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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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Uniform Issue List: 414.08-00

T:EP:RA:YK

LEGEND:

Church A =

Church B =

School C =

School D =

Organization E =

State M =

City N =

Plan X =

Dear :

This is in response to a request for a ruling submitted on your behalf by your authorized representative dated March 24, 2005 as supplemented by letters dated July 21, 2005, July 13, 2006, and July 25, 2006 under section 414(e) of the Internal Revenue Code (the "Code"). The following facts and representations were submitted in connection with your request.

Church A is a member of Organization E, which forms part of a regional association of churches that accepts the constitution of Church B. In 1984, Church A established School D. In 1991, three officials of Church A (the "Incorporators") incorporated School D as a non-profit, non-stock organization under the laws of State M. The Articles of Incorporation provided that School D was organized on a "directorship basis" and that on dissolution, all of the assets of School D would be distributed to Church A. School D's original Bylaws, adopted in 1991, vested the power and authority to manage and control School D in its Board of Directors ("Board"), the members of which were originally named by the Incorporators. Thereafter, vacancies on the Board were appointed by a group of Church A members who managed the temporal affairs of Church A. In September of 1991, the Internal Revenue Service (the "Service") determined that School D was an organization described under Code section 501(c)(3) and exempt from tax under section 501(a).

In 2002, School D, known as School C in honor of a former Dean of Church A, amended its original Bylaws ("Amended Bylaws"). School C received a letter from the Service dated December 12, 2003, recognizing that its 1991 exemption under Code section 501(a) was still in effect. The Amended Bylaws provide that the Board must have at least 10 and not more than 20 directors unless otherwise approved by a local body of Church A in City N of State M ("Chapter"). The Chapter's 18 members are appointed by Church A's parish, the spiritual leader of Organization E, and members elected by Organization E. Under the Amended Bylaws, a nominating committee recommends candidates to fill vacancies on the Board due to expiring terms of directors. The nominating committee consists of five individuals, three of whom are directors selected by the Board and two of whom are members of the Chapter selected by the Chapter. The nominating committee is required to consult with the Chapter regarding its recommendations. The Board has the power and authority to approve or reject the nominating committee's recommendations, however, the Board can only elect directors from the pool of nominated candidates to fill the vacancies. Any vacancy that occurs for reasons other than expiration of a director's term must be filled by majority vote of the remaining directors, and the Board's selection is conditioned on the approval of the Chapter. Removal of directors is done by majority vote of the directors and is also subject to the Chapter's approval. Currently, the nominating committee consists of three members of the Chapter and two other individuals. A presiding official ("Dean") of Church A serves as Chairman of the Board, is a voting member of the Board, and must approve the Head of School selected by the Board. The Head of School serves as Chief Executive Officer of School C and is responsible for managing the day-to-day affairs of School C and implementing the Board's resolutions and programs.

The Dean of Church A may appoint a member of the clergy to serve as Chaplain to School C. The function of the Chaplain includes tending to the spiritual well-being and concerns of all who are associated with School C. School C's curriculum requires that each student in the fifth through eighth grades attend regular Christian education classes and all students must attend chapel on a weekly basis and recite a morning prayer. Church A manages School C's endowment, of which Church A has contributed half. This endowment is the source of the majority of financial aid and scholarships for students enrolled at School C. Church A owns the property on which School C is located, and Church A has made substantial loan repayments for School C's building without any contributions from School C. Church A provides two-thirds of the operating costs of School C's building and pays premiums for property and liability insurance for certain activities of School C. Church A also provides parking and electronic equipment for School C. Although there is no official Church A directory, Organization E has included School C in the report of its annual convention and in its publication entitled "Daily Cycle of Prayer." Due to financial constraints, School C as an operating institution is currently in the process of closing and will likely be dissolved.

School C maintains Plan X, a section 403(b) plan that was originally established effective January 1, 1990 for its eligible employees. Plan X was restated effective January 1, 1997. Since its inception, Plan X has been administered by a committee, the principal purpose or function of which was to administer Plan X; however, Plan X's documents failed to provide for the establishment of such a committee. Plan X's documents have always provided that School C shall be the administrator of Plan X, although, as of January 1, 1997, Plan X provided that School C, as plan administrator,

has authority to delegate full responsibility for the general administration of Plan X to an administrative committee (the "Committee"). The 1997 Plan document provided that the members of the Committee were to be appointed by the Dean of Church A with the consent of the Chapter, with a majority of those appointed being members of Church A's parish. School C, through its Board, has the authority to amend Plan X. The Board will amend Plan X to provide for the establishment of the Committee, the principal purpose and function of which is the administration of Plan X.

Based on the above facts and representations, you request a ruling that the taxpayer's section 403(b) Plan, Plan X, constitutes a church plan under Code section 414(e), and has constituted a church plan under section 414(e) since January 1, 1990, pursuant to the relief provided in Code section 414(e)(4).

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)(2) provides that the term "church plan" does not include a plan (A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) of a church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses or, (B) if less than substantially all of the individuals included in the plan are church employees (as described in section 414(e)(1) or 414(e)(3)(B)).

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.

Code section 414(e)(4)(A) provides that if a plan established or maintained for its employees by a church or convention or association of churches which is exempt from tax under section 501 fails to satisfy one or more of the requirements of section 414(e) and corrects the failure within the correction period, the plan is deemed to meet

the requirements of section 414(e) for the year in which correction was made and for all prior years.

Code Section 414(e)(4)(C)(i) provides that the term "correction period" means the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the church plan requirements.

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, all of the participants in Plan X are current and former employees of School C. School C is closely linked to Church A and Church B. School C is listed in official publications of Organization E, which forms part of the regional association of churches of Church B. The Board and Chief Executive Officer of School C are responsible for managing School C's operations. The nominating committee recommends candidates to the Board to fill vacancies due to the expiration of directors' terms, and currently three of the five members on the nominating committee are members of the Chapter. The nominating committee is required to consult with the Chapter regarding filling such vacancies, and the removal of directors is conditioned on the Chapter's approval. The Chief Executive Officer must be approved by the Dean of Church A.

Church A provides substantial financial support for School C. Daily prayer, weekly chapel, and religion classes infuse School C with the teachings of Church A. For these reasons, we conclude that School C shares common religious bonds and convictions with Churches A and B, and is therefore considered to be "associated" with Church A and Church B under the church plan rules. Accordingly, because the employees of School C are employed by an organization that is exempt from tax under Code section 501(a) and associated with a church or convention or association of churches (i.e., Church A and Church B), these employees are deemed to be Church A and Church B employees under section 414(e)(3)(B). Conversely, Churches A and B are considered to be the employer of the employees of School C under section 414(e)(3)(C).

In addition, the proposed amendment contained in the correspondence dated July 25, 2006 establishes a Committee the principal purpose and function of which is to administer Plan X. Under the proposed amendment, the Committee members will be appointed by the Dean of Church A with the consent of the Chapter, and a majority of Committee members is required to be members of Church A's parish. Because School C is "associated" with Church A and Church B within the meaning of Code section 414(e)(3)(D), the Committee therefore will be considered to be associated with or controlled by a church or a convention or association of churches within the meaning of section 414(e)(3)(A). The failure by Plan X to satisfy the requirements of Code section

414(e)(3)(A) will be corrected within the correction period defined in section 414(e)(4)(C)(i) by execution of the proposed amendment. Therefore, Plan X will be deemed to meet the requirements of section 414(e)(3)(A) for the year in which the correction was made and for all prior years back to January 1, 1990.

Accordingly, we conclude that the taxpayer's section 403(b) plan, Plan X, constitutes a church plan described under Code section 414(e), and has constituted a church plan described under section 414(e) since January 1, 1990.

This ruling is conditioned on timely execution of the above amendment. This letter expresses no opinion as to whether Plan X satisfies the requirements for a tax-sheltered annuity plan under Code section 403(b).

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

A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions or concerns, please contact

Sincerely yours,

Carlton A. Watkins

Carlton A. Watkins, Manager
Employee Plans Technical Group 1

Enclosures:
Copy of deleted letter
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