

April 23, 1987

Mr. Patrick Sharp
Compliance Specialist

This letter will summarize our several telephone conversations concerning a proposed transaction between

two corporations ("Contributing Corporations"), both recognized as exempt entities under Section 501(c)(3) of the Internal Revenue Code, intend to create a new corporation ("Joint Venture Corporation"), which will also apply for recognition under Section 501(c)(3). For reasons unrelated to the Hart-Scott-Rodino Act the transaction will not be consummated unless the IRS recognizes the Joint Venture Corporation as tax exempt under Section 501(c)(3).

The Joint Venture Corporation is being created to operate, administer, and manage

two Contributing Corporations. Each of the Contributing Corporations owns one or more other hospitals, including

At the present time, the two Hospitals jointly own or operate a number of assets. These include a jointly operated radiology department that serves the two Hospitals, an emergency room owned by one Hospital but leased to a joint venture of both Hospitals, a physicians office building, a parking ramp, and a

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Joint Venture Corporation provides that it is the intent of the parties "at the appropriate time to incorporate the functions, management, and assets" of the existing joint ventures into the Joint Venture Corporation. The agreement does not define the appropriate time or otherwise bind the parties to incorporate existing joint venture assets into the new Joint Venture Corporation.

The agreement for creation of the new Joint Venture Corporation does not require the Contributing Corporations to

Joint Venture Corporation all "real and personal property" of

period of fifteen years. If during that fifteen-year period any

all property contributed by the Contributing Corporations is

All revenues from operations of the two Hospitals will

for certain services that that Contributing Corporation will perform for the Joint Venture Corporation; a "membership" fee to the Contributing Corporations, which is an amount initially calculated with relation to the debt service on and the capital value of the assets made available by the Contributing

Corporations.

Because of the substantial time lag between billing

to advance working capital to the Joint Venture Corporation to fund operating expenses until receipts from billings of the

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Joint Venture Corporation come on stream. The amount of such advances has not been fixed by contract and will depend on how

the parties contemplates additional capital contributions for capital improvements, if any, and additional working capital only with the mutual agreement of the Contributing Corporations.

The form of the transaction--in particular the decision of the Contributing Corporations to subject their

It was your opinion that even though the amount of the contribution the Contributing Parties will make to the Joint Venture Corporation's working capital is not fixed, because the parties anticipate that the contribution will be in excess of \$10 million, the proposed transaction would be held to meet the size-of-transaction level requiring filing under the Act.

*Contributing
Corporations
are
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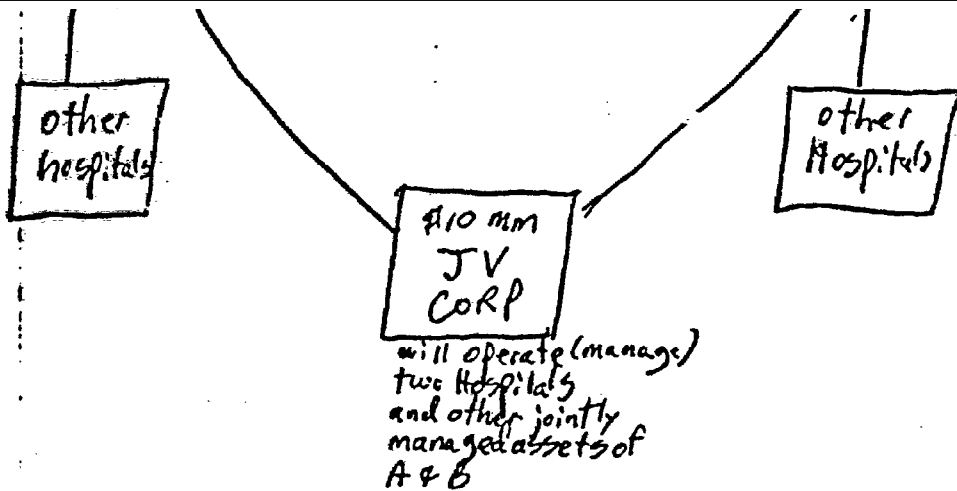
We asked you whether you agreed with our opinion that the transaction would be exempt under Reg. § 802.40. You said you were not prepared to give us an opinion on that question unless we made the request in writing, which we are doing now.

Thanks for your assistance.

Sincerely yours,

A

B



The parties are forming a Joint venture to manage a portion of their assets, not all of their assets. Although this transaction meets the size-of-~~the~~^{person} test, It is clear to me that this is exempt under § 802.40 of the rules. The rule is clear, a newly formed company that will be not for profit

under section 802.40. The party asserts the the joint venture "will not be consummated unless the IRS recognizes the Joint Venture Corporation as tax exempt under section 501(C)(3)". The statement of Basis and Purpose describes the types of organizations related to section 501(C)(3) as "civic leagues or employee associations." Although this is not the normal hospital merger, (parties are forming a management company) I don't recall any transactions ~~rel~~ concerning hospitals as being exempt under 802.40. Any thoughts?

11 A ~~_____~~

The PMN off has determined
that this is exempt under 802.40.
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