

Internal Revenue Service

199938049

Department of the Treasury

WL: 9999.98-00

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

OP:E:EP:T:2

Date:

JUL 1 1999

Employee Identification Number:

Legend:

- Church A =
- Church B =
- Committee A =
- Corporation M =
- Corporation N =
- Corporation O =
- Diocese D =
- Region A =
- Plan X =
- Plan Y =
- Plan Z =
- Plan XX =
- Plan YY =
- Plan ZZ =
- Synod Y =

Dear :

This letter is in response to your ruling request dated November 5, 1998, as supplemented by correspondence dated December 14, 1998, February 11, 1999, March 26, 1999, May 5, 1999, and June 9, 1999, as submitted on your behalf by your authorized representative concerning whether the retirement and welfare plans of Corporation O qualify as church plans under section 414(e) of the Internal Revenue Code.

The following facts and representations have been submitted:

Corporation M's Articles of Incorporation provide that Corporation M was organized to establish, maintain, operate, manage, control, and regulate a resident home or homes for the aging under the supervision and direction of Diocese D. Corporation M's trustees are nominated

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by the Council of Diocese D, and the Bishop of Diocese D is an ex officio trustee. Corporation N's Articles of Incorporation provide that Corporation N was organized to construct, own, operate, and maintain homes for the aged and for persons in need of nursing care. Its trustees are elected by Church B in Synod Y upon nomination by Synod Y's Committee on Nominations. Both Corporations M and N are exempt from federal income tax under section 501(a) of the Code as organizations described in section 501(c)(3). Diocese D and Synod Y are "churches" as described in section 501(c)(3).

In 1975, Church A and Church B through the Boards of Corporations M and N recognized the growing housing and health care needs of the ever-increasing number of elderly. In order to meet these needs, Church A and Church B, through Corporations M and N, each contributed \$20,000 to create Corporation O. In addition, both Church A's and Church B's communities provided loans to Corporation O: Diocese D and Synod Y loaned \$30,000 each, while Corporation N loaned Corporation O an additional \$20,000.

Churches A and B formed an association of churches under section 414(e) of the Code in providing for the housing and medical needs of the elderly through the establishment, support and oversight of Corporation O.

Corporations M and N are the sole members of Corporation O. These two organizations each elect eight members of Corporation O's Board of Trustees. The trustees are required to be members in good standing of their respective churches. Corporation O's board has an executive committee composed of an equal number of members elected by Corporations M and N. Corporation O is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

Corporation O's Mission Statement states that it is committed to providing and/or maintaining:

Close ties with Church A and Church B, wherein it has its roots;

A program of services which provides residents with housing, health care, security and a variety of activities and support services;

Financial assistance, within the limits of its Fellowship Endowment Fund, for the admission and/or continued residence of those who otherwise would be unable to afford the entire cost; and

Encouragement to residents to maintain independence.

The preamble of the Constitution and Canons of Diocese D states that Diocese D acknowledges the authority and power of the General Convention of Church A in the United States of America, as set forth in its Constitution and Canons.

Synod Y is an intermediate governmental unit of Church B and is responsible for the mission of Church B throughout Region A.

Corporation O maintains Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ (referred to collectively as "the Plans") for the benefit of its employees. Only employees of Corporation O can participate in the Plans. None of the participants in the Plans are employees of for-profit entities and at no time have any of the participants been employed by for-profit organizations or worked in unrelated trades or businesses.

Plan X was adopted July 22, 1985, Plan Y was adopted October 1, 1996, Plan Z was adopted July 1, 1992, Plan XX was adopted July 1, 1996, Plan YY was adopted October 1, 1992, and Plan ZZ was adopted July 1, 1996. Plan X and Plan Y are retirement plans. Plan Z, Plan XX, Plan YY, and Plan ZZ are welfare benefit plans.

Effective December 4, 1998, the Board of Trustees of Corporation O established Committee A whose sole purpose is to administer the retirement and welfare plans of Corporation O. The members of Committee A are Corporation O's President, Chief Financial Officer, and Human Resources Director of Corporation O, and the Chairman of the Finance Committee of the Board of Trustees, and any other members the Board of Trustees may deem necessary in its sole discretion.

Based on the foregoing facts and representations, you request a ruling that Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ are church plans within the meaning of section 414(e) of the Code retroactively to the respective dates of their adoption.

Section 414(e)(1) of the Code defines a church plan as a plan established and maintained for its employees (or their beneficiaries) by a church or by 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 the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provides that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Public Law 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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" 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, 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 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, in general, that if a plan established and maintained for its employees (or their beneficiaries) by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of section 414(e) and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) 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 requirements of this subsection.

Revenue Ruling 74-224, 1974-1 C.B. 61, states, in part, that although the term "convention or association of churches" has a historical meaning generally referring to a cooperative undertaking by churches of the same denomination, nothing in the legislative or religious history or the term prevents its application to a cooperative undertaking by churches of differing denomination.

In order for an organization to have a qualified church plan, it must establish that its

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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 affiliation with the church or convention or association of churches and that the plan will be administered by an organization of the type described in section 414(e)(3)(A).

In this case, Churches A and B formed an association of churches under section 414(e) of the Code in providing for the housing and medical needs of the elderly through the establishment, support and oversight of Corporation O. Furthermore, Corporation O is an organization described in section 501(c)(3) of the Code and is exempt from Federal income tax under section 501(a). Corporation O is affiliated with Churches A and B because its Board of Trustees was and is respectively selected by Corporations M and N. Corporation M is controlled by Diocese D because the Council of Diocese D nominates its trustees, and the Bishop of Diocese D is an ex officio trustee. Corporation N is controlled by Synod Y because Church B in Synod Y elects its trustees. Diocese D is associated with Church A, and Church B in Synod Y is an intermediate governmental unit responsible for the mission of Church B throughout a certain region. Corporation O is associated with Churches A and B because it addresses the ecclesiastical tasks of Churches A and B concerning the aged.

Accordingly, pursuant to sections 414(e)(3)(B) and (C) of the Code, employees of Corporation O are deemed to be employees of Churches A and B, and Churches A and B are deemed to be employers of such employees for purposes of the church plan rules.

However, an organization must also establish that its plan or program for the provision of retirement benefits and welfare benefits, or both, is established and maintained by a church or a convention or association of churches, or by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A), an organization must have as its principal purpose the administration of a plan or program for the provision of retirement benefits and welfare benefits, or both, and must also be controlled by or associated with a church or a convention or association of churches.

It has been submitted that effective December 4, 1998, Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ are administered by Committee A. Members of Committee A are officers of Corporation O, and Corporation O may appoint other persons to Committee A. Committee A's sole responsibility is the administration of Corporation O's retirement and welfare plans, which presently include Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ. Thus, Committee A is controlled by Corporation O, and because Corporation O is maintained by a church or a convention or association of churches, Committee A is associated with a church, or a convention or association of churches. Therefore, Committee A qualifies as an organization described in section 414(e)(3)(A) of the Code.

Prior to December 4, 1998, Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ were not administered by an organization whose principal purpose is the administration of a plan or program for the provision of retirement benefits and welfare benefits, or both, controlled by or associated with a church or a convention or association of churches. However, as provided under section 414(e)(4) of the Code, where a plan fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then the plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction is made and for all prior years. Because effective December 4, 1998, Committee A operates for the sole purpose of administering Corporation O's retirement and welfare plans, which presently include Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ, the Plans are deemed to meet the requirements of section 414(e)(3)(A) for all years, including all prior years as permitted by ERISA and MPPAA.

Based on the foregoing facts and representations, we conclude that Plan X, Plan Y, Plan Z, Plan XX, Plan YY, and Plan ZZ are qualified as church plans within the meaning of section 414(e) of the Code retroactively to the respective dates of their adoption.

This letter expresses no opinion as to the qualified status of Plan X and Plan Y under section 401(a) of the Code or the status of Plan Z, Plan XX, Plan YY, and Plan ZZ as welfare benefit plans.

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

In accordance with a power of attorney on file in this office, a copy of this ruling is being sent to your authorized representative.

Sincerely yours,

**(signed) JOYCE E. FLOYD**

Joyce E. Floyd  
Chief, Employee Plans  
Technical Branch 2

Enclosures:  
Deleted Copy of this Letter  
Notice of Intention to Disclose

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