Internal Revenue Service

Department of the Treasury
Washington, DC 20224 200148055

Uniform Issue List: 414.08-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T1

JUL 16 2001

Attn:

Church K.....

Corporation A.....

Home B.....

Home C.....

Home D.....

Organization E.....

Official F.....

State M.....

Plan X.....

Dear :

This is in response to a letter dated October 13, 2000, as supplemented by additional correspondence dated February 22, 2001, in which your authorized representative requested a ruling on your behalf under section 414(e) of the Internal Revenue Code (the "Code"). You submitted the following facts and representations in support of your request.

Corporation A is a non-stock membership corporation organized under the laws of State M as a non-profit corporation. Corporation A is responsible for the professional delivery of social services and effective administration of Church K charity, including the management and operation of homes for needy and dependent children, Home B, Home C, and Home D. Corporation A and Homes B, C and D are each listed in the official directory of Church K and are exempt from tax under Code section 501(c)(3). The By Laws of Corporation A and Homes

252

B, C and D provide that Organization E is the parent corporation of each of these corporations.

In 1980, Corporation A established Plan X, a defined benefit pension plan, for its employees and in 1993 extended coverage under the plan to eligible employees of Home B and Home C. In 1995, Corporation A further amended Plan X to cover eligible employees of Home D.

Plan X is administered by a pension plan committee ("Committee") to manage and control the operation and administration of the plan pursuant to section 9.8 of Plan X. The members of the Committee serve at the pleasure of and are appointed by Official F, an official of Church K, or the administrator of Organization E ("Administrator"), who is also an official of Church K. Pursuant to a resolution adopted by the Board of Directors of Corporation A on October 30, 2000, the Committee was established to provide consultation, input and advice on behalf of the participants and employer and generally administer Plan X. All Committee members are members of Church K. As a condition of membership, all members of the Committee must share common religious bonds and convictions with Church K.

The By Laws of Corporation A provide that Corporation A shall be directed by a Board of Trustees and a Board of Directors; members of the Board of Trustees may also serve as members of the Board of Directors and vice versa. The By Laws of Homes B, C and D provide that each of these corporations shall be directed by a Board of Trustees, and the Board of Directors of Corporation A; members of each corporation's Board of Trustees may also serve as members of the Board of Directors of Corporation A and vice versa. Under their respective By Laws, therefore, Corporation A and Homes B, C and D are governed by a common Board of Directors. The By Laws of each of these corporations permit, but do not require, that these corporations be governed by a common Board of Trustees. Representation has been made, however, that Corporation A and Homes B, C and D are, in fact, directed by a common Board of Trustees.

The By Laws of each of the above corporations require that Official F, or the Administrator, shall be one of the Trustees and will also serve as the President of the Board of Trustees, ex-officio, of each corporation. The remaining Trustees are to be appointed by and serve at the pleasure of Official F, or the Administrator. The Board of Directors of Corporation A, which also serves as the Board of Directors of Homes B, C and D, is empowered by Official F and the Board of Trustees of each corporation to provide leadership for the corporation in conformity with the stated purposes of the corporation, the doctrine and teachings of Church K, and the laws of State M. Its delegated powers include establishing policies and procedures for the operation of the corporation, including personnel policies provided such policies are in harmony with the official personnel policies of Church K's Organization E. All members of the Board of Directors are appointed and removed at will by Official F or the Administrator. Powers reserved to Official F under the By Laws of each corporation include establishing and changing the mission and governing policies of the corporation, appointing the Chief Executive Officer of Corporation A, approving changes to the By Laws, and appointing members to the Board of Trustees and Board of Directors. The officers of Corporation A are annually elected by the Board of Trustees, except the President who is Official F or the Administrator, by virtue of his

office.

Based on the above facts and representations, you request a ruling that Plan X constitutes a church plan as described in Code section 414(e).

To qualify under Code section 401(a), an employees' plan must meet certain requirements, including the minimum participation rules under section 410 and the minimum vesting requirements under section 411. A qualified plan may be subject to an excise tax under section 4971 if it does not comply with minimum funding standards under section 412. A church plan described in section 414(e), however, is excepted from these requirements unless an election is made in accordance with section 410(d) to have such requirements apply. Where no election is made under section 410(d), a church plan described in section 414(e) shall be treated as a qualified plan for purposes of section 401(a) if such plan meets the participation, vesting and funding requirements of the Code as in effect on September 1, 1974.

Code section 414(e) generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from taxation under section 501.

Code section 414(e)(3)(A) provides that a plan will be treated as a church plan if it is maintained by an organization, whether a civil law corporation or otherwise, the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits or welfare benefits, or both, for the employees of a church or a convention or association of churches, if such organization is controlled by or associated with a church or a convention or association of churches.

Code section 414(e)(3)(B) provides that an employee of a church or convention or association of churches shall include an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501, and which is controlled by or associated with a church or a convention or association of churches.

Code section 414(e)(3)(C) provides that a church or a convention or association of churches which is exempt from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

Code section 414(e)(3)(D) provides that an organization, whether a civil law corporation or otherwise, is "associated" with a church or convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization that is not itself a church or convention or association of churches to have a church plan under Code section 414(e), that organization must establish that its employees are employees or deemed employees of a church or convention or association of

churches under section 414(e)(3)(B). Employees of such an organization maintaining a plan are considered to be a church employee if the organization: (1) is exempt from tax under section 501, (2) is controlled by or associated with a church or convention or association of churches, and (3) provides for administration or funding of the plan by an organization described in section 414(e)(3)(A).

In this case, Corporation A and Homes B, C and D are all listed in Church K's official directory. The Service has ruled that any organization listed or appearing in the Church K's official directory is an organization described in Code section 501(c)(3) and exempt from tax under section 501(a). The purpose of Corporation A is to deliver social services and administer charities under the auspices of Church K, including managing Homes B, C, and D for needy and dependent children. In addition, Official F or the Administrator appoint and remove the members of the Board of Trustees and the Board of Directors. The Board of Directors of Corporation A is established to provide leadership in conformity with the doctrine of Church K. Only Official F has the authority to approve changes in the By Laws or mission of Corporation A. The Board of Trustees elects the officers who manage Corporation A. The Board of Trustees and Board of Directors of Corporation A are, in fact, the same as for Homes B, C and D. (Although the Board of Directors of Corporation A must serve as the Board of Directors for Homes B, C and D, there is no similar requirement in the By Laws with respect to the Board of Trustees of Corporation A.) Because Corporation A and Homes B, C and D are listed in Church K's official directory, these organizations share religious bonds and convictions with Church K, and are therefore considered to be "associated" with Church K under the church plan rules. These organizations are also controlled by Church K through Official F or the Administrator who have appointment authority over the Boards of Trustees and Boards of Directors. Accordingly, because the employees of Corporation A, and Homes B, C and D are employed by organizations that are exempt from tax under Code section 501(a) and associated with a church or convention or association of churches (i.e., Church K), these employees are deemed to be Church K employees under section 414(e)(3)(B). Conversely, Church K is considered to be the employer of the employees of Corporation A and Homes B, C and D under section 414(e)(3)(C).

In addition, Plan X is administered by a Committee appointed and removed by Official F or the Administrator. It has been represented that the principal purpose or function of the Committee is to administer Plan X. The above-mentioned resolution establishing the Committee will be modified to reflect plan administration by the Committee as its principal purpose. Thus, the Committee is associated with or controlled by a church or a convention or association of churches. Accordingly, we rule that, with respect to your ruling request, Plan X constitutes a church plan described under Code section 414(e).

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under Code section 401(a). The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the Manager, Employee Plans Determinations Programs, Cincinnati, Ohio, and the appropriate Area Office of the Employee Plans Examination Division.

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

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

John Swieca

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

cc:

256