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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List: 414.08.00

Contact Person:

Telephone Number:

In Reference to:

Date: OP:E:EP:T:2/5003212

NOV 19 1999

Attn:

Legend:
Church A =
Order B =
Congregation =
Province A =
Corporation A =
Corporation B =
Corporation C =
Corporation D =
Corporation E =
Foundation R =
Hospital D =
Directory B =
Plan X =
Trust Y =
State M =
State V =
Committee D =
Committee E =

Dear

This letter is in response to a ruling request dated July 15, 1999, submitted on your behalf by your authorized representative, concerning whether Plan X is a church plan within the meaning of section 414(e) of the Internal Revenue Code ("Code").

The following facts and representations have been submitted on your behalf:

Order B is an order of religious women dedicated to serving Church A through the provision of health care services to the aged and the poor. The Congregation is the sole United States province of Order B. The Provincial Council of Province A is the governing body of the Congregation.

Hospital D has been in existence since May 30, 1998. Hospital D's purpose is to fulfill the health care mission of the Congregation. The sole member of Hospital D is Corporation D, a State V not-for-profit corporation. 83 percent of the membership interest of Corporation D is owned by Corporation C, a wholly-owned nonprofit subsidiary of Corporation B, which is a wholly-owned, not-for-profit subsidiary of Corporation A. Corporation A is a State M nonprofit membership corporation which is the civil incorporation of the Congregation.

The Congregation indirectly controls Hospital D through the power granted to it at each level in the organizational chain (from the Congregation, to Corporation A, to Corporation B, to Corporation C, to Corporation D, to Hospital D) to appoint the members of the Board of Directors. The Congregation augments this control by retaining certain reserved powers to control various operational aspects of all levels of the foregoing entities.

The organizational chain is as follows:

First Tier. Corporation A

The sole members and voting directors of Corporation A are the members of the Provincial Council of Province A, each of whom is a member of the Congregation. Thus, election or appointment to the Provincial Council constitutes election as a Director of Corporation A. Corporation A has been listed in Directory B continuously since 1983.

In addition, as the sole members of Corporation A, the Provincial Council retains a number of reserved powers consistent with the canonical law of Church A. Among the reserved powers with respect to Corporation A, Corporation B, and the entities of which Corporation B is a member, including Hospital D, are the powers to change the philosophy, objectives or purposes, or ethical and religious standards; to amend the Articles of Incorporation or Bylaws; to dissolve or liquidate; to approve of a merger or consolidation; to approve the creation of any subsidiary organization or the affiliation of Corporation A with any other entity; and to approve the conveyance of, or the granting of mortgages, trust deeds or the creation of liens on real property assets of Corporation A, Corporation B, and the entities of which Corporation B is a member.

Second Tier. Corporation B

Corporation A is the sole member of Corporation B. Corporation A has the authority to appoint or remove the members of Corporation B's Board of Directors. In addition, Corporation A, as the sole member of Corporation B, has the exclusive power to appoint or remove the president of all subsidiary organizations. Finally, Corporation

B retains similar reserved powers with respect to the corporations of which Corporation B is a member, and the subsidiaries of the corporations of which Corporation B is a member, as the Provincial Council of Province A retains with respect to Corporation A, Corporation B, and the corporations of which Corporation B is a member. Corporation B has been listed in Directory B continuously since 1983.

Third Tier. Corporation C

Corporation B is the sole member of Corporation C and appoints all of the members of its Board of Directors. Corporation C's Articles of Incorporation and Bylaws provide that it was formed exclusively for the benefit of, to perform the functions of, and to carry out the purpose of the Congregation and other entities in Corporation D in accordance with the philosophy, mission, and policies of the Congregation, and in accordance with, and subject to, the directives and teachings of Church A. Corporation C is listed in Directory B.

Fourth Tier. Corporation D

Corporation D is a State V nonprofit nonstock corporation. 83 percent of the membership interest of Corporation D is owned by Corporation C and 17 percent is owned by Foundation R, a nonstock corporation exempt from federal income tax under section 501(c)(3) of the Code. The Articles of Incorporation and Bylaws of Corporation D provide that its purpose is to fulfill the health care mission of the Congregation. The members of Corporation D are divided into two classes: Class B and Class H. The sole Class B member is Corporation C and the sole Class H member is Foundation R. All business and affairs of Corporation D are managed under the direction of Corporation C. The initial Board of Directors of Corporation D consisted of Classes 1, 2, and 3 with initial terms of three, four, and five years, respectively. Corporation C appoints all successor directors, subject to the right of Foundation R to nominate one person as a successor to a Class 1 and Class 2 director. Corporation C has the unqualified right to reject any such nominee.

Fifth Tier. Hospital D

Hospital D's Articles of Incorporation and Bylaws provide that the purpose of Hospital D is to fulfil the health care mission of the Congregation in accordance with the philosophy, mission, and policies of Order B and in accordance with, and subject to, the directives and teachings of Church A. The Articles of Incorporation and Bylaws also provide that Hospital D shares common religious bonds and convictions with Church A. Corporation D is the sole member of Hospital D and appoints all of the members of its Board of Directors. Hospital D has been recognized as exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

Corporation E is a wholly-owned for-profit subsidiary of Hospital D. Through two subsidiaries, Corporation E operated a pharmacy and an assisted care living facility (the "For-Profit Affiliates"). On May 30, 1998, approximately 18 participants in Plan X worked for the For-Profit Affiliates. This represented less than four percent of the participants in Plan X. Shortly after May 30, 1998, these employees were transferred to another entity and ceased to be eligible to participate in Plan X.

Plan X, a defined benefit plan intended to be qualified under section 401(a) of the Code was established on July 1, 1971. As of May 30, 1998, Plan X was amended and Hospital D adopted Plan X for its employees and became the Plan sponsor. Committee D is the plan administrator for Plan X. Committee D consists of not less than three members, the sole purpose of which is to administer Plan X in accordance with the principles and tenants of Order B. The members of Committee D were appointed by the Board of Directors of Hospital D which has removal powers over Committee D. Committee D has as its principal purpose or function the administration of Plan X.

In addition, Plan X was amended effective May 30, 1998, to provide for participation in Trust Y as soon as practicable. As of that date, Plan X allocated authority to control Plan X's assets to Committee E which performs investment functions for other plans participating in Trust Y. Committee E performs the following functions with respect to Plan X: establishing an investment policy and directing investments pursuant to that policy; hiring, monitoring, and discharging investment managers, the Trustee, enrolled actuaries, counsel, accountants and other service providers for Plan X; and establishing a funding policy which articulates the basis under which Hospital D will make contributions to Plan X. The Board of Directors of Corporation B selects the members of Committee E. The principal purpose of Committee E is managing the assets of Plan X. Committee E is required to adhere to the principles and tenets of Order B.

Based on the foregoing facts and representations, you request a ruling that Plan X has been (since May 30, 1998), and presently is a church plan within the meaning of section 414(e) of the Code.

Section 414(e)(1) of the Code defines the term "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)(2) of the Code provides that the term "church plan" excludes a plan which 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 Code section 513), or if less than substantially all of the individuals included in the plan are church employees (as described in section 414(e)(1) or 414(e)(3)(B)).

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 a 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.

In order for an organization to have a qualified church plan, it must establish that its 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) of the Code.

Hospital D is indirectly controlled by Church A as follows: The sole member of Hospital D is Corporation D. 83 percent of the membership interest of Corporation D is owned by Corporation C. Corporation C is a wholly-owned nonprofit subsidiary of Corporation B, which is a wholly owned nonprofit subsidiary of Corporation A (the civil incorporation of the Congregation). The Congregation operates under the principles of

Order B which serves Church A. The Articles of Incorporation and the Bylaws also provide that Hospital D shares religious bonds and convictions with Church A.

Hospital D has been controlled by Church A through the power granted at each level in the organizational chain (from Order B to the Congregation, to Corporation A, to Corporation B, to Corporation C, to Corporation D, to Hospital D) to control the Board of Directors of the entity immediately below it in the chain. Corporation A has the power to appoint the directors of Corporation B, Corporation B appoints the directors of Corporation C which in turn controls the directors of Corporation D, which controls the directors of Hospital D, which maintains Plan X. Therefore, during the period from May 30, 1998 to the present, Hospital D has been indirectly controlled by Church A.

