

Department of the Treasury  
Internal Revenue Service

200816031

JAN 25 2008

**Uniform Issue List: 414.08-00**

Attention:

LEGEND:

Entity A =

State B =

Plan X =

Church C =

Organization D =

Organization E =

Organization F =

Organization G =

Religion H =

Committee I =

City J =

Country K =

Dear :

This is in response to correspondence dated June 6, 2005, as supplemented by correspondence dated December 29, 2006, and April 2, September 14 and December 10, 2007, submitted on behalf of Entity A by its authorized representatives, concerning

whether Plan X qualifies as a church plan under section 414(e) and constitutes a retirement income account under section 403(b)(9) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalty of perjury in support of the rulings requested:

Entity A was established under the laws of State B as a not-for-profit corporation. Entity A is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3). Entity A is organized and operated exclusively to carry out the charitable and religious purposes of Church C.

Church C is an association of Religion H's congregations that share common religious bonds and convictions with Religion H. Church C is principally supported by four main entities, collectively known as the Supporting Organizations. The Supporting Organizations consist of Organizations D, E, F, and G, all of which are exempt from federal income tax under section 501(a) of the Code as organizations described in section 501(c)(3). The Supporting Organizations also share common religious bonds and convictions with Church C and Religion H.

Organizations D, E, and F, collectively known as the Guiding Organizations, are collectively responsible for setting the policies and direction of Church C. While each congregation is an autonomous local unit, Church C is organizationally and functionally dependent on the Guiding Organizations. The Guiding Organizations provide Church C with religious and doctrinal guidance, administrative support, educational development, and spiritual enrichment.

Organization D is an international body of clergyman. Currently there are approximately 1550 members of this organization who serve throughout the world as spiritual leaders of congregations, on academic campuses, in hospitals, and in military organizations, as teachers of Religion H. Organization D serves via Committee I, a sub-committee of Organization D, as Church C's central authority on Religion H law and custom. Committee I is composed of 25 clergymen who are voting members, and five lay persons who do not vote but participate fully in deliberations.

Organization E is an association of Church C's congregations in North America. Organization E currently is composed of affiliated congregations, grouped into 15 geographic regions, representing over one and a half million members. The mission of Organization E is to strengthen and service Church C and its congregations by providing standards of conduct and guidance regarding the best administrative practices. Organization E recognizes Committee I of Organization D as its authority on Religion H law, and works in close cooperation with the other arms of Church C to promote, nurture, and foster a unified faith. Specifically, Organization E coordinates with the other organizations to insure the placement of clergymen and other professionals in locations of greatest need. Organization E undertakes responsibility for the coordination of regional efforts to create new congregations in high growth areas.

Organization F is the primary seminary of Church C in City J. Organization F is the original educational institution of Church C and is regarded as a preeminent center for the academic study of Religion H outside of Country K. Organization F offers ordination after the completion of a five-year post-graduate program of study and religious development. In addition to educating clergymen, Religion H educators, and lay leadership in the spirit

of Religion H, Organization F provides educational opportunities to the broader community through information and formal academic religious programs.

The fourth main member of the Supporting Organizations, Organization G, while not a Guiding Organization, occupies a unique and special place in Church C. Organization G is the world's largest organization of clergymen who minister in a sacred capacity at rites and services, often also serving as a chaplain. Organization G sponsors the official placement agency of clergymen in Church C and is responsible for publishing new and out of print liturgical music.

Entity A was originally founded as a central agency of Church C commissioned with the task of making retirement benefits available to clergymen generally employed by the individual congregations that comprised Organization E, as well as seminary teachers of Organization F. Since its founding, Entity A has been expanded to include other professions and support staff employed by the congregations of Organization E, as well as other institutions of Church C and affiliated organizations who share Religion H's common bonds and convictions.

The primary function of Entity A is to support the retirement plans of the Supporting Organizations, Organizations D through G, by contracting with third-party vendors to provide centralized retirement investments and administration. Entity A serves the role of providing administration, due diligence, and economies of scale to the employers that comprise the Supporting Organizations.

The Supporting Organizations played an active role in the incorporation of Entity A and currently control Entity A's operations. The policies of Entity A are determined, and its affairs managed, by its Board of Trustees. The Board of Trustees is composed of 13 volunteer Trustees, all of whom are selected from the Supporting Organizations. Four Trustees are appointed by Organization D, four by Organization E, four by Organization F, and one by Organization G. Trustees are appointed by the presidents of their respective Organizations for a three-year term, with no limit on the number of terms that may be served. All official actions of Entity A require a majority vote of the Board of Trustees or its executive committee.

Entity A created Plan X to offer a retirement plan primarily to employees of the individual congregations that comprise Organization E, as well as to those who serve in the other Supporting Organizations and share the common religious bonds and convictions of Religion H. Entity A's structure enables it to enter into arrangements with third parties providing investment management services and programs of retirement and welfare benefits. This structure also facilitates the maintenance of administrative services necessary or incidental to the development or administration of such retirement and welfare benefit programs.

Plan X was adopted by Entity A effective October 1, . Plan X is a new plan, not a successor plan, which is intended to meet the requirements of section 403(b)(9) of the Code. Entity A has never intended that Plan X be subject to the Employee Retirement Income Security Act of 1974 (ERISA) and consequently has not sought to meet ERISA's requirements such as filing a Form 5500, Annual Return/Report of Employee Benefit Plan, or issuing a Summary Plan Description.

The overwhelming majority of participants in Plan X are employees of the member congregations that comprise Organization E. Also covered are employees of the Supporting Organizations and other organizations which are described in section 501(c)(3) of the Code which are closely affiliated with Church C. A very small number of participants who are either members of Organization G or Organization D and are self-employed as described in section 414(e)(5) of the Code, or employed by an organization described in section 501(c)(3) are also permitted to participate. Such participants, when coupled with the small number of participants who are employed by organizations closely affiliated with Church C, comprise less than five percent of Plan X's total participants. Only organizations which are recognized as tax-exempt organizations described in Code section 501(c)(3) are eligible to participant in Plan X. No eligible participants are or will be employed in connection with an unrelated trade or business of a participating employer, and all eligible participants are and will be employed by these participating employers, none of which are for-profit entities.

Plan X is a defined contribution plan which allows participants to direct the investment of their accounts. Entity A contracts with various investment management firms to provide and maintain an array of investment alternatives from which participants may make investment elections. Participants may select any combination of choices at the time of enrollment and may change that election at any time. Entity A monitors the choices on an ongoing basis, adding new selections and making replacements as appropriate. The principal purpose of Entity A is to sponsor and administer Plan X for the above-described Organizations and affiliates of Church C.

Only eligible employees may participate in Plan X. Eligible employee is defined in section 1.13 of Plan X as an employee of a participating employer who satisfies the participating employer's eligibility requirements or a self-employed clergy member who is a member of Organization D or Organization G. An eligible employee does not include an individual (a) who renders services to a participating employer but whose remuneration is paid by a third party, regardless of any governmental or judicial determination characterizing the individual as the participating employer's employee, or (b) who renders service as an independent contractor to a participating employer, as determined by the participating employer (regardless of the individual's employment status under applicable law).

Section 1.14 of Plan X defines an eligible employer as an employer that is exempt from tax under Code section 501(c)(3), has been determined by the Plan Administrator as eligible to participant in the Plan, and is affiliated with Church C or employs a member of Organization D or Organization G.

Pursuant to section 3.1 of Plan X, contributions may be made to the Plan by (a) employer contributions, (b) elective deferral contributions, (c) nondeductible employee contributions, (d) church plan catch-up contributions, and (e) catch-up contributions for participants age 50 and over. Participants may make elective deferral contributions to Plan X under a compensation-reduction agreement. Contributions made pursuant to the compensation-reduction agreement shall be subject to the limit on elective deferrals and the annual contribution limit.

Section 3.3 of Plan X provides the limits on annual contributions to Plan X. Section 3.3(b) limits overall annual contributions to the amounts specified in section 415 of the Code. The maximum amount of elective deferral contributions under Plan X, combined with any other elective deferral contributions made during the plan year to all other retirement

arrangements, are limited under section 3.3(c) of Plan X to the maximum dollar limit of section 402(g) of the Code.

Section 3.4 of Plan X provides that, subject to the Plan Administrator's approval, a participant may make an eligible rollover distribution into the Plan of all or part of amounts from his eligible retirement plans. The rollover must be transferred from the provider directly to the Plan X Administrator.

Under section 4 of Plan X, all contributions and earnings allocated to the account of a participant are fully vested and nonforfeitable at all times.

Pursuant to section 6.2 of Plan X, distributions may be made upon the occurrence of an Eligible Distribution Event. Section 1.12 defines Eligible Distribution Event as the occurrence of any of the following events: attainment of age 59 ½, severance from employment, death, total and permanent disability, or severe financial hardship. In the case of an eligible distribution for severe financial hardship, no earnings attributable to elective deferral contributions may be distributed.

Pursuant to section 6.3 of Plan X, distribution of a participant's accrued benefit shall not commence later than April 1 of the calendar year immediately following the calendar year in which the participant attains age 70 ½ or, if later, the calendar year in which the participant retires. All distributions shall comply with the required minimum distribution rules of section 401(a)(9) of the Code.

Based on the above facts and representations, the following rulings are requested:

1. Entity A constitutes an entity, as described in section 414(e)(3) of the Code, eligible to establish and maintain a church plan under section 414(e).
2. Plan X is a church plan under 414(e) of the Code.
3. Plan X constitutes a retirement income account under section 403(b)(9) of the Code.

With respect to ruling requests 1 and 2, section 414(e)(1) of the Code generally defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or a convention or association of churches includes a plan 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.

Section 414(e)(3)(B) of the Code defines "employee" of a church or convention or association of churches to include a duly ordained, commissioned, or licensed minister of a church in the exercise of his or her ministry, regardless of the source of his or her compensation, and 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.

Section 414(e)(3)(C) of the Code 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).

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

In order for an organization to have a qualified church plan, it 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) of the Code by virtue of the organization's affiliation with the church or convention or association of churches. In addition, a church plan must be established and maintained for its employees by a church or convention or association of churches which is exempt from tax under section 501 as provided in section 414(e)(1), or must be administered by an organization of the type described in section 414(e)(3)(A) of the Code.

Church C is an association of Religion H congregations that share common religious bonds and convictions with Religion H. Church C is principally supported by the Supporting Organizations which are exempt from federal income tax under section 501(a) of the Code as organizations described in section 501(c)(3) and also share common religious bonds and convictions with Church C and Religion H.

It has been represented that the overwhelming majority of the participants in Plan X are employees of the member congregations that comprise Organization E, which is an association of churches. Also covered are employees of the other Supporting Organizations and other organizations described in Code section 501(c)(3) which are closely affiliated with Church C. Although a very small number of participants who are either members of Organization G or Organization D and are self-employed, or employed by an organization described in section 501(c)(3), are also permitted to participate, such participants, when coupled with the small number of participants who are employed by organizations closely affiliated with Church C, comprise less than five percent of Plan X's total participants. The Supporting Organizations are all religious organizations that serve an integral role in Church C and are engaged in carrying out the essential functions of Church C. Likewise, the other associations affiliated with Church C serve integral roles in providing Church C with necessary support for the effective administration, governance, and advancement of Church C.

Accordingly, the participating employers in Plan X are considered to be associated with a church or convention or association of churches since they share common religious bonds and convictions with Church C and Religion H. Therefore, the participants in Plan X meet the definition of section 414(e)(3)(B) of the Code and are deemed to be employees of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and which is controlled by or association with a church or convention or association of churches.

However, an organization must also establish that its plan is established and maintained by a church or a convention or association of churches or by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the administration of the plan and must also be controlled by or associated with a church or a convention or association of churches.

Entity A is organized and operated exclusively to carry out the charitable and religious purposes of Church C. Entity A is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

Church C is principally supported by Organizations D through G, which played an active role in the incorporation of Entity A and currently control Entity A's operations through a Board of Trustees. The policies of Entity A are determined and its affairs managed by its Board of Trustees, all of whom are appointed by the presidents of their respective Supporting Organizations. All official actions of Entity A require a majority vote of the Board of Trustees or its executive committee. The principal purpose of Entity A is to sponsor and administer Plan X for the above-described Organizations and affiliates of Church C, all of which are associated with Church C and Religion H.

In view of the stated purposes of Entity A, its organization and structure, its actual activities, its control by its Board of Trustees, and its recognized status within Church C, Entity A meets the definition of section 414(e)(3)(A) of the Code and is deemed to be 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. In addition, Entity A is deemed to be controlled by or associated with a church or a convention or association of churches.

Therefore, the administration of Plan X satisfies the requirements regarding church plan administration under section 414(e)(3)(A) of the Code. Accordingly, Plan X is maintained by an organization that is controlled by or associated with a church or convention or association of churches, and the principal purpose or function of which is the administration of Plan X for the provision of retirement benefits for the deemed employees of a church or convention or association of churches.

Accordingly, with respect to your first ruling request, we conclude that Entity A constitutes an entity, as described in section 414(e)(3) of the Code, eligible to establish and maintain a church plan under section 414(e).

In addition, with regard to your second ruling request, we conclude that Plan X constitutes a church plan under section 414(e) of the Code.

With respect to ruling request 3, section 403(b)(1) of the Code states that amounts contributed by the employer shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable limit under section 415, provided (1) the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the

foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and, (5) in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract meets the requirements of section 401(a)(30).

Section 403(b)(9) of the Code provides that a retirement income account provided by a church shall be treated as an annuity contract described in section 403(b), and amounts paid by an employer described in paragraph (1)(A) to such an account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained. The term "retirement income account", for purposes of this section, means a defined contribution program established or maintained by a church, a convention, or association of churches, including an organization described in section 414(e)(3)(A), to provide benefits under section 403(b) for an employee described in paragraph (1) hereunder or his beneficiaries.

Section 403(b)(10) of the Code requires that arrangements pursuant to section 403(b) of the Code must satisfy requirements similar to the requirements of section 401(a)(9) and similar to the incidental death benefit requirements of section 401(a) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date. In addition, this section requires that, for distributions made after December 31, 1992, the requirements of section 401(a)(31), regarding direct rollovers, are met.

Section 401(a)(9) of the Code provides, in general, that the required beginning date for commencement of benefits is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½ or the calendar year in which the employee retires. Section 401(a)(9) specifies required minimum distribution rules for the payment of benefits from qualified plans.

Section 403(b)(11) of the Code provides, in general, that section 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only when the employee attains age 59 ½, has a severance of employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Section 403(b)(1)(E) of the Code provides that in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract must meet the requirements of section 401(a)(30). Section 401(a)(30) requires a section 403(b) arrangement, which provides for elective deferrals, to limit such deferrals under the arrangement, in combination with any other qualified plans or arrangements of an employer maintaining such plan providing for elective deferrals, to the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.

Section 402(g)(1)(A) of the Code provides, in general, that the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals exceeds the applicable dollar amount. For 2008, the applicable dollar amount is \$15,500.

Section 402(g)(7) of the Code provides that, in the case of a qualified employee of a qualified organization, with respect to employer contributions used to purchase an annuity contract under section 403(b) under a salary reduction agreement, the limitation of section 402(g)(1), as modified by section 402(g)(4), for any taxable year shall be increased by whichever of the following is the least: (i) \$3,000, (ii) \$15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or (iii) the excess of \$5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary). A "qualified organization" for these purposes means any educational organization, hospital, home health service agency, health and welfare service agency, church, or convention or association of churches and includes any organization described in section 414(e)(3)(B)(ii) and a "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

Section 415(a)(2) of the Code provides, in relevant part, that an annuity contract described in section 403(b) shall not be considered described in section 403(b) unless it satisfies the section 415 limitations. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract exceeding the section 415(b) or 415(c) limitations.

Section 415(c)(7)(B)(i) of the Code provides that all years of service by (I) a duly ordained, commissioned, or licensed minister of a church, or (II) a lay person, as an employee of a church, a convention, or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for one employer.

Part IV(d)(4) of the General Explanation of the Tax Equity and Fiscal Responsibility Act of 1982 (Act) contains, in pertinent part, the following information regarding investments made by or on behalf of participants for whom contributions are made into a retirement income account as described in section 403(b)(9) of the Code:

The Act also provided that, generally, the tax rules relating to tax-sheltered contracts apply to retirement income accounts provided by a church for its employees. Under the Act, a retirement income account means a program which is a defined contribution plan (sec. 414(i)) and which is established or maintained by a church to provide retirement benefits for its employees under the tax-sheltered annuity rules. Thus, a church-maintained retirement income account differs from a tax-sheltered annuity only in that the account is not maintained by an insurance company.

In this case, you represent that Entity A, an organization described in section 501(c)(3) of the Code which is exempt from tax under section 501(a), has established Plan X as a section 403(b) arrangement for employees of organizations related to Church C. Only employees of organizations which are tax-exempt organizations as described in section 501(c)(3) are eligible to participate in Plan X. All contributions to Plan X, and earnings thereon, are fully vested and nonforfeitable at all times. Plan X does not meet the requirements of a section 403(a) annuity contract.

Plan X satisfies the restrictions, under section 403(b)(11) of the Code, that amounts attributable to elective deferral contributions cannot be distributable earlier than upon the

attainment of age 59 ½, severance of employment, death, disability, or hardship. In addition, Plan X satisfies the section 403(b)(10) requirements and limits contributions in accordance with section 415 of the Code.

Accordingly, with respect to your third ruling request, we conclude that Plan X constitutes a retirement income account under section 403(b)(9) of the Code.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated September 14 and December 10, 2007.

This ruling does not address any provisions that may violate the nondiscrimination requirements of section 403(b)(12) and 401(m) of the Code. This ruling does not extend to any operational violations of section 403(b) of the Code by Plan X, now or in the future.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This letter 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 as precedent.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representatives. Should you have any concerns regarding this letter, please contact \_\_\_\_\_, ID# \_\_\_\_\_, at ( ) - \_\_\_\_\_.

Sincerely yours,



\_\_\_\_\_, Manager  
Employee Plans Technical Group 3

Enclosures:

- Deleted copy of ruling letter
- Notice of Intention to Disclose