



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

201309028

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

U.I.L.: 414.08-00

DEC 3 2012

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Attn: xxxxxxxxxxxxxxx

Legend:

- Corporation A = xxxxxxxxxxxxxxxxxxxxxxx
- Association B = xxxxxxxxxxxxxxxxxxxxxxx
- Convention C = xxxxxxxxxxxxxxxxxxxxxxx
- Convention D = xxxxxxxxxxxxxxxxxxxxxxx
- Clergy H = xxxxxxxxxxxxxxxxxxxxxxx
- Church A = xxxxxxxxxxxxxxxxxxxxxxx
- Religion B = xxxxxxxxxxxxxxxxxxxxxxx
- Hospital M = xxxxxxxxxxxxxxxxxxxxxxx
- City L = xxxxxxxxxxxxxxxxxxxxxxx
- State S = xxxxxxxxxxxxxxxxxxxxxxx
- Board D = xxxxxxxxxxxxxxxxxxxxxxx
- Plan X = xxxxxxxxxxxxxxxxxxxxxxx
- Plan Y = xxxxxxxxxxxxxxxxxxxxxxx
- Plan Z = xxxxxxxxxxxxxxxxxxxxxxx

Committee F = xxxxxxxxxxxxxxxxxxxxxxxxx

Dear xxxxxxxxx:

This letter is in response to your request dated xxxxxxxxxx, as supplemented by correspondence dated xxxxxxxxxx and xxxxxxxxxx, submitted on your behalf by your authorized representative regarding the church plan status of Plan X, Plan Y, and Plan Z within the meaning of section 414(e) of the Internal Revenue Code ("Code").

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

Corporation A is a State S nonprofit corporation classified as a public charity under section 501(c)(3) of the Code. Corporation A was first organized in 18 and first incorporated as a pro-forma decree corporation in 18 by the legislature of State S. In 18 , Corporation A began to operate Hospital M, the first Religion B hospital in City L of State S.

From 18 until 19 , Corporation A continuously operated a hospital and nursing school under the control of Association B. In addition, over the years it engaged in other charitable activities, such as the operation of an orphanage, retirement center, and nursing home. These efforts were directed with the intention of more efficiently carrying out the collective religious ministries of Association B to the ill, needy, and elderly.

In 19 , Corporation A chose to redirect its activities by terminating its hospital operation and refocusing its resources into its other charitable endeavors in furtherance of its religious mission under Church A doctrine. Corporation A's current charitable endeavors consist of providing senior housing and services.

The members of Corporation A are church congregations that form Association B. Association B controls Corporation A. Each church in Association B is exempt from federal income taxation under the group exemption ruling of either Convention C or Convention D.

Association B has a distinct legal existence, recognized creed, a distinct legal history, established place of worship, regular congregations, regular religious services, Sunday schools for the religious instruction of the young, and schools for the preparation of their ministers. Association B has carried out the churches' collective religious and charitable ministries to the ill, needy, and elderly. Corporation A operates church homes for aging people. percent of its residents are members of Church A.

Association B's members are the sole members of Corporation A. Section 2.1 of Corporation A's bylaws limits membership to members of Association B within City L. Each member is entitled to appoint one Regular Delegate, who ordinarily will be the President of the church. If the church does not have a President, another equivalent officer shall serve as the Regular Delegate and the Member's Senior Pastor shall serve as the Alternate Delegate. Delegates of the member churches elect the Board of Directors of Corporation A according to section 3.5 of the Bylaws.

All directors must be communicant members in good standing of the churches that are Members of Corporation A. In addition, at least two directors on the Board of Directors shall be professional church workers from churches that are Members of Corporation A.

Corporation A's communities are served by Clergy H, specially trained for ministry with older persons. In addition, Clergy H serve in hospice care and are on call 24-hours a day, 7-days a week to residents and their families. Clergy H host Sunday and midweek worship services at Corporation A's communities, teach Bible classes, and provide grief support and private communion. Clergy H assist residents of the communities who choose to plan a funeral or a memorial service to be held in the chapel on campus. Corporation A also offers a Clinical Pastoral Education program through which student chaplains serve at Corporation A's communities, making pastoral contact with residents, families or staff through visits, Bible classes, worship devotions and community activities.

Corporation A is a recognized service organization of Convention C and affiliated with Convention D. These associations with Convention C and Convention D require very specific obligations of Corporation A, including identification with the Church A mission and ministry, compliance with doctrinal and religious practice standards, adoption of specific denominational language for inclusion in its governing instruments and engaging in program activities that are in harmony with the programs of the boards of the Church A denomination. As part of the association requirements, the bylaws of Corporation A state that: "it is the intent of the Corporation to be recognized by Convention C and affiliated with Convention D and function in accordance with the criteria and provisions of each church body." Corporation A is listed in the official directory of related organizations of both Convention C and Convention D.

Corporation A's corporate documents ensure that Association B has retained influence over Corporation A and will continue to retain such influence. The Bylaws provide that the business and property of Corporation A shall be managed and controlled by Board D. Association B may remove any director for whatever reason or cause as they deem best in their sole discretion, by a majority vote. Association B, though its election of the Board of Directors of Corporation A, have also reserved to themselves certain important powers regarding the governance of Corporation A including powers relating to the

amendment of the Bylaws, and the merger, dissolution, sale or disposition of all or substantially all of Corporation A's assets.