Moreover, various reserved powers require higher level approval of various actions by subsidiaries. Among these is the reserved power of Corporation A to approve the appointment or removal of the presidents of all subsidiaries in Corporation B's system, which includes Hospital D. Further, any proposed changes in philosophy, amendments to Articles of Incorporation or Bylaws, dissolutions, mergers or consolidations, affiliations or creation of subsidiary organizations, and granting or conveyancing of deeds, mortgages, or liens, must be approved by each level of the organizational chain, and ultimately by the Provincial Council of Province A.

Corporation E is a wholly-owned for-profit subsidiary of Hospital D. Corporation E is operated through two For-Profit Affiliates. Although on May 30, 1998, 18 Plan X participants worked for the For-Profit Affiliates, shortly thereafter they were transferred to another entity and ceased participating in Plan X. Further, these participants represented less than four percent of the participants in Plan X. This is an insubstantial portion of the employees eligible to participate in Plan X. Therefore, pursuant to section 414(e)(2) of the Code, Plan X has not been maintained primarily for the benefit of employees who are employed in connection with one or more unrelated trades or businesses as defined in Code section 513, and not less than substantially all of the individuals included in Plan X are individuals described in sections 414(e)(1) or 414(e)(3)(B) of the Code. Therefore, substantially all of the employees included in Plan X are employees of a church or a convention or association of churches.

Consequently, since May 30, 1998, the employees covered by Plan X are considered to be employed by an organization that is exempt from tax under Code section 501 and that is controlled by, or associated with a church or a convention or association of churches pursuant to Code section 414(e)(3)(B). Accordingly, pursuant to sections 414(e)(3)(B) and (C) of the Code, employees of Hospital D are deemed to be employees of Church A, and Church A is deemed to be the employer of such employees, for purposes of the church plan rules.

Having established that these employees are church employees, the remaining issue is whether Committee D and Committee E are organizations controlled by or associated with a church or a convention or association of churches, the principal purpose or function of which is the administration or funding of a plan within the meaning of section 414(e)(3)(A) of the Code.

Committee D, during the period from May 30, 1998 to the present, has been controlled by and associated with Church A by virtue of the indirect control by Church A over Hospital D. During this period, Committee D has consisted of not less than three members who are appointed and may be removed by the Board of Directors of Hospital D. Since Hospital D is controlled by Corporation D, which is controlled by Corporation C, which is controlled by Corporation B, which is controlled by Corporation A, which is controlled by the Congregation, which is controlled by Order B, Committee D is indirectly controlled by Order B, and thus Church A.

In addition, effective May 30, 1998, Plan X allocated authority to control its assets to Committee E. From May 30, 1998 to the present, Committee E has been controlled by and associated with Church A by virtue of the indirect control by Church A over Hospital D. Committee E's members are selected by the Board of Directors of Corporation B and is required to adhere to the principles and tenets of Order B. Since Hospital D is controlled by Corporation D, which is controlled by Corporation C, which is controlled by Corporation B, which is controlled by Corporation A, which is controlled by the Congregation, which is controlled by Order B, Committee E is indirectly controlled by Order B, and thus Church A.

In this regard, it has been submitted that Committee D is involved in the administration of Plan X and Committee E is involved in the management of Plan X's assets. Because the principal purpose of Committee D is the administration of Plan X and the principal purpose of Committee E is the funding of Plan X, Committee D and Committee E are organizations the principal purpose or function of which is the administration or funding of a plan or program for the provision of retirement benefits for employees of Hospital D and Corporation E. Therefore, Committee D and Committee E qualify as organizations described in section 414(e)(3)(A) of the Code.

Therefore, in regard to your ruling request, we conclude that Plan X qualifies as a church plan within the meaning of section 414(e) of the Code, and has qualified as a church plan in accordance with section 414(e) since May 30, 1998.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code. The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate Key District Office of the Internal Revenue Service.

This ruling 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 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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