



TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

201420028

FEB 18 2014

U.I.L 414.08-00

SET:EP:RA:T3

LEGEND:

Entity A =

Entity B =

Entity C =

Entity D =

Entity E =

Entity F =

Entity G =

Entity H =

Entity I =

Entity J =

Entity K =

Entity L =

201420028

Plan 1 =

Religion X =

State Y =

Country Z =

Area 1 =

Campaign W =

Dear :

This letter responds to your July 22, 2004 ruling request, as supplemented by correspondence dated September 2, 2004, April 15, 2005, January 13, 2012, January 19, 2012, January 25, 2012, June 14, 2012, February 19, 2013, April 16, 2013, May 1, 2013, June 30, 2013, July 2, 2013 and January 23, 2014, submitted by your authorized representative, concerning whether Plan 1 qualifies as a church plan under section 414(e) 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 is a not-for-profit corporation organized under the laws of State Y and is exempt from federal income tax under section 501(c)(3) of the Code. Entity A is a communal welfare organization that serves members of the Religion X faith in Area 1 of State Y. The mission of Entity A is to enhance the life of the Religion X community, rooted in its religious heritage, and with a commitment to members of the Religion X faith in State Y, Country Z, and throughout the world. The activities of Entity A and its beneficiary agencies are interwoven with and enhance the spiritual mission of the Religion X churches in Area 1. Rather than each church providing a broad range of communal services on its own, Entity A has historically provided the Religion X community a single central organization for purposes of a broad range of communal services, including educational programs; youth camps; relief for the indigent; educational, vocational, and housing assistance; homes for the aged; and other programs for Religion X cultural and religious enrichment. The relationships between Entity A, its beneficiary agencies and the Religion X churches are mutually supportive: the churches provide platforms for the generation of resources, which in turn, lead to wide-ranging support for the churches in promoting the teachings and tenets of the Religion X faith. The bonds that tie Entity A,

the beneficiary agencies and the Religion X churches are religious, spiritual and cultural bonds that tie the underlying religious precepts of the Religion X faith to every aspect of Entity A's and the beneficiary agencies' missions.

The Entity A Constitution and By-Laws provides that Entity A shall seek to be representative of all members of the Religion X faith and all Religion X entities having a constructive interest in Religion X life located in Entity A's service and fund-raising area. Entity A's Constitution and By-Laws defines the Entity A area as Area 1. Entity A's Constitution and By-Laws provides that in the event of dissolution of Entity A, its assets will be distributed only to organizations that are exempt from tax under section 501(c)(3) of the Code.

Entity A is governed by a Board of Trustees, consisting of 125 to 175 trustees, each of whom is elected for a three-year or one-year term. Members of Entity A elect the trustees, in their collective capacity as the General Assembly of Entity A. Entity A's Constitution and By-Laws define a beneficiary agency as an agency in State Y that applies for and receives funds for the support of services it renders to the local community, and which must have as its primary purpose the furtherance of Religion X life or some aspect of Religion X life. Each such organization appoints a trustee. Additional members of the Board of Trustees include the past presidents of Entity A, the president of Entity C, the president of Entity B, and the chairpersons of several committees of Entity A. All of the current members of the Entity A Board of Trustees are members of Religion X and each of them belongs to one or more Religion X churches. Entity A asserts that it is now part of a controlled group that includes Entity B, Entity C, and Entity D.

Entity B is a for-profit corporation organized under the law of State Y. Entity B's mission is to publish a weekly newspaper for Entity A. Entity B is governed by a Board of Trustees who are either elected by the Board of Trustees of Entity A or appointed by other participating members of Entity A. According to the By-Laws of Entity B, at least 60% of the Entity B Board of Trustees must consist of trustees appointed by Entity A. Entity A represents that it has consistently appointed all of the trustees of Entity B. The President of Entity A is an ex officio board member of Entity B. Trustees of Entity B may be removed by action of its Board of Trustees. The Entity B By-Laws provide that vacancies on the Board of Trustees of Entity B are filled by the organization that made the prior appointment. The Entity B By-Laws also provide that the Entity B Board of Trustees appoints its own Officers.

Entity C is tax-exempt under section 501(c)(3) of the Code, and a not-for-profit corporation under State Y law. Entity C's By-Laws provide that it shall act as an instrument of Entity A in receiving, administering, and allocating funds and property for capital and special purposes of Entity A and its beneficiary agencies. Entity C By-Laws also provide that Entity A elects all of the members of the Entity C Board of Trustees. Entity A asserts that Entity C is a subsidiary of and under direct control of Entity A.

Entity D is a wholly owned subsidiary of Entity A and is tax exempt under section 501(c)(3) of the Code, and a State Y not-for-profit corporation. The mission of Entity D is to advance and enhance Religion X educational experiences for the community of Area 1, with its initial focus on young people, from early childhood through teenage years, and their families. The vision statement for Entity D provides that its vision is to make Area 1 the Religion X community of choice for those who seek creative, dynamic, relevant and stimulating Religion X educational experiences at every stage of life. Entity A is the sole member of Entity D. Entity D is governed by its Board of Trustees, whose members are elected by Entity A and may be removed by Entity A. The Entity D Constitution and Bylaws provide that upon the dissolution of Entity D, its assets will be distributed to charitable, religious, scientific, literary or educational organizations which are exempt from tax under section 501(c)(3) of the Code.

Entity E, which was dissolved and replaced by Entity D, was a tax exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation, whose mission was to foster quality, life-long Religion X education for all adherents of the Religion X faith, affiliated and non-affiliated. Entity E was governed by a Board of Trustees which was elected by dues paying members. Dues were established by the Board of Trustees, subject to Entity A approval. The Board of Trustees of Entity E had the power to appoint and remove the officers of Entity E.

Entity F is a tax-exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation whose objects and mission are to provide a continuum of health related and social services to the Religion X elderly and disabled regardless of their ability to pay. Since 1906, its vision has been to be a leader among all long term care facilities. The Articles of Incorporation for Entity F provide that it does not have members. The By-Laws of Entity F provide that it shall be governed by a Board of Governors and that no person may serve on the Board of Governors if such person has failed to contribute to Campaign W in the preceding calendar year.

Entity G is a tax-exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation that has served Area 1 since 1861. The purpose of Entity G is to provide comprehensive social and therapeutic services to the Religion X members residing in Area 1 and to the general community. Entity G's services preserve and enhance family values and functioning, promote healthy personality development, and respond to the stress and distress impacting people throughout the life-cycle. Entity G is governed by its Board of Trustees. Members of Entity A are eligible to become members of the Entity G Board of Trustees once they have paid the dues fixed by the Entity G Board of Trustees. Entity G officers are nominated by a nominating committee, whose recommendations are acted upon by its Board of Trustees. The Board of Trustees also has the authority to remove or suspend any officer of the organization. The Entity G By-Laws provide that upon its dissolution, its assets shall be distributed to a Religion X non-profit organization that is exempt from tax under section 501(c)(3) of the Code, to be used for purposes similar to the purpose for which Entity G was organized.

Entity H is a tax exempt organization under section 501(c)(3) of the Code, and a State Y voluntary membership association. Entity H is a social service agency dedicated to helping members of the Religion X community and others residing in Area 1 to realize more adequate educational, vocational, and social adjustment through the provision of professional guidance, job placement, vocational rehabilitation, émigré resettlement and services to the aging. Entity H was organized in 1939 to help unemployed members of Religion X find jobs during the Depression. It also provided vocational and testing services to young and adult members of Religion X. Any member of the Religion X community or of Entity A is eligible for membership in Entity H, upon payment of the prescribed Entity H dues. The By-Laws of Entity H provide that a Board of Trustees, made up of its members, shall govern Entity H and that upon the dissolution of Entity H, its assets will be distributed to Entity A or such other charitable organizations as designated by Entity A that enjoy tax exempt status under section 501(c)(3) of the Code.

Entity I is a tax-exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation whose vision is to be the premier social, recreational, cultural, and educational center for members of the Religion X faith in Area 1. The goal of Entity I is to inspire every individual to explore the boundless potential of the Religion X faith. Entity I aims to be a welcoming neighborhood of members of the Religion X faith that links every member of the Religion X faith to the home, the community, and the rest of the Religion X world. The mission of Entity I is to infuse Religion X values, culture and joy throughout the community; create Religion X experiences and build lasting Religion X memories; nurture commitment to Religion X learning and life choices; represent an entry-point into a community that accepts and respects diversity among members of the Religion X faith as well as people of all races, creeds, nationalities, abilities, and disabilities; and strengthen ties to Religion X institutions, Religion X churches, Country Z, and the global Religion X community. The Entity I By-Laws provide that upon its dissolution, its assets, after the payment of all debts and liabilities, shall be distributed for one or more exempt purposes within the meaning of section 501(c)(3) of the Code or shall be distributed to the federal government or to a state or local government for a public purpose. The By-Laws also provide that all persons desiring to utilize its services and/or participate in its activities and who subscribe to its purpose shall be eligible for membership. The Entity I By-Laws provide that it shall be governed by a Board of Trustees made up of members of Entity I who are at least 18 years old and are committed to the Religion X life and mission of Entity I and who are willing to volunteer on behalf of Entity I.

Entity J is a tax-exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation whose mission is to provide suitable accommodations with services for the independent and non-institutionalized elderly, with sensitivity to the spiritual needs of members of the Religion X faith and to offer opportunities for them to express their own affiliation through religious services and practices consistent with all approaches to the Religion X faith. Entity J provides low and middle-income housing, assisted living, and support services for senior citizens within Area 1. In addition, Entity J operates in accordance with the Religion X religious requirements for daily life. The

By-Laws of Entity J provide that a Board of Trustees governs Entity J. The By-Laws of Entity J do not make any provision for its dissolution.

Entity K is a tax exempt organization under section 501(c)(3) of the Code, and a State Y not-for-profit corporation whose mission is to be the lead multi-purpose agency dedicated to providing an integrated program of community education, advocacy and services for individuals with developmental disabilities and their families. Entity K strives to maximize the potential of individuals with developmental disabilities and promotes opportunities for their integration into the Religion X community and general communities. Entity K's vision statement indicates that it will foster a Religion X environment within its residences and ensure that Religion X values and experiences are an integral part of its programs. The Entity K By-Laws provide that a Board of Trustees shall govern it. The By-Laws further provide that upon its dissolution, the assets of Entity K should be distributed as set forth in its Certificate of Incorporation.

Entity L was an organization that provided community cultural, exercise and recreational opportunities to the Religion X community. Entity A asserts that it believes that Entity L was merged into Entity I but Entity A asserts that it has no documentation to support this. Entity A has not provided information regarding whether Entity L's purpose or whether Entity L was exempt from tax under section 501(c)(3) of the Code.

On January 1, 1953, Entity A established Plan 1 as a qualified multiple employer plan under section 401(a) of the Code. Plan 1 was restated from time to time, including restatements effective January 1, 1997, and January 1, 2013. Entity A received a determination from the Internal Revenue Service (Service) that Plan 1 was qualified under section 401(a) of the Code and a multiple employer plan under section 413(c) of the Code.

Entity A, Entity B, Entity C, Entity F, Entity G, Entity H, and Entity I joined Plan 1 at its establishment. Entity J joined Plan 1 in 1982 or 1983. Entity K joined Plan 1 in 1988. Entity L joined and later left Plan 1. Entity A asserts that it has no records of the dates of Entity L's entry into and departure from Plan 1. Entity E was an original participating employer but it later dissolved. Entity D entered Plan 1 when it replaced Entity E in 2006.

Plan 1 was frozen for all participants on July 1, 2011. Entity A represents that none of the eligible plan participants in Plan 1 are or can be considered employed in connection with one or more unrelated trades or businesses within the meaning of section 513 of the Code.

Plan 1 is administered by the Pension Committee. According to Section 10.1 of Plan 1, the sole function of the Pension Committee is to administer and serve as the fiduciary of Plan 1. The Pension Committee has the exclusive responsibility and authority to control and manage the operation and administration of Plan 1, except to the extent such responsibility and authority are otherwise specifically allocated to Entity A or the Trustee under the Plan and Trust Agreement. Section 10.16 of Plan 1 provides that the Pension

Committee shall be responsible for the investment of assets of the Plan 1 trust fund. The President of Entity A designates the members of the Pension Committee with the consent of the Board of Trustees of Entity A. The President of Entity A serves as a voting member of the Pension Committee and the assistant secretary of Entity A serves as a non-voting member of the Pension Committee. The President of Entity A has the power to remove any member of the Pension Committee at any time without cause and without notice, and any member may resign at any time upon five days' notice to the Board of Trustees of Entity A. The Pension Committee has been made up of members of Entity A since Plan 1 began.

Entity A represents that it has not made an election under section 410(d) of the Code with respect to Plan 1

In accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446, Notice to Employees with reference to Plan 1 was provided on January 12, 2012. This notice explained to participants of Plan 1 the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan 1 is a church plan within the meaning of section 414(e) of the Code.

Section 413(c) of the Code provides for the participation, exclusive benefit, vesting, funding, and liability for funding tax, deduction limits, and allocations for a plan maintained by more than one employer.

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 generally 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 it 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.

Section 1.414(c)-5(b) of the Treasury Regulations (Regulations) provides that for an organization that is exempt from tax under section 501(a) of the Code whose employees participate in a plan, the employer with respect to that plan includes the exempt organization whose employees participate in the plan and any other organization whose employees participate in the plan and any other organization that is under common control with that exempt organization. For this purpose, common control exists between an exempt organization and another organization if at least 80% of the directors or trustees of one organization are either representatives of, or directly or indirectly controlled by the other organization. A trustee or director is treated as representative of another exempt organization if he or she is also a trustee, director, agent, or employee of the other organization. A trustee or director is controlled by another organization if the other organization has the general power to remove such trustee or director and designate a new trustee or director. Whether a person has the power to remove or designate a trustee is based on the facts and circumstances.

Section 1.414(e)-1(a) of the Regulations provides that in general a church plan means a plan established and at all times maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501(a),

and if at any time during its existence a plan is not a church plan because of its failure to meet the requirements, it cannot thereafter become a church plan.

Section 1.414(e)-1(c) of the Regulations provides that a church plan does not include a plan maintained by two or more employers unless: (1) Each of the employers is a church that is exempt from tax under section 501(a), and; (2) With respect to the employees of each employer, the plan would be determined to be a church plan based on all of the facts and circumstances.

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 Service as part of the ruling request; and, (3) provides procedures for the Service 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 the 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 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 convention or association of churches. If the organization that employs the plan participants and the organization that administers the plan both meet the required control by or association with a church, the plan participants are deemed to be employees of such church and the church is deemed to have established and maintained the plan.

Further, in order for a multiple employer plan to be a church plan, each adopting employer must be either a church, or a convention or association of churches, which is exempt from tax under section 501 of the Code or an organization that is permitted to maintain a church plan through operation of section 414(e)(3)(A) of the Code. Thus, if with respect to a single employer the plan fails to qualify as a church plan, then the entire plan fails to be a church plan, subject to the correction procedures of section 414(e)(4) of the Code.

You have represented that Entity A is part of a controlled group with Entities B, C and D. Although the By-Laws of Entity B require that Entity A appoint only 60 percent of the Board of Trustees, you have represented that, in fact, the Board of Trustees of Entity B

has consistently been entirely appointed by Entity A. The By-Laws of Entities C and D provide that Entity A elects all of the members of their Boards of Trustees. You represent that Entities F through K are not part of the controlled group. You also represent that Entities E and L, which were formerly participating employers in Plan 1 were not part of the controlled group.

In order for the IRS to conclude that Plan 1 is a church plan, you must, at a minimum prove that all of the entities described above are "controlled by or associated with" a church. Sections 414(e)(3)(A) and (D) require the presence of a "church" and a facts and circumstances analysis of the connections between the church and the entities that participate in the plan. Plan 1 will not be a church plan merely because the entities sponsoring Plan 1 are associated with the same religious denomination. Instead, the entities must be controlled by or associated with an organization that is a church, convention of churches or association of churches, and the connections must be more than merely incidental. The connections must show an ongoing active relationship between each entity and the designated church.

In this case, you have not demonstrated that a church, or association or convention of churches, controls Entity A, any of the other entities that adopted Plan 1, or the Pension Committee. Similarly, you have not demonstrated that a church, or association or convention of churches, plays any role in the governance of Entity A, any of the other entities that adopted Plan 1, or the Pension Committee. On the other hand, you have represented that many of the individuals involved in the governance of Entity A, the other entities that adopted Plan 1, and the Pension Committee are members of one or more Religion X churches, and that Religion X clergy participate in the activities of Entity A and the other entities that adopted Plan 1, although not necessarily as representatives of the Religion X churches.

You have represented that a relationship exists between the Religion X churches in Area 1 and Entity A in that the activities of Entity A and the other entities that adopted Plan 1 are interwoven with and enhance the spiritual mission of the Religion X churches in Area 1, and that Entity A and the other entities that adopted Plan 1 provide a broad range of communal services to the Religion X community that would otherwise be provided directly by the Religion X churches. You have further represented that the relationship between Entity A, the other entities that adopted Plan 1, and the Religion X churches is mutually supportive and based on common religion, spirituality and culture. However, even though Entity A and the other entities that adopted Plan 1 share the same religion and serve the same community as the Religion X churches, we find that you have not demonstrated that a church, or association or convention of churches, is associated with Entity A, any of the other entities that adopted Plan 1, or the Pension Committee in such a way that the employees of Entity A and the employees of the other entities that adopted Plan 1 could be deemed to be employed by a church, or association or convention of churches. Thus, none of the employees that participate in Plan 1 are deemed to be employees of a church or a convention or association of churches.

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Based on the foregoing facts and representations, we conclude that Plan 1 is not a church plan under section 414(e) of the Code and has not so qualified since its establishment.

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 representative.

If you wish to inquire about this ruling, please contact me at () - . Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,



Laura B. Warshawsky, Manager
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter
Notice of Intention to Disclose

cc: