

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

Telephone Number:

Refer Reply To:

CC:TEGE:EB:QP3

PLR-139751-16

Date:

June 21, 2017

Legend:

Entity A =

Religious Institute B =

Church C =

State D =

Directory E =

Committee F =

Plan X =

Date 1 =

Date 2 =

Date 3 =

Dear _____ :

This letter is in response to your request, submitted on your behalf by your authorized representative, regarding the status of Plan X as a church plan within the meaning of § 414(e) of the Internal Revenue Code (Code).

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

Entity A was formed by Religious Institute B, a religious community within Church C, to carry out Religious Institute B's mission in State D and certain other regions in the United States. Entity A focuses on facilitating the provision of health care, education and social services to the poor, and undertakes missionary activities. Entity A is also referred to as a _____ of Religious Institute B, and is a religious order within Church C.

Entity A is an incorporated not-for-profit religious organization under the laws of State D. The authority to manage Entity A generally rests with its Corporate Board of Directors (the "Board"). Under Entity A's articles of incorporation and bylaws, only individuals who serve in specified leadership positions of the religious congregation of Entity A are eligible to serve as members of the corporation (within the meaning of State D's incorporation laws) and directors of Entity A. Under Entity A's articles of incorporation and bylaws, each member and director of Entity A is required to be a member of Entity A's religious congregation, and will cease to be a member or director of the corporation if the individual ceases to be a member of the religious congregation of Entity A.

Entity A's articles of incorporation provide that it is a religious corporation organized exclusively for religious purposes, specifically to support and foster the mission and purposes of Religious Institute B, and not for the private gain of any person. The articles further state that the property of Entity A is irrevocably dedicated to religious purposes, and that no part of the net income or assets of Entity A shall ever inure to the benefit of any director, officer or member thereof or to the benefit of any private person. Finally, the articles specify that upon Entity A's dissolution, its assets remaining after payment or provision for payment of all debts and liabilities of Entity A shall be distributed to a nonprofit fund, foundation or corporation selected by the members of the corporation, which is organized and operated exclusively for religious purposes and which has established its tax exempt status under § 501(c)(3).

Entity A is organized and operated exclusively for religious purposes within the meaning of § 501(c)(3). Entity A is listed in Directory E of Church C, and is exempt

from federal income tax under § 501(a) as an organization described in § 501(c)(3) pursuant to a group exemption letter applicable to organizations listed in Directory E.

Entity A established Plan X, a defined benefit plan qualified under § 401(a), effective Date 1. Plan X was completely frozen as of Date 2. As a result of the plan freeze, no new participants will enter the Plan and participants will not accrue any additional benefits under the Plan after Date 2. Prior to Plan X being frozen, all of Entity A's employees were eligible to participate in Plan X after attaining age 21 and completing 2 years of service.

Committee F has been appointed as administrator and named fiduciary of Plan X. Committee F was created by the Board of Entity A for the purpose of administering a program of retirement plans which are intended to be church plans under § 414(e), and has full discretionary power and authority to administer Plan X in all of its details, subject to the ultimate oversight of the Board. Members of Committee F are appointed by the Board, and Committee F is required to report to the Board at least annually.

Committee F's charter provides that Committee F's administration shall be in a manner consistent with the teachings and tenets of Church C and Religious Institute B. The charter states that Committee F shares common religious bonds and convictions with Church C and Religious Institute B. Committee F includes two officers of Entity A, *ex officio*, and currently at least three of the six members of the committee hold official positions within Entity A.

None of the eligible participants in Plan X are or can be considered employed in connection with a for-profit entity or one or more unrelated trade or businesses of Entity A within the meaning of § 513. All eligible participants of Plan X are employed directly by Entity A and there are no other participating employers in Plan X.

Although Entity A has filed Form 5500 and paid premiums to the Pension Benefits Guaranty Corporation (PBGC), the plan administrator of Plan X never made an election under § 1.410(d)-1 of the Federal Income Tax Regulations (Regulations) with regard to Plan X.

In accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446, a notice to interested persons regarding Plan X was provided on Date 3. This notice explained the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X is a church plan within the meaning of § 414(e) of the Code. You also request a ruling that the filing of Forms 5500 and payment of PBGC premiums does not constitute an election by Entity A under § 410(d).

Section 414(e)(1) 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 § 501.

Section 414(e)(2) 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 § 513); or if less than substantially all of the individuals included in the plan are individuals described in § 414(e)(1) or § 414(e)(3)(B) (or their beneficiaries).

Section 414(e)(3)(A) 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. See *Advocate Healthcare Network v. Stapleton*, 581 U.S. ____ (2017), holding that a plan that is maintained by an organization described in § 414(e)(3)(A) may be a church plan under § 414(e) even if it was not established by a church or a convention or association of churches.

Section 414(e)(3)(B) 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 § 501, and which is controlled by or associated with a church or a convention or association of churches.

Section 414(e)(3)(C) provides that a church or a convention or association of churches which is exempt from tax under § 501 shall be deemed the employer of any individual included as an employee under subparagraph (B).

Section 414(e)(3)(D) 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.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446, supplements the procedures for requesting a letter ruling under § 414(e) 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 § 414(e) for a qualified plan; (2) requires that a copy of the notice be submitted to the 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 a 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 a convention or association of churches under § 414(e)(3)(B) by virtue of the organization's control by or association 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 § 501; and (2) is controlled by or associated with a church or a 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 § 414(e)(3)(A). To be described in § 414(e)(3)(A), 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.

With respect to your first ruling request, under the facts you have represented, Entity A was formed by Religious Institute B, a religious community within Church C, to carry out Religious Institute B's mission in State D and certain other regions in the United States. Entity A is a religious order within Church C. Entity A is incorporated under the laws of State D, and its corporate members and directors must hold certain specified leadership positions in the religious congregation of Entity A. Entity A is organized and operated exclusively for religious purposes within the meaning of § 501(c)(3), and is exempt from tax under § 501. Entity A is listed in Directory E of Church C.

You represent that none of Entity A's employees are employed in connection with one or more unrelated trades or businesses within the meaning of § 513 and no plan participants are employed by for-profit entities.

Based on these facts, we conclude that Entity A is associated with Church C for purposes of § 414(e). We further conclude that the employees of Entity A 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 § 501 and which is controlled by or associated with a church or a convention or association of churches.

Committee F is the administrator of Plan X, and its sole purpose is to administer a program of retirement plans that qualify as church plans. The members of Committee F are appointed by the Board of Entity A, whose members consist of persons holding leadership positions in Entity A, a religious order within Church C. Committee F is subject to the oversight of the Board of Entity A, and is required to report to the Board annually. Committee F's charter provides that it shall administer the plan in a manner consistent with the teachings and tenets of Church C and Religious Institute B.

Committee F includes two officers of Entity A, *ex officio*, and currently at least three of the six members hold official positions within Entity A.

We thus conclude that Committee F is associated with Church C. Accordingly, Plan X is maintained by an organization that is associated with a church or a convention or association of churches, the principal purpose or function of which is the administration of Plan X for the provision of retirement benefits for the deemed employees of a church or a convention or association of churches.

Based on the foregoing facts and representations, we conclude that Plan X is a church plan as defined in § 414(e) of the Code, and has been a church plan since its inception on Date 1.

With respect to your second ruling request, § 410(d) allows a church or a convention of churches which maintains any church plan to make an irrevocable election that certain provisions of the Code and Title I of the Employee Retirement Income Security Act of 1974 (ERISA) shall apply to the plan as if it were not a church plan. Section 1.410(d)-1 of the Regulations provides that the plan administrator of the church plan may make the election by attaching an affirmative statement to either the plan's Form 5500 or to Form 5300, Application for Determination for Employee Benefit Plan. Section 1.410(d)-1 does not provide for an alternative form of election. Accordingly, we conclude that the filing of Forms 5500 and payment of PBGC premiums with respect to Plan X does not constitute an election by Entity A under § 410(d).

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter.

This ruling is directed only to the taxpayer requesting it. Section 6110(k)(3) of the Code provides that it may not be used or cited as precedent.

The rulings contained in this letter are based upon information and representations submitted by the taxpayer and accompanied by a penalty of perjury statement executed by an appropriate party, as specified in Rev. Proc. 2017-1, 2017-1 I.R.B. 1, § 7.01(15)(b). This office has not verified any of the material submitted in support of the request for ruling, and such material is subject to verification on examination. The Associate office will revoke or modify a letter ruling and apply the revocation retroactively if there has been a misstatement or omission of controlling facts; the facts at the time of the transaction are materially different from the controlling facts on which the ruling was based; or, in the case of a transaction involving a continuing action or series of actions, the controlling facts change during the course of the transaction. See Rev. Proc. 2017-1, § 11.05.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representative.

Sincerely,

John Ricotta
Branch Chief, Qualified Plans 3
(Tax Exempt & Government Entities)

cc: