



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

201432028

TAX EXEMPT AND  
GOVERNMENT ENTITIES  
DIVISION

MAY 16 2014

U.I.L 414.08-00

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Attention: xxxxxxxxxxxx

LEGEND:

Order A = xxxxxxxxxxxxxxxx

University B = xxxxxxxxxxxxxxxx

Order C = xxxxxxxxxxxxxxxx

Board D = xxxxxxxxxxxxxxxx

Agreement E = xxxxxxxxxxxxxxxx

State F = xxxxxxxxxxxxxxxx

Commission H = xxxxxxxxxxxxxxxx

Entity K = xxxxxxxxxxxxxxxx

Plan X = xxxxxxxxxxxxxxxx

Plan Y = xxxxxxxxxxxxxxxx

Plan 1 = xxxxxxxxxxxxxxxx

201432028

Plan 2 = xxxxxxxxxxxxxxxx

Plan 3 = xxxxxxxxxxxxxxxx

Plan 4 = xxxxxxxxxxxxxxxx

Plan 5 = xxxxxxxxxxxxxxxx

Directory Z = xxxxxxxxxxxxxxxx

College N = xxxxxxxxxxxxxxxx

Community M = xxxxxxxxxxxxxxxx

Board P = xxxxxxxxxxxxxxxx

Church O = xxxxxxxxxxxxxxxx

Dear xxxxxxx:

This is in response to your letter dated April 17, 2012, as supplemented by correspondence dated July 16, 2012, and May 10, 2013, submitted on your behalf by your authorized representative, concerning whether Plan X, Plan Y, and your five welfare plans, Plan 1, Plan 2, Plan 3, Plan 4 and Plan 5 are church plans within the meaning of 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:

Order A was incorporated in xxxxxxx in State F as a seminary for priesthood students. Order A is part of Order C, a Church O religious order, which consists of independent xxxxxxx communities.

University B includes a college of Liberal Arts and Sciences and the School of Theology. University B operated under the full direction and responsibility of Order A from xxxxxxx until xxxxxxx. From xxxxxxx until xxxxxxx, University B remained an operating division of Order A which was assisted in its governance functions by Board

D. Board D consists of 24-44 persons. The xxxxxxx of Order A appointed eight xxxxxxx to Board D, and Board D self-selected the remaining members, including one representative each nominated by the alumni association, student government, and faculty.

In response to a recommendation by Commission H, Order A was restructured so that University B would be established as a separate tax-exempt entity. The restructure of Order A was done in a two-step process in xxxxxx and xxxxxx. The first step occurred in xxxxxxx, when the xxxxxxx of Order A created Entity K, a tax-exempt organization. Entity K was incorporated with two classes of members, Class A members and Class B members, and a governing body called Board P. The two classes of members are made up of xxxxxxx. The Class A members are five xxxxxxx of the xxxxxxx, including the xxxxxxx and the xxxxxxx Treasurer. The Class B members consist of the finally professed xxxxxxx of Order A.

The second step occurred on xxxxxxxxxxx, when the functions, assets and employees of University B were transferred to Entity K. Order A transferred all assets necessary to operate University B as well as the associated liabilities to Entity K at that time. Accordingly, beginning xxxxxxxxxxx, the College of Liberal Arts and Sciences and the School of Theology have been operated by Entity K and other functions and assets of Order A have remained with Order A.

Entity K's initial Board was composed of five xxxxxxx who make up the Class A members of Order A. Since October 2011, when Entity K was created, Board P expanded its members through a process of self-appointment. On an ongoing basis, the Class A members will elect one representative to Board P, and the Class B members will elect four representatives to Board P. The remaining members of Board P are self-elected. All nominees are subject to the disapproval of the Class A members. A trustee may generally be removed by the affirmative vote of a majority of Board P. A trustee elected by the Class A or Class B members may be removed by the body that appointed such trustee. Class A members have the power and authority to remove all of the members of Board P and name successor trustees, but do not have the authority to remove and name successor trustees on an individual basis, except with respect to Class A and Class B representatives.

The mission and purpose of Entity K is the provision of education in the liberal arts and graduate theological disciplines within the Church O university tradition. All staff providing services to University B have become employees of Entity K, except for faculty members who are xxxxxxx of Order A. These individuals are considered appointees of Order A. In the past, compensation they received from Entity K for their services was paid directly to Order A, effective xxxxxxxxxxx, paychecks for services performed by Entity K employees are being issued by Entity K and Entity K will issue W-2s to its employees for services performed by them on or after this date.

Previously, the xxxxxx of Order A nominated the President, who was then appointed by Board D. After the restructure, the President of Entity K is appointed by Board P on its own initiative, but the selection is subject to the approval of Class A members.

Land located within the core campus has been leased from Order A to Entity K through a long term ground lease; buildings located on the ground-leased land have been conveyed to Entity K. Other space and facilities belonging to Order A have been leased to Entity K and Entity K and preparatory school students continue to have the right to use the land and forest areas surrounding the Order A xxxxxxxx for educational purposes.

Order A and Entity K entered into Agreement E that details the parties understanding regarding the relationship between Entity K and Order A. In particular, the parties acknowledge and commit to the fact that the formation of Entity K and the restructure will not affect the xxxxxxxx status of University B. Entity K will remain a part of Order A's juridical person for xxxxxxxx purposes. Order A and Entity K realized and acknowledged the complexity of establishing a separate civil corporation that has this status, but stressed that sustaining this status is of the paramount importance and in order to achieve this goal, Order A and Entity K set out in detail their roles and responsibilities.

Among the responsibilities of Order A to Entity K are:

1. Be a living model of Order A spiritually, mission, identity, and values, as well as a model of dedication and excellence in the performance of responsibilities with regard to Entity K, both as individuals and as a community.
2. Foster the xxxxxxxx relationship of Entity K and Order A by regular communication and consultation with the President of Entity K and Board P on matters of special concern, such as mission and identity, pastoral care, religious practice, and the care and maintenance of the campus.
3. Support Entity K's preference in hiring and retaining members of the xxxxxxxx community and participate in the periodic process or updating this policy.
4. Make the Order A xxxxx and University B Order available to Entity K as the primary places of worship and reflection.

Among the responsibilities of Board P to Order A are:

1. Conduct Entity K as an education under the leadership of Order A as the xxxxxxxx juridical person, looking to the xxxxxxxx community in order to define and deepen Entity K's understanding of its Church O, Order A character.
2. Together with the President of Entity K, foster Entity K's and civil relationship with the xxxxxxxx community through regular communication and consultation with the xxxxxxxx of Order A, senior council, and xxxxxxxx chapter on matters of special concern, such as mission and identity, pastoral care, religious practice, and the care and maintenance of the campus.

3. Continue the use of the Order A xxxxxxxxxx and University B Order as Entity K's primary places of worship and reflection.
4. Uphold Entity K's policy on Order A preference in the hiring and retention of members of the xxxxxxxxxx community by ensuring its implementation by Entity K administrators, and periodically updating such policy, as necessary, in collaboration with the xxxxxxxxxx community; and support the education of xxxxx for work at Entity K.

In addition, in order to sustain and promote the Church O, Order A character, mission, and identity of Entity K, Board P is required to:

1. Maintain and promote the Order A heritage, values and Church O identity as fundamental elements of Entity K's mission.
2. Charge the Chair of Board P and the President of Entity K with the responsibility of:
  - (a) promoting, understanding and appreciation of the xxxxxxxxxx character, mission, and identity of Entity K among Trustees, faculty, administration, staff, alumni, and the broader constituencies of Entity K;
  - (b) ensuring that the xxxxxxxx, xxxxxxxx character of Entity K is reflected in its curriculum, programs, policies, and practices by reporting annually to the xxxxxxxx community on these matters; and
  - (c) collaborating with Order A's leadership to foster the xxxxxxxxxx community's commitment to and participation in the mission of Entity K.
3. Recognize that the person holding the office of President of Entity K serves as the director of an xxxxxxxx work of Order A and Church O. In this regard, the Trustees commit to encourage and promote qualified xxxxxxxx of Order A as candidates, as well as qualified xxxxxxxx of other xxxxxxxxxx xxxxxxxxxx. Further, the Trustees committed to selecting as President of Entity K a qualified xxxxxxxx who understands, appreciates and will ensure the xxxxxxxx, xxxxxxxx character, mission, and identity of Entity K.
4. Actively seek qualified members of the xxxxxxxxxx community for faculty, staff, and administrative positions, consulting in advance with the xxxxxxxx of Order A and his representatives according to the policy and procedures on xxxxxxxx Preference outlined in Entity K's governing documents and in the faculty, administrative, and support handbooks.
5. Engage the xxxxxx community as an active partner in dialogue when discerning and promoting the Church O, xxxxxxxxxx character, mission, identity and religious practices of Entity K.
6. Keep the xxxxxx, xxxxxxxxxx character of Entity K strong by promoting an orientation program for Trustees, faculty, administration, staff and students, addressing this character.
7. Promote and sustain the School of Theology-Seminary curriculum and program and the strength of the library's theology section so that a vibrant and active graduate school and seminary program can flourish, preparing ministers for the church.

8. Maintain and promote the faculty resident model of residential programming in cooperation with the xxxxxxxx community by recruiting and training xxxxxx of the xxxxxxxxx community to serve as faculty residents, assuring that this program remains a central and unique xxxxxxxxx element of Entity K educational experience.
9. Maintain structures within Entity K in cooperation with the xxxxxx community designed to promote the Church O, xxxxxxx character, mission and identity of Entity K.
10. Maintain a robust theology requirement with ample support and resources as an integral part of the curriculum for all undergraduate students and a distinctive academic program in theology that attracts strong undergraduate majors and minors.
11. Ensure the continued presence of visible religious symbols throughout the campus, such as crucifixes, statues, and artwork to provide a material culture of faith.

Order A similarly is required to commit itself to ongoing collaboration with Entity K leadership to sustain and strengthen the Church O, Order A character, mission and identity of Entity K, including the training and promotion of Order A xxxxxxxxxx in leadership, faculty, residential and ministry roles at Entity K.

Order A, University B and Entity K are all organizations exempt from federal income tax under section 501(a) of the Code as organizations described in section 501(c)(3) of the Code. Order A, University B and Entity K are all listed in Directory Z. Also, no employees of Order A or Entity K are employed in connection with any unrelated trades or businesses with the meaning of section 513 of the Code.

Order A maintains two retirement plans for its employees, Plan X and Plan Y, both of which are intended to comply with section 403(b) of the Code and were established prior to January 1, 1974. Order A also maintains welfare benefit plans, Plan 1 through Plan 5, for its employees.

Prior to the restructure, University B employees participated in Plan X, Plan Y, and Plan 1 through Plan 5 (Plans) as employees of Order A. Following the restructure, Entity K became a participating employer in the Plans. Accordingly, employees of Entity K continue to participate in the Plans. In addition, employees of College N participate in Plan 1 through Plan 5. College N is a women's college established by xxxxxxx of Order A. College N is a separate tax-exempt organization that has received a favorable church plan ruling on its retirement plans.

The Plans are administered by a committee (Committee) consisting of the Chief Financial Officer (CFO) of Order A, the CFO of Entity K and the CFO of College N. The CFO of Order A is appointed by the xxxxxxx of Order A. The CFO of Entity K is appointed by the President of Entity K. The CFO of College N is appointed by the President of College N. The Committee's primary purpose and function is the administration of the Plans.

Order A has not made an election under section 410(d) of the Code to have the Plans treated other than as church plans under section 414(e) of the Code.

In accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446, a Notice to Employees with reference to Plan X and Plan Y was provided on April 16, 2012. This notice explained to participants of Plan X and Plan Y the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X, Plan Y and Plan 1 through Plan 5 are church plans as defined in section 414(e) of the Code. Also, that Plan X and Plan Y have been church plans since January 1, 1974, Plan 1 has been a church plan since July 1, 2008, Plan 2 has been a church plan since September 1, 2007, Plan 3 has been a church plan since July 1, 2012, Plan 4 has been a church plan since January 1, 2011 and Plan 5 has been a church plan since January 1, 2007.

Section 414(e) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) of the Code applied as of the date of ERISA's enactment. However, section 414(e) of the Code 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) of the Code was effective as of January 1, 1974.

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, Order A, University B and Entity K are all organizations exempt from federal income tax under section 501(a) of the Code as organizations described in section 501(c)(3) of the Code. Order A, University B and Entity K are all listed in Directory Z. Order A is a well-established religious order of Church O that carries out Church O functions. The mission and purpose of Entity K is the provision of education in the liberal arts and graduate theological disciplines with the Church O university tradition.

Entity K has two classes of members, Class A and Class B, both of which are representatives of Order A. Order A exerts control over Entity K by its right to appoint five Board P trustees through these two classes of members; the Class A Members' right to disapprove new Board P candidates; the Class A Members' right to approve the President of Entity K; and, the Class A Members' right to remove and reappoint the entire Board P.

In view of the common religious bonds between Order A, University B, Entity K and Church O, the inclusion of Order A, University B and Entity K in Directory Z, and the indirect control of University B and Entity K by Church O through Order A, we conclude that University B and Entity K are associated with a church or convention or association of churches within the meaning of section 414(e)(3)(D) of the Code. That the employees of University B and Entity K 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.

The administrative control of the Plans is vested in the Committee. The Committee is controlled by and shares common religious bonds with Church O through the controlling power that the CFOs of Order A, Entity K and College N exercise over the Committee. The CFO of Order A is appointed by Order A which is a religious order of Church O. The CFO of Entity K is appointed by Entity K which is an organization controlled by or associated with Church O. The CFO of College N is appointed by College N who has received a favorable church plan ruling on its retirement plans. The Committee's primary purpose and function is the administration of the Plans.

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

Based on the foregoing facts and representations, we conclude that Plan X, Plan Y and Plan 1 through Plan 5 are church plans as defined in section 414(e) of the Code. Also, that Plan X and Plan Y have been church plans since January 1, 1974, Plan 1 has been a church plan since July 1, 2008, Plan 2 has been a church plan since September 1,

2007, Plan 3 has been a church plan since July 1, 2012, Plan 4 has been a church plan since January 1, 2011 and Plan 5 has been a church plan since January 1, 2007.

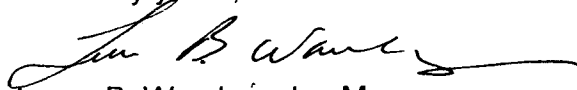
This letter expresses no opinion as to whether Plan X and Plan Y satisfy the requirements of section 403(b) of the Code.

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 have any questions regarding this letter, please contact xxxxx, xxxxxxxxxxxxxx, SE:T:EP:RA:T3, at xxxxxxxxxxxxxx.

Sincerely yours,



Laura B. Warshawsky, Manager  
Employee Plans Technical Group 3

Enclosures:

Deleted copy of ruling letter  
Notice of Intention to Disclose

cc: xxxxxxxxxxxxxxxxxxxx