



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201233027

MAY 25 2012

U.I.L.: 414.08-00

T:EP:RA:T3

Attn:

Legend:

Church A =

State B =

Plan X =

Corporation E =

Committee H =

Directory S =

Organization F =

Dear

This letter is in response to your request dated January 21, 2005, as supplemented by correspondence dated March 23, 2005, April 14, 2005, November 23, 2011, January 11, 2012, and February 3, 2012, submitted on your behalf by your authorized representative regarding the church plan status of Plan X within the meaning of section 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury on your behalf:

Church A established Organization F, which includes 12 State B counties within its geographic jurisdiction. Among Organization F offices is Corporation E, a separate corporation under the control of Organization F. Corporation E is a nonprofit corporation exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. Corporation E is organized under the laws of State B. Corporation E and Organization F are listed in Directory S, the official directory of Church A.

Corporation E's Articles of Incorporation describe the organization's purpose as to engage in organized charitable work embracing the total care and physical, mental and spiritual welfare of all persons and families. Corporation E is a nonprofit corporation governed by the provisions of the State B Nonprofit Corporation Act. The members of Corporation E are those persons elected or designated as Directors, its existence is perpetual and in the event of its dissolution, all of its assets revert to Organization F. Corporation E's bylaws provide that certain officers of Organization F are, by virtue of their offices, members of the Board of Directors of Corporation E. The bylaws also provide that all other members of the Board of Directors are appointed by the highest officer of Organization F, who also has the authority to appoint the chair and the chair-elect of the Board and who is named in the bylaws as president of Corporation E.

Corporation E sponsors Plan X for the benefit of employees of Corporation E. Plan X is a defined contribution plan including a section 401(k) arrangement that was originally established on January 1, 2001. Plan X is a new plan, not a successor plan, and meets the requirements of section 401(a) of the Code. From January 1, 2001 through September 27, 2004, Plan X was administered by Corporation E through its Executive Committee. Effective September 27, 2004, Committee H was established by a resolution of the Executive Committee of the Board of Directors of Corporation E with the principal purpose of administering Plan X. Committee H consists of ten individuals involved with the direction and management of Corporation E. Committee H members must share common religious bonds and convictions with Church A and are appointed by and serve at the pleasure of the Board of Directors of Corporation E. The Executive Committee may appoint additional or replacement members to Committee H.

During this entire period, the individuals covered by Plan X have been and continue to be employees of a 501(c)(3) organization controlled by and sharing common religious bonds with Church A through Organization F.

Committee H has not made the election under section 410(d) of the Code with respect to Plan X. However, it has in the past voluntarily operated Plan X in compliance with the standards of ERISA.

In accordance with Revenue Procedure 2011-44, Notice to Employees with reference to Plan X was provided on November 22, 2011. This notice explained to participants of Plan X the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X is a church plan under the provisions of section 414(e) of the Code, because its employees are deemed to be employees of Church A due to the control exercised by Church A over Corporation E and due to the common religious bonds and convictions it shares with Church A, and because Plan X is established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 of the Code, and that it is administered by an organization established by Corporation E for the principal purpose of administering and maintaining Plan X, effective as of January 1, 2001.

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)(2) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

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 by 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 a 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 of the Code, 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 of the Code 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 the organization shares common religious bonds and convictions with that church or convention or association of churches.

Section 414(e)(4)(A) of the Code provides that if a plan, intended to be a church plan, fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) of the Code provides, in pertinent part, 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.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446 supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request, and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches 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 control by or affiliation with a church or convention or association of churches. Employees of any organization maintaining a plan are considered to be church employees if the organization: 1) is exempt from tax under section 501 of the Code; and, 2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the plan must be administered or funded (or both) 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 or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In this case, Corporation E is a nonprofit organization described under section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code. Corporation E was organized exclusively for charitable and religious purposes

and is included in Directory S. Corporation E is under the control of Organization F, which was established by Church A and is listed in Directory S. Corporation E's bylaws provide that certain officers of Organization F are members of Corporation E's Board of Directors. The highest officer of Organization F is the president of Corporation E.

In view of the common religious bonds between Church A and Corporation E, the inclusion of Corporation E in Directory S, and the indirect control of Corporation E by Church A through Organization F, we conclude that Corporation E is associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of Corporation E meet the definition of employee under section 414(e)(3)(B) of the Code and that they are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization which is exempt from tax under section 501 of the Code and which is controlled by or associated with a church or a convention or association of churches.

Effective September 28, 2004, Plan X has been administered by Committee H which is controlled by the Board of Directors of Corporation E which has the power to appoint and remove members of Committee H. Because Corporation E is associated with Church A within the meaning of section 414(e)(3)(D) of the Code, Committee H is therefore considered to be associated with a church or convention or association of churches within the meaning of section 414(e)(3)(A) of the Code through its relationship with Corporation E.

Also, as provided under section 414(e)(4)(A) of the Code, where a plan fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction is made and for all prior years. Committee H was established to administer Plan X on September 28, 2004, which is within the correction period for Plan X.

Based on the foregoing facts and representations, we conclude that Plan X is a church plan within the meaning of Code section 414(e), and has been a church plan within the meaning of section 414(e) of the Code retroactive to January 1, 2001.

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 Program, Cincinnati, Ohio.

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 letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact
, SE: T: EP: RA: T3, at

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: