414.08-00

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

200010059

Contact Person:

Telephone Number:

In Reference to:

OP:E:EP:T:5

Date:

DEC 15 1999

Legend:

Church =
Congregation =

Hospital =
Corporation A =
Corporation B =
City C =
State D =
Committee F =
Subcommittee G=
Directory =
Plan X =

This is in response to letters dated July 6, 1999, and December 3, 1999, in which you requested a letter ruling as to whether Plan X is a church plan within the meaning of section 414(e) of the Internal Revenue Code.

In support of your letter ruling request you submitted the following facts and representations:

The Hospital is a not-for-profit corporation located in City C, State D. Founded in ****, the Hospital was organized by and is currently operated under the auspices of the Congregation, a religious order ******** operating within the Church who are dedicated to providing health care to the general public.

The stated purpose of the Hospital is to acquire, own, operate, administer and otherwise deal with a nursing home. The Hospital carries out its mission of advancing the healing ministry ********** primarily through the direction of the activities of its nursing home. According to its certificate of organization, the Hospital's nursing home philosophy is

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consistent with the philosophy of the Church and the Congregation. All of the Hospital's activities are conducted and carried out consistent with and guided by the official teachings of the Church. This sense of purpose is further reflected in its by-laws and Mission Statement, where the Hospital is called upon to advance the healing ministry ********** by providing high quality, cost effective elder care services. The Hospital further pledges to treat all persons with compassion according to the principles of dignity, charity and justice.

As part of a corporate reorganization the Hospital's certificate of incorporation was restated in 1997. Corporation A, a State D not-for-profit corporation, is the sole member of the Hospital. Corporation A is also the sole member of Corporation B, an acute care hospital located in City C, State D.

Management of the affairs of the Hospital is vested in its Board of Trustees, subject to certain powers reserved to Corporation A. The Board of Trustees is divided into three groups, with each group containing approximately the same percentage of the total trustees. The first group shall expire after one year, the second after two years, and the third after three years. Thereafter the trustees of each group shall serve for three years.

The Board of Trustees act by majority vote at any meeting at which a quorum is present. The number of Trustees who currently constitute the entire Board of Trustees shall not be less than thirteen nor more than twenty. The Board of Trustees also consists of the following ex-officio members: ********** **********, the General Superior of the Congregation and two additional members of the Congregation designated by the General Superior, the President of Corporation A, and the president of Corporation B. The Trustees who do not serve in an ex-officio capacity are elected by Corporation A, and one shall be a member of the Hospital's senior management. At least four other Trustees shall be physicians, at least two of whom shall be attending physicians on Corporation B's Medical Staff. The remaining Trustees shall be community representatives.

The officers of the Hospital shall include a chairperson, president, vice president, treasurer, sectetary and, when deemed necessary by the Board of Trustees, a vice chairperson, one or more other officers and assistant officers as may be elected. The president shall be appointed and removed by the sole member, Corporation A, and the Board of Trustees shall appoint the remaining officers.

Corporation A and its subsidiaries have all been recognized as being exempt from federal income taxation under section 501(a) of the Internal Revenue Code as organizations described in section 501(c) of the Code. None have been determined to be

private foundations under Code sections 509(a)(1), 509(a)(3) and 170(b)(1)(A)(iii). Corporation A, Corporation B, and the Hospital are all listed in the Directory of 1998 and thus included in the 1998 group exemption applicable to all such listed institutions.

The Hospital has maintained Plan X for its eligible employees and the eligible employees of the other participating employers since its acquisition of the Hospital on December 23, 1987. Plan X has since been amended and restated, most recently effective January 1, 1996. Plan X was previously amended and restated in 1991 to incorporate applicable provisions of the Tax Reform Act of 1986 and all subsequent legislation and regulatory changes since that time. You have represented that, to the best knowledge of the Hospital, no election with respect to Plan X has been made under section 410(d) of the Internal Revenue Code, Plan X has at all times been maintained exclusively for the benefit of employees of the hospital, and Plan X has been maintained primarily for the benefit of individuals employed by non-profit organizations and not in connection with an unrelated trade or business.

Under Plan X, the administrator of the plan is the Hospital unless some other person or committee is appointed by the Hospital. In this case, all administrative aspects of Plan X have been handled by Subcommittee G, appointed by Committee F, since the overall reorganization of Corporation A in 1997. Committee F is appointed by the Board of Trustees of Corporation A. Members of each committee and subcommittee may consist of Hospital Trustees and one or more Corporation A Trustees, all of whom are appointed by the Hospital Board of Trustees. All members of committees serve at the pleasure of the Hospital Board of Trustees. Subcommittee G also handles the administration for the retirement plans of Corporation B. Subcommittee G's principal purpose or function is the administration of Plan X as well as the retirement plans for Corporation B. Subcommittee G's administrative duties include general plan administration, plan design decisions, and the funding and investment of plan assets.

Based on the foregoing statements and representations, you request a ruling that Plans X is a church plan within the meaning of section 414(e) of the Internal Revenue Code.

To qualify under section 401(a) of the Code, an employees' plan generally must meet the minimum participation standards of section 410 and the minimum vesting standards of section 411. Qualified pension plans also must meet the minimum funding standards of section 412. Each of these sections, however, contains an exception for a "church plan" as defined in section 414(e), unless an election has been made in accordance with section 410(d). See sections 410(c)(1)(B), 411(e)(1)(B) and 412(h)(4).

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 by a convention or association of churches which is exempt from taxation under section 501 of the Code.

Under section 414(e)(3)(A) of the Code, a plan established for its employees by an employer which is not itself a church or a convention or association of churches but otherwise meets the requirements of section 414(e), will be treated as a church plan if it is 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.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or convention or association of churches includes 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 the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization that is not itself a church or a convention or association of churches to have a church plan under section 414(e) of the Code, that organization must establish that its employees are employees or deemed employees of a church or a convention or association of churches under section 414(e)(3)(B). Employees of an organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; (2) is controlled by or associated with a church or a convention or association of churches; and (3) provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A).

In this case, the Hospital is a nonprofit corporation established and operated by the Congregation, a religious order

of women within the Church who are dedicated to providing health care to the general public. Hospital activities are carried out consistent with and guided by the official teachings of the Church and the philosophy of the Hospital is consistent with that of the Church and the Congregation. The stated purpose of the Hospital is to acquire, own, operate, administer and otherwise deal with a nursing home, and to advance the healing ministry of Jesus Christ by providing high quality, cost effective elder care services. The Hospital pledges to treat all persons with compassion according to the principles of dignity, charity, and justice. In addition, management of the affairs of the Hospital is vested in its Board of Trustees, which includes a number of Church and Congregation officials as members, and is generally subject to powers reserved to Corporation A.

In addition, the Hospital, Corporation A, and Corporation B are each listed in the official directory of the Church for the United States of America. The Internal Revenue Service has determined that any organization listed or appearing in the Church's official directory is an organization described in section 501(c)(3) of the Code, and exempt from tax under section 501(a). Also, the Service has determined that any organization that is listed in the official directory of the Church shares common religious bonds with that Church and therefore is associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code.

If an organization is associated with the Church and shares common religious bonds with the Church, that organization's employees are deemed to be Church employees. In view of the common religious bonds between the Congregation, the Hospital, and Corporations A and B, and the association of all these organizations with the Church, it is concluded that the employees of the Hospital meet the definition of "employee" under section 414(e)(3)(B) of the Code. Accordingly, these individuals are deemed to be employees of the Church for purposes of the church plan rules.

Having established that the above organizations' employees are Church employees, the remaining issue is whether the Committee which administers the Plans is an organization controlled by or associated with a church or a convention or association of churches and has as its principal purpose or function the administration or funding of a plan within the meaning of section 414(e)(3)(A) of the Code.

In this case, the Board of Trustees of Corporation B has appointed Committee F, which, in turn, has delegated to Subcommittee G the duty of handling the administrative aspects of Plan Y. The principal function of Subcommittee G is the administration of Plan X and the other retirement plans of maintained by the Corporation A. Such duties include plan administration and design and the funding and investment of plan

assets. Thus, Subcommittee G is an organization controlled by or associated with a church or a convention or association of churches and has as its principal purpose or function the administration or funding of a plan for the provision of retirement benefits for individuals (and their beneficiaries) who are deemed to be employees of a church or a convention or association of churches. It is concluded, therefore, that Plan X, as administered by Subcommittee G, is a plan administered by an organization described in section 414(e)(3)(A) of the Code.

Accordingly, it is ruled that Plans X is a church plan within the meaning of section 414(e) of the Internal Revenue Code.

This letter expresses no opinion as to whether Plan X continues to be a qualified plan under section 401(a) of the Code. The determination as to whether a plan remains qualified under section 401(a) is within the jurisdiction of the appropriate Key District Director's office of the Internal Revenue Service.

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

Sincerely yours,

for Robert Morrill

Alan Pipkin
Chief, Employee Plans
Technical Branch 5

Enclosures:
Notice of Intention to Disclose
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