Corporation A sponsors Plan X, Plan Y, and Plan Z ("Plans") each of which is administered by Committee F. The members of Committee F are appointed by Board D and three officers (the President, Vice- President, Human Resources and Chief Financial Officer) of Corporation A.

Plan X is a defined benefit plan that was established in 19 . All of the participants in Plan X are employees of Corporation A, but the plan became closed to new participants in 20 , so employees of facilities that were acquired by Corporation A shortly before 20 and all new employees of Corporation A on or after November 26, 20 are not eligible to participate. In addition, leased employees and the employees covered by a denomination qualified plan of Convention C are not eligible to participate. Committee F has full power and authority to administer Plan X in all respects. Plan X has not made an election under section 410(d) of the Code to be subject to the Employee Retirement Income Security Act ("ERISA").

Plan Y is a defined contribution plan that was established in 19 . All employees of Corporation A are eligible to participate in Plan Y, except that any ordained or commissioned minister who participates in a retirement plan of the Church A denomination in which he or she was ordained or commissioned (either Convention C or Convention D) is not eligible to participate. Committee F has full power and authority to administer Plan Y in all respects. Plan Y has not made an election under section 410(d) of the Code to be subject to ERISA.

Plan Z is a defined contribution plan that was established in 20 . All employees of Corporation A are eligible to participate in Plan Z, except that any ordained or commissioned minister who participates in a retirement plan of the Church A denomination in which he or she was ordained or commissioned (either Convention C or Convention D) is not eligible to participate. Committee F has full power and authority to administer Plan Z in all respects. Plan Z has not made an election under section 410(d) of the Code to be subject to ERISA.

In accordance with Revenue Procedure 2011-44, Notice to Employees with reference to the Plans was provided on November 18, 20 . The notice explained to participants of the Plans the consequences of Church Plan Status.

Based on the foregoing, you request a ruling that the Plans are Church Plans within the meaning of section 414(e) of the Code effective January 1, 20 .

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 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.

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 the 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 the church or a 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 administration or funding (or both) of the plan must be 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 a convention or association of churches.

Revenue Ruling 74-224, 1974-1 C.B. 61, concludes that an exempt organization whose governing membership is comprised of churches of different denominations qualifies as an association of churches within the meaning of section 170(b)(1)(A)(i) of the Code for purposes of classification as an organization that is not a private foundation with the meaning of section 509(a)(1) of the Code. The revenue ruling also provides that although the term "convention or association of churches" has an historical meaning generally referring to a cooperative undertaking by churches of the same denomination, nothing in the legislative history or religious history of the term prevents its application to a cooperative undertaking of churches of differing denominations, assuming such convention or association otherwise qualifies for recognition of exemption as an organization described in section 501(c)(3) of the Code.

In this case, Corporation A is a not-for-profit corporation which is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. Association B that controls Corporation A is comprised of churches from two different denominations, but the churches all are associated with Church A, share core religious beliefs, and engage in the cooperative undertaking of carrying out the religious and charitable ministries of the churches. For church plan rules, Association B constitutes an "association of churches."

All of the employees covered by the Plans are employees of Corporation A, a tax-exempt organization that is controlled by Association B. The members of Board D are elected entirely by Association B. All of the directors must be members of Association B. Association B may remove any director for whatever reason or cause as they deem best in their sole discretion, by a two-thirds majority vote. Members of Association B also provide financial and volunteer support for Corporation A. Thus, Corporation A is controlled by the association of churches within the meaning of section 414(e)(3)(A) of the Code.

Corporation A also is associated with Convention C and Convention D and shares common religious bonds and convictions with them. In view of the control of Board D of Corporation A by Association B and the relationship of Association B to Corporation A, the employees of Corporation A are deemed employees of a church or of a convention or association of churches under section 414(e)(3)(B) of the Code. Additionally, Association B is the employer of Corporation A for purposes of section 414(e)(3)(C) of the Code.

No employees in the Plans are employed in connection with an unrelated trade or business within the meaning of section 513 of the Code. All of the employees who are covered by the plans are employees of Organization A which is controlled by Association B. Thus, the plans are not maintained primarily for the benefit of employees employed in connection with one or more unrelated trades or businesses within the meaning of section 513 of the Code and satisfy the requirements of section 414(e)(2)(A) of the Code.

Committee F serves at the pleasure of Board D and its principal purpose or function is to administer the Plans in accordance with their terms. Committee F is controlled by or associated with Association B through its relationship with Board D. The appointment and removal of all committee members of Committee F is made by Board D or Organization A which, in turn, is elected entirely and thus is controlled by Association B. Therefore, Committee F is an organization, the principal purpose or function of which is the administration or funding of the plans or programs for the provision of retirement benefits for employees of Organization A and qualifies as an organization described in section 414(e)(3)(A) of the Code.

Based on the foregoing facts and representations, we conclude that the Plans are church plans within the meaning of section 414(e) of the Code effective January 1, 2009.

This letter expresses no opinion as to whether Plan X and Plan Y satisfy 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,

This letter also expresses no opinion as to whether Plan Z satisfies the requirements of section 403(b) of the Code.

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.

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

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 xxxxxxxxxxxxxxxxx, SE:T:EP:RA:T3, at xxxxxxxxxxxxxxxxx.

Sincerely yours,



William B. Hulteng
Manager, Employee Plans Technical

Enclosures:
Deleted Copy of letter ruling
Notice 437

cc: xxxxxxxxxxxxxxxxx