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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200229050

APR 24 2002

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Attn: **********

Legend:

Church A = **********
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Administrator = **********

Plan W = **********
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Plan X = **********
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Plan Y = **********
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Endowment Funds = **********

Organization A = **********

C Funds = **********

Organization B = **********

Organization C = **********

Custodian D = **********
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Gentlemen:

This is in reply to a request for rulings submitted on August 19, 1999, as revised on November 20, 2000, and supplemented on March 22, 2001, February 8, 2002, and March 25, 2002, concerning a proposed commingling arrangement for funds of retirement income accounts described in section 403(b)(9) of the Internal Revenue Code (the "Code") with assets of plans that are qualified under section 401(a) of the Code and assets of Church A's Endowment Funds.

The following facts and representations have been submitted on your behalf:

The General Convention is Church A's national body, with a House of Deputies and a House of Bishops. The General Convention has the exclusive authority (1) to amend the book of common prayer; (2) to amend Church A's constitution; (3) to amend the cannons of Church A; and (4) to determine the program and budget of the General Convention, as well as any missionary, educational, and social programs.

The Administrator was organized in 1914 to provide retirement benefits for Church A's clergy and their beneficiaries. The General Convention established the Administrator, and the bishops and deputies of the General Convention elect the Administrator's governing board. The General Convention selects 24 of the Administrator's 25 trustees. The Administrator is listed in Church A's directory of official Church A agencies. Also, the Administrator is associated with Church A through the governing board's common religious bonds and convictions, as demonstrated by the Administrator's constitution.

The Administrator was recognized as an organization that is exempt from tax under section 501(c)(3) of the Code and is a supporting organization of the church under section 509(a)(3). The primary function of the Administrator is to serve as both the sponsor and administrator of (1) Plan W, a section 401(a) plan; (2) Plan X, a section 401(a) plan; and (3) Plan Y, a

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section 403(b)(9) plan (the "Plans"). The Administrator also receives and manages other funds, including the Endowment Funds.

Plan W is intended to qualify under section 401(a) of the Code. On August 5, 1994, the District Director issued a determination or ruling concerning the continued exemption of the Administrator under section 501(c)(3) of the Code.

Plan X received a favorable determination letter concerning its continued qualification under section 401(a) of the Code in a letter dated February 9, 1988.

Plan Y is intended to qualify as a retirement income account under section 403(b)(9) of the Code, and as a church plan under section 414(e)(3) of the Code. The Administrator has the authority to control and manage the operation and administration of Plan Y on behalf of all of the member churches and their affiliates.

Church A and its affiliates that have adopted or will adopt one of the Plans and make contributions on behalf of their employees must also be recognized as organizations exempt from tax under section 501(c)(3) of the Code.

As part of its mission on behalf of Church A, the Administrator established three new nonprofit entities - Organization A, Organization B and Organization C - to commingle and collectively invest assets held in the Plans with other Church related Endowment Funds ("General Church Endowment Funds"), including the non-pension endowment assets of one or more provinces, dioceses, parishes, missions, agencies, institutions and other entities connected with Church A (collectively referred to as "Eligible Investors"). Organization A, Organization B and Organization C have been recognized as exempt from tax under section 501(c)(3) and as supporting organizations to Church A under section 509(a)(3). The Administrator is the sole member of Organization A, which is the sole member of each Organization B and Organization C (collectively, the "C Funds").

Organization A will provide or enter into relationships with third parties who will provide, investment management and related services with respect to the commingling arrangement.

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Such services will be provided solely to carry out the charitable and religious purposes of Church A. Organization A is closely associated with the Administrator and Church A. All directors of Organization A must be officers or trustees of the Administrator and must be approved by the Administrator's board of trustees. The General Convention elects all but one of the Administrator's trustees. The president of the Administrator serves ex officio as a trustee.

Organization B and Organization C ("C Funds") are single-member corporations with Organization A as their sole member. Organization B and Organization C are recognized as organizations exempt from tax under section 501(c)(3) and as supporting organizations under section 509(a)(3) of the Code in letters from the Internal Revenue Service dated November 20, 2000. Organization A elects the directors of Organization B and Organization C. These directors must also be officers or directors of Organization A.

C Funds will hold title to certain assets of Church A and the Plans (Plan W, Plan X and Plan Y) and the Church Endowment Funds. The Boards of Directors of each of the C Funds (Organization B and Organization C) has adopted resolutions concerning the management of retirement plan assets, as follows:

> RESOLVED, in the event assets that equitably belong to church retirement Plans that qualify under section 403(b)(9) of the Code (the "403(b)(9) Assets") are commingled with assets that equitably belong to Plans that qualify under section 401(a) of the Code (the "401(a) Assets" and, together with the 403(b)(9) Assets, the "Plan Assets"), and other assets (the "Other Assets") of provinces, dioceses, parishes, missions, agencies, institutions or other entities connected with Church A, each of the (i) 403(b)(9) Assets, (ii) 401(a) Assets, (iii) and Other Assets shall be accounted for separately for all purposes.
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> RESOLVED, FURTHER, no part of the Plan Assets (or income therefrom) may be used for, or diverted to, purposes, other than for the exclusive benefit of the employees who participate in the Plan or their beneficiaries. No part of the equity of, or any interest in, any Plan may be assigned

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to any person or entity. In the case of any merger or consolidation of any Plan, or a transfer of the assets or liabilities of such Plan to, any other retirement benefit plan (the "Transferee Plan"), each of the Plan's participants shall have a benefit in the Transferee Plan (determined as if such Transferee Plan were then terminated immediately after such merger, consolidation or transfer) that is equal to or greater than the benefit that the participant would have been entitled to receive immediately before such merger, consolidation or transfer in the Plan in which he or she was then a participant (had such Plan been terminated at that time) and the remaining assets of the Plan shall continue to be managed in a manner consistent with the provisions of this resolution. The preceding sentence is not intended to cover any merger or transfer of Plan assets or liabilities between a 403(b) arrangement and a plan qualified under section 401(a) of the Code.

The commingling arrangement will provide Church A with a mechanism to allow Eligible Investors to pool their investment assets under the custody and management of experienced custodians and investment managers in order to achieve lower investment costs and higher quality investment advice.

The Participation Agreement between Organization A and Eligible Investors identifies the investment manager and provides that the custodian may use other U.S. banks. Appendix A and Appendix B, which are attached to the Participation Agreement, names Custodian D as the custodian of both C Funds. Appendix A names an investment manager of Organization C and states that Organization C will be primarily invested in a diversified portfolio of publicly traded equity securities of U.S. issuers, or those non-U.S. included in a specified Index, based on the investment manager's expected return rankings. Industry sector weights will be maintained close to those of the specified Index. Exchange traded futures contracts on the specified Index may be used to adjust the market exposure of the portfolio. The investment objective is to exceed the return of the specified Index of a market cycle with a level of risk comparable to that of the specified Index. Appendix B names an investment manager of Organization B and states that Organization B will be primarily invested in a diversified

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portfolio of publicly traded investment grade fixed income securities of U.S. issuers selected by the investment manager based on credit, security and sector analysis. Securities could include U.S. Government issues, corporate issues, mortgage securities and asset backed securities. Exchange traded futures contracts on the U.S. Treasury issues may be used to adjust the market exposure of the portfolio. The investment objective is to exceed the return of a specified Index over a three-to-five year time horizon with a comparable level of risk.

A copy of the Participation Agreement for the C Funds provides, in part, that Organization A has established the C Funds to permit assets of Church A-related entities to be pooled for investment purposes and placed under the discretionary management of third party investment managers. Each Eligible Investor that contributes assets to the C Funds pursuant to the commingling arrangement will enter into a Participation Agreement with the C Funds. Admissions of Eligible Investors and contributions and withdrawals will be permitted on the basis of the C Funds' Unit value. Each C Fund is divided for record keeping purposes into Units representing an undivided interest in the Fund Units, each Unit of which represents an equal interest with each other Unit in the same Fund, none having priority or preference over another. The Participation Agreement provides that in the case of an investment in a C Fund consisting of assets of an employee benefit plan described in section 401(a) or section 403(b)(9) limitations similar to those described above for the C Funds are enumerated in the agreement concerning separate accounting, exclusive benefit and limitations on transferability.

For accounting purposes, the C Funds will issue to each Eligible Investor a number of Units in the Fund corresponding to the amount contributed, which represents such Eligible Investor's proportionate interest in the assets held in a C Fund. All periodic payments of dividends, interest, gains, or other earnings payable in respect of such assets will be automatically reinvested on behalf of the Eligible Investors. These amounts will be reflected in the value of the Units of the C Funds. The Eligible Investors may withdraw assets from the C Funds in minimum amounts of $*****.

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Eligible Investors will receive monthly, quarterly and annual reports showing the activities on their accounts, including contributions and withdrawals, and the fair market value of the Units held for their accounts.

Each Eligible Investor understands that it will bear its proportionate share of the annualized fees, expenses, and other costs incurred in operating the Funds.

It is anticipated that Plan W, Plan X and Plan Y with other Church related Endowment Funds ("General Church Endowment Funds"), including the non-pension endowment assets of one or more provinces, dioceses, parishes, missions, agencies, institutions and other entities connected with Church A (collectively referred to as "Eligible Investors") will participate in the commingling arrangement. In the future, other plans sponsored by a member of Church A or Church A affiliate that is qualified under Code section 401(a) or is described in section 403(b)(9), may also participate in the commingling arrangement.

Based on these facts and representations, your authorized representative requested the following rulings:

The proposed commingling arrangement (1) will not cause Plan W to be other than a qualified plan under section 401(a) of the Code, (2) will not cause Plan X to be other than a qualified plan under section 401(a) of the Code, and (3) will not cause Plan Y to be other than a retirement income account described in section 403(b)(9) of the Code.

Section 501(a) of the Code provides an exemption from federal income tax for organizations described in sections 401(a) and 501(c)(3). Section 501(c)(3) of the Code provides in part for an exemption from federal income tax of organizations organized and operated exclusively for charitable purposes.

Section 401(a)(2) of the Code provides that under each trust instrument it must be impossible, at any time prior to the satisfaction of all liabilities with respect to employees and their beneficiaries under the plan and the trust or trusts, for any part of the corpus or income to be used for, or diverted to,

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purposes other than for the exclusive benefit of the employees or their beneficiaries.

The Pension Provisions of the Conference Report for the Tax Equity and Fiscal Responsibility Act of 1982, Pub. L. 97-248, 1982-2 C.B. 462, 468, concerning retirement savings for church employees, provides, in part, as follows:

> The conferees intend that the assets of a retirement income account for the benefit of an employee or his beneficiaries may be commingled in a common fund made up of such accounts. However, that part of the common fund which equitably belongs to any account must be separately accounted for (i.e., it must be possible at all times to determine the account's interest in the fund), and cannot be used for, or diverted to, any purpose other than the exclusive benefit of such employee and beneficiaries. Provided those requirements are met, the assets of a retirement income account also may be commingled with the assets of a tax-qualified plan without adversely affecting the status of the account or the qualification of the plan.
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> The conferees also intend that the assets of a church plan (section 414(e)) may be commingled in a common fund with other amounts devoted exclusively to church purposes (for example, a fund maintained by a church pension board) if that part of the fund which equitably belongs to the plan is separately accounted for and cannot be used for or diverted to purposes other than for the exclusive benefit of employees and their beneficiaries. Of course, the reasonable costs of administering a retirement income account (including an account which is a part of a common fund) may be charged against the account. Such costs include the reasonable costs of administering a retirement income program of which the account is a part, including costs associated with informing employees and employers of the availability of the program.

Church A and all its affiliates (Eligible Investors) that have adopted or will adopt one of the Plans (Plan W, Plan X or Plan Y) and make contributions on behalf of their employees must be recognized as organizations exempt from tax under section 501(c)(3) of the Code. In addition, an Eligible Investor in the

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commingling arrangement must be one of Church A's Endowment Funds ("General Church Endowment Funds"), including the non-pension endowment assets of one or more provinces, dioceses, parishes, missions, agencies, institutions and other entities connected with Church A (collectively referred to as "Eligible Investors").

The primary function of the Administrator is to serve as both sponsor and administrator of Plan W, Plan X and Plan Y. The Administrator, Organization A, Organization B and Organization C are exempt from tax under section 501(c)(3) of the Code, and they are associated with and controlled by Church A through the Administrator within the meaning of section 414(e)(3) of the Code.

Under the commingling arrangement, the assets of Plan W, Plan X, Plan Y and Church A's Endowment Funds will be commingled and held by the C Funds for investment purposes. Although the C Funds will hold the assets of Plan W, Plan X, Plan Y and the Endowment Funds, the commingled assets will equitably belong to Plan W, Plan X and Plan Y and the Endowment Funds and will be separately accounted for. Further, Custodian D will be custodian of both C Funds.

For accounting purposes, Organization A will issue to each Eligible Investor a number of units in the Plans corresponding to the amounts contributed and represents each Eligible Investor's proportionate interest in the assets held in the commingling arrangement. Furthermore, the resolution passed by Organization B and Organization C will protect the assets of the Plans under the Commingling Arrangement, and the resolutions provide that no part of the Plan assets (or income therefrom) may be used for, or diverted to, purposes other than for the exclusive benefit of the employees who participate in the Plans or their beneficiaries. Under these circumstances we believe that the separate accounting requirement will be satisfied and that the assets of the Plans will be used only for the exclusive benefit of the employees of the Eligible Investors as required by the Tax Equity and Fiscal Responsibility Act of 1982.

Accordingly, based on these facts and representations we conclude as follows:

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The proposed commingling arrangement (1) will not cause Plan W to be other than a qualified plan under section 401(a) of the Code, (2) will not cause Plan X to be other than a qualified plan under section 401(a) of the Code, and (3) will not cause Plan Y to be other than a retirement income account described in section 403(b)(9) of the Code.

The Participation Agreement must be signed by the C Funds and each Eligible Investor that participates in the commingling arrangement. Further, the investment managers should also sign an agreement with Organization A and the C Funds that is at least as stringent as the Participation Agreements that will be signed by the Eligible Investors. That agreement should state the investment requisites, as follows: (1) the cost must not exceed the fair market value at the time of purchase, (2) a fair return commensurate with the prevailing rate must be provided, (3) sufficient liquidity must be maintained to permit distributions in accordance with the terms of the Plans, and (4) the safeguards and diversity that a prudent investor would adhere to must be present.

This letter expresses no opinion whether Plan W or Plan X is qualified under section 401(a) of the Code. This letter also expresses no opinion whether Plan Y is a retirement income account provided by a church as described in section 403(b)(9) of the Code. Also, the letter expresses no opinion as to whether Plan W, Plan X or Plan Y is a church plan described in section 414(e) of the Code.

This ruling is based upon the assumption that the assets of Plans W, X and Y will be used to provide participant benefits for each plan respectively.

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

The original of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office.

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If you have any questions please contact me or
at

Sincerely yours,

Alan Pipkin

Alan Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437