ the Medical School faculty members. Remuneration disbursed by the Account to a Medical School faculty member who renders patient care at the Medical School shall be deemed to have been actually disbursed by State A as a common paymaster.

Except as specifically ruled on above, no opinion is expressed as to the federal tax consequences of the transaction described above under any other Code provision. This ruling is directed only to the taxpayer who requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely yours,

PATRICIA M. MCDERMOTT
Senior Technical Reviewer, Branch 2
Office of the Associate
Chief Counsel
(Employee Benefits and
Exempt Organizations)

cc: