



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201247023

AUG 31 2012

U.I.L.: 414.08-00

T:EP:RA:T3

Attn:

Legend:

Taxpayer A =

Church A =

Individual I =

State B =

Plan X =

Committee H =

Directory S =

Dear

This letter is in response to your request dated December 21, 2005, as supplemented by correspondence dated January 27, 2012, and February 7, 2012, and February 27, 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:

Taxpayer A is an unincorporated religious organization exempt from taxation under section 501(c)(3) of the Code. Taxpayer A is listed in Directory S, which is the official listing of entities of related organizations whose mission is to further the objectives of Church A.

Parties interested in this request include 48 parishes, 24 elementary, middle and high schools, and 26 agencies and institutions. All of these interested parties (Participating Entities) are deemed to be exempt from taxation under section 501(c)(3) of the Code. Taxpayer A sponsors Plan X for the benefit of the employees of all the interested parties. Plan X is a defined benefit plan that was originally established on January 1, 1974. Plan X is a new plan, not a successor plan, and meets the requirements of section 401(a) of the Code.

All of the Participating Entities of Plan X are also listed in Directory S. No other entities are eligible to participate in Plan X. None of eligible participants are or can be considered employed in connection with one or more unrelated trades or businesses of Taxpayer A within the meaning of section 513 of the Code. All eligible participants are employed by Taxpayer A or the Participating Entities, and do not include employees of for-profit entities.

Section 5.1 of Plan X establishes Committee H for the purpose of administering Plan X. Committee H members consists of five members appointed by Individual I. Any member of Committee H may, at any time, be removed from office by Individual I. Individual I is defined in Plan X as the highest officer of Taxpayer A as duly appointed, from time to time, by the proper officials of Church A.

Taxpayer A has never made an irrevocable election under section 410(d) of the Code subjecting Plan X to ERISA. However, it has in the past voluntarily operated Plan X in compliance with the standards of ERISA, to include filing Form 5500 for Plan X, paying premiums to the Pension Benefit Guaranty Corporation, and updating and amending Plan X on a continuous basis.

In accordance with Revenue Procedure 2011-44, Notice to Employees with reference to Plan X was provided on February 22, 2012. This notice explained to participants of Plan X the consequences of church plan status.

Based on the foregoing, you request rulings that:

- (1) Plan X is a church plan under the provisions of section 414(e) of the Code; and
- (2) Taxpayer A's administration and operation of Plan X as subject to Title I of ERISA did not constitute such an election under section 410(d) of the Code.

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) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was subsequently amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. Law 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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 4(a) of Title I of ERISA provides that Title I generally applies to any employee benefit plan. However, section 4(b)(2) of ERISA states that Title I shall not apply to a "church plan" as defined in section 3(33) of ERISA, "with respect to which no election has been made under section 410(d) of the Internal Revenue Code of 1986."

Section 410(d) of the Code allows a church or convention or association of churches which maintains any church plan to make an irrevocable election to become subject to the provisions of Title I of ERISA and other provisions of the Code. Treasury Regulation section 1.410(d)-1 prescribes a procedure for making this election, namely, that a affirmative statement containing an irrevocable election to become subject to the provisions of ERISA must be attached to Form 5500, Annual Report/Return of Employee Benefit Plan, or attached to Form 5300, Application for Determination for Employee Benefit Plan.

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, Taxpayer A qualifies as a church or association of churches for purposes of the church plan rules. Additionally, all the entities whose employees participate in Plan X share the same common bonds and convictions of Church A, and Taxpayer A is a nonprofit organization described under section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code. Taxpayer A was organized exclusively for charitable and religious purposes and is included in Directory S.

In view of the common religious bonds between Church A and Taxpayer A, the inclusion of Taxpayer A and its participating entities in Directory S, we conclude that Taxpayer A 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 Church A and its Participating Entities 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 January 1, 1974, Plan X has been administered by Committee H which is controlled by Taxpayer A and has the power to appoint and remove members of Committee H through Individual I. Because Individual I 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.

Although Plan X has been maintained and operated in the past as if it had made an election under section 410(d) of the Code, such actions are insufficient to constitute an affirmative election as required under Treasury Regulation section 1.410(d)-1.

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, 1974.

Regarding the second ruling request, we conclude that Taxpayer A's administration and operation of Plan X as subject to Title I of ERISA did not constitute an irrevocable election under section 410(d) of the Code.

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,

A handwritten signature in black ink, appearing to read "Laura B. Warshawsky". The signature is fluid and cursive, with a long, sweeping underline that extends to the right.

Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of letter ruling
Notice 437

cc: