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Third Party Communication: None

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Person To Contact:

, ID No.

Telephone Number:

Attn:

Refer Reply To:

CC:EEE:EB:QP1

PLR-104601-20

Date:

September 23, 2020

University =

Plan X =

Plan Y =

Church =

Leadership Group A =

Leadership Group B =

Individual A =

Individual B =

Council =

Church Conference =

State A =

Locality A =

Locality B =

Board =

Committee P =

Committee Q =

Date 1 =

Date 2 =

Date 3 =

Date 4 =

Date 5 =

Date 6 =

Date 7 =

Date 8 =

Date 9 =

Date 10 =

Date 11 =

Year 1 =

Year 2 =
Year 3 =
Year 4 =

Dear :

This letter responds to the letter dated January 13, 2020, as supplemented by correspondence dated June 19, 2020, July 14, 2020, and August 27, 2020, submitted on your behalf by your authorized representative, regarding the status of Plan X and Plan Y as church plans within the meaning of § 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury in support of the ruling requested:

The Church was officially organized on Date 4 by Individual A, and was reorganized on Date 5 by Individual B. Its international headquarters are located in Locality B.

Leadership Group A provides primary leadership to the Church and consists of individuals who preside over all aspects of the Church internationally. Leadership Group A also appoints members of the Council who carry major responsibility for expansion of the Church and serve as administrative supervisors of field jurisdictions, among other duties. Leadership Group B is responsible for looking after the finances and property of the Church, among other duties. Together, Leadership Group A, Leadership Group B, and the President of the Council are the leadership of the Church.

The University was founded in Year 1. The University has campuses in Locality A and Locality B that are home to the Church seminary as well as the University's graduate and undergraduate programs, including face to face and online programs. The University is a tax-exempt non-profit corporation under the law of State A. It has also been recognized as a tax-exempt organization by the Internal Revenue Service (IRS) under § 501(c)(3) (or predecessor Code provisions) since Year 2. The IRS most recently issued a letter recognizing the University's exempt status on Date 1.

The most recent iteration of the University's Amended and Restated Articles of Incorporation ("Articles") were signed on Date 2 by the Chair of the Board of Trustees on behalf of the University and on Date 3 by a member of the Church leadership on behalf of the Church. Relevant provisions of earlier iterations of the Articles of Incorporation dating from Year 3 are substantially similar to the relevant provisions in the most recent Articles.

Article II of the current Articles provides that the purposes for which the University is organized are to maintain an accredited, nonsectarian institution of higher education that aligns with the enduring principles of its founding and sponsoring Church and to do any and all lawful corporate acts performed by duly authorized and lawful entities, without limitation.

Article V provides that the University's members consist of Leadership Group A, Leadership Group B, and the president of the Council, who together are the leadership of the Church and act by majority vote.

Article VI provides that the business and affairs of the University are managed by the Board of Trustees, consisting of at least 15 but no more than 21 trustees to be elected by: (i) the leadership of the Church (up to 7 trustees), one of whom must be part of the Church leadership; (ii) the delegates to the Church Conference (up to 7 trustees); and (iii) the Board itself (up to 7 trustees). Article VI further provides that a trustee elected by the Church leadership or the Church Conference may be removed from office at any time, with or without cause, by the respective body that elected the trustee; in the case of a trustee elected by the Board, that trustee can similarly be removed by an affirmative vote of two-thirds of the full Board.

Article IX provides that the Board of Trustees has the power to make, adopt, and enforce the bylaws and other rules and regulations, not inconsistent with the Articles, for the governance of the University, and can amend, modify or alter those bylaws in the Board's sole discretion. In the case of conflict between the bylaws and the Articles, the Articles control. You have represented that only members of the Board of Trustees may serve as members of a committee and the Board approves the rules of procedure or policy guidelines established by each committee.

Article XI provides that, upon dissolution, any remaining assets of the University are to be distributed to the Church.

Article XII provides that the Articles may be amended if the amendment is approved in writing by the leadership of the Church and by at least two-thirds of the full Board of Trustees.

The Church lists the University as an affiliated organization on its website. In addition, the Church provides some financial and non-financial contributions to the University and has guaranteed certain debt of the University, which is currently outstanding. However, the University maintains separate books and records and bank accounts from the Church and enters into and signs its own contracts.

Plan X, a defined benefit plan, was established by the University on Date 6, and has been amended and restated from time to time. Plan X defines an eligible employee as any employee of the University. Plan X was amended effective Date 7 to freeze accruals, but it continues to provide benefits that were accrued prior to Date 7. The University represents that Plan X is a qualified plan under § 401(a), and most recently received a favorable determination letter from the IRS on its qualified status on Date 8.

Plan X has been operated in accordance with the Employee Retirement Income Security Act of 1974 (ERISA) and the University has been paying premiums to the Pension Benefit Guaranty Corporation (PBGC). However, the University has never

made an election under § 410(d) to be covered by ERISA or to be subject to the qualified plan requirements of the Code that are otherwise not applicable to a church plan.

Plan Y, an ongoing § 403(b) defined contribution plan, was established by the University on Date 9 and has been amended and restated from time to time. Plan Y defines eligible employees as employees of the University except for students performing services under § 3121(b)(10) and employees who work less than 20 hours per week. The University represents that Plan Y satisfies the requirements of § 403(b).

Committee P is a committee of the Board of Trustees. According to its charter, Committee P is responsible for oversight of, and matters of policy related to, the financial affairs and business operations of the University, including, but not limited to, the physical property of the University, annual budgets, annual audits, contractual obligations, investments, compliance, and compensation and benefits. In the letter dated June 19, 2020, your authorized representative stated that, according to the University bylaws, only members of the Board of Trustees may serve on Committee P.

On Date 10, the Board of Trustees adopted a resolution creating Committee Q, effective immediately. Pursuant to the resolution, Committee Q is responsible for reporting directly to Committee P, with oversight by the Board of Trustees. The resolution further provides that Committee Q's sole purpose is to administer the benefits of Plan X and Plan Y, manage the funds available for investment in a prudent manner and take such steps as are necessary to maintain Plan X and Plan Y as qualified plans. Committee Q consists of the University's vice president for business and finance, the human resources director, and the members of Committee P.

In accordance with Revenue Procedure 2011-44, 2011-39 I.R.B. 446, a notice to plan participants and other interested persons with reference to Plan X and Plan Y was provided on Date 11. This notice explained the consequences of church plan status.

You represent that the operation of an unrelated trade or business is not a substantial purpose of the University and that none of the eligible participants are or can be considered employed in connection with one or more unrelated trades or businesses within the meaning of § 513. You further represent that all of the eligible participants are employed by the University and do not include employees of for-profit entities.

The University has requested a ruling on whether Plan X and Plan Y are considered church plans as defined under § 414(e).

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 by 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 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. See *Advocate Health Care Network v. Stapleton*, 137 S. Ct. 1652 (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.

Section 414(e)(4) provides a method of correction of a failure to meet the church plan requirements. In general, § 414(e)(4)(A) provides 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 § 501 fails to meet one or more of the requirements of § 414(e) and corrects its failure to meet such requirements within the correction period, the plan is deemed to meet the requirements of § 414(e) for the year in which the correction was made and for all prior years.

Section 414(e)(4)(C) defines the correction period as: (i) the period, ending 270 days after the date of mailing by the Secretary of the Treasury (Secretary) of a notice of default with respect to the plan’s failure to meet one or more of the requirements of this subsection; (ii) any period set by a court of competent jurisdiction after a final determination that the plan fails to meet such requirements, or, if the court does not

specify such period, any reasonable period determined by the Secretary on the basis of all the facts and circumstances, but in any event not less than 270 days after the determination has become final; or (iii) any additional period which the Secretary determines is reasonable or necessary for the correction of the default, whichever has the latest ending date.

Revenue Procedure 2011-44, 2011-39 IRB 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 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 § 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 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 convention or association of churches.

With respect to your ruling request, we note that the University is a non-profit corporation that is exempt from federal income tax under § 501(a) as an organization described in § 501(c)(3). The Church lists the University as an affiliated organization on its website. Under its Articles of Incorporation, its primary purpose is to maintain an institution of higher education that aligns with the principles of the Church. The Church's seminary is located on one of the University's two campuses.

We also note that, pursuant to Articles V and VI, the terms of which have consistently applied to the University since before Plan X and Plan Y were established, the University is governed by the Board of Trustees, at least two-thirds of which are either members of the Church leadership or the Church Conference. Furthermore, any trustee can be removed at any time, with or without cause, by the Church body that elected that trustee to the Board (or by the Board, in the case of a trustee elected by the Board). Committee P, which is responsible among other tasks for the oversight of, and matters of policy related to, compensation and benefits at the University, consists solely of members of the Board of Trustees. Committee Q, which among other tasks relating to Plan X and Plan Y administers the benefits and investments for the Plans, consists solely of the University's vice president for business and finance, the human resources director, and members of Committee P. Committee Q reports directly to Committee P,

with oversight by the Board of Trustees. In addition, we note that Article XI provides that, upon dissolution, any remaining assets of the University are to be distributed to the Church.

You represent that none of the participants eligible to participate in Plan X or Plan Y are, or can be considered, employed in connection with one or more unrelated trades or businesses within the meaning of § 513. You further represent that all of the eligible participants are employed by the University and do not include employees of for-profit entities.

Based on these facts and representations, we conclude that the University is controlled by or associated with the Church. We further conclude that the employees of the University are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization that is exempt from tax under § 501 and controlled by or associated with a church or a convention or association of churches, and your representation that none of the employees eligible to participate in Plan X or Plan Y is employed by an unrelated trade or business.

With respect to the requirement that, 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), that is, an organization that has as its principal purpose the administration or funding of the plan and that also is controlled by or associated with a church or a convention or association of churches, effective as of Date 10, Plan X and Plan Y have been administered by Committee Q, whose sole purposes are to administer the benefits of Plan X and Y, manage the investment funds prudently, and take steps to maintain the plans' qualified status under the Code. In light of the fact that members of the Board of Trustees, a majority of whom are elected by the Church leadership or the Church Conference, serve on Committee P, and the fact that the members of Committee P are also a majority of the members of Committee Q, as discussed above, we conclude that Committee Q is controlled by or associated with the Church. Accordingly, we find that Committee Q is an organization described in § 414(e)(3)(A).

As provided under § 414(e)(4), where a plan fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan is deemed to meet the requirements of § 414(e) for the year in which the correction is made and for all prior years. In this case, Committee Q was established to administer the benefits of Plan X and Y, manage the investment funds prudently, and take steps to maintain the plans' qualified status under the Code as of Date 10, which is within the correction period for Plan X and Plan Y.

Based on the foregoing facts and representations, we conclude that Plan X and Plan Y are church plans within the meaning of § 414(e).

This letter expresses no opinion as to whether Plan X satisfies the requirements of § 401(a) or whether Plan Y satisfies the requirements of § 403(b).

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) 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. 2020-1, 2020-1 I.R.B. 1, § 7.01(16)(b). This office has not verified any of the material submitted in support of the request for a 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. 2020-1, § 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,

Laura B. Warshawsky
Branch Chief, Qualified Plans Branch 1
(Employee Benefits, Exempt Organizations, and
Employment Taxes)

cc: