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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

W/L: 501.00-00
509.00-00
414.00-00
501.00-00

Contact Person:

Telephone Number:

In Reference to

T:EP:RA:T3

Date:

MAR 3 2000

Legend:

Congregation A =
Entity B =
Entity C =
Church K =
Directory D =
Plan X =

State N =
Entity E =

Dear

In letters dated July 26, 1999, and February 18, 2000, your authorized representative requested a ruling on your behalf that the employee benefit plan maintained by Entity C, a State N nonprofit corporation, qualifies as a church plan under section 414(e) of the Internal Revenue Code.

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

Congregation A is a religious congregation of women established according to the tenets of Church K. Congregation A established and organized a non-stock, not-for-profit corporation under the laws of State N known as Entity B. Entity B is exempt from federal income tax under Code section 501 (a) as an organization described in section 501 (c) (3). Entity B is listed in Directory D as a Religious Community of Women in Entity E and as a Religious Institute of Women in the United States.

The primary purpose of Entity B is to establish, sponsor, staff, promote, support, maintain, develop, supervise directly or indirectly, and conduct religious, charitable, and educational work through, including, but not limited to, the following: (i) facilities and programs for the accommodation, care, and treatment of individuals suffering from illness, injury, disease, disability, or infirmity; (ii) nursing homes; (iii) homes for the aged; (iv) residential facilities; (v) institutions and programs for the education of youth and other persons; (vi) high schools; (vii)

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day care centers; (viii) involvement in parish ministries; (ix) temporary residences for working women of low income; and (x) institutions or programs to visit and care for the poor and needy.

The Bylaws of Entity B requires that the Board of Directors consist of the Superior General and General Council of Congregation A. The Board of Directors acts in a stewardship capacity and assures that all actions of Entity B are consistent with the religious and ethical principles of Congregation A, the charitable, religious, and educational mission of Congregation A, the Constitutions of Congregation A, and the mission, teaching, doctrine, and traditions of Church K.

Entity C was incorporated as a non-stock, not-for-profit corporation under the laws of State N. Under Section 1 of Article II of Entity C's Corporate Bylaws, Entity C's members are the Superior General and the members of the General Council of Entity B. Entity C is exempt from federal income tax under Code section 501 (a) as an organization described in Code section 501(c) (3). Entity C is listed in Directory D.

Entity C was organized for charitable, religious, scientific, and educational purposes, including, but not limited to, the following: to operate exclusively for the benefit of, to perform the functions of, and to carry out the purposes of organizations described in section 509 (a) (1) or section 509(a) (2) of the Code, including Entity B. One of the purposes of Entity C is similar to the primary purpose of Entity B, which is discussed above. Entity C is also responsible for coordinating activities of Congregation A as they pursue their charitable, educational, benevolent, scientific, religious, and other purposes related to health care, health education and training, health facilities, scientific research, and health management. Entity C is required to act in accordance with the applicable teachings, doctrines, traditions, and canon law of Church K and the Ethical and Religious Directives for Church K Health Facilities.

As members of Entity C, the Superior General and the members of the General Council of Entity B act in a stewardship capacity and ensure that the actions of Entity C are consistent with its purposes and the ethical and religious principles of Congregation A and in furtherance of their apostolate of quality health care.

The Board of Directors of Entity C is responsible for the management, control, and operation of the affairs and properties of Entity C. Entity C's Corporate Bylaws requires the Board of Directors to act in accordance with Entity C's Articles of Incorporation and Bylaws and the Ethical and Religious Directives for Church C Health Facilities.

Entity C's Corporate Bylaws states that the Board shall consist of five to ten Directors, as determined by the members at each annual meeting. The Bylaws also states that the Board shall at a minimum consist of those members duly elected pursuant to the constitutions to hold office as the Superior General and the members of the General Council of Entity B. The Articles of Incorporation, dated April 22, 1988, states that the first Board consists of five Directors, all of whom are members of Congregation A.

Entity C adopted Plan X, a prototype defined contribution retirement plan, effective as of January 1, 1997. All employees of Entity C are eligible to participate in Plan X, excluding employees who, after January 1, 1997, are classified as employees scheduled to work only a limited number of hours based exclusively on the needs of the facility.

The Internal Revenue Service has not issued a favorable determination letter on the qualified status of Plan X. Entity C intends to submit Plan X for a determination letter before the close of the remedial amendment period applicable to tax-exempt institutions.

Since its establishment effective January 1, 1997, Plan X has provided for its administration by a committee appointed by Entity C's Board of Directors. As an organization appointed pursuant to the terms of the Plan X documents, the principal purpose of the committee is the administration of the Plan. The committee's powers and duties include the determination of all questions arising in the administration, interpretation and application of the Plan. The committee is controlled by Entity C, through its Board of Directors.

Section 17.2 of Plan X provides that Entity C reserves the right at any time by action of its Board of Directors to modify, alter or amend Plan X in whole or in part, which power enables its Board to control Plan X. Under Section 2 of Article II of Entity C's Corporate Bylaws, all directors of Entity C are appointed by its members (the Superior General and the members of the General Council of Entity B). Entity C thus has controlled Plan X since its establishment, and continues to control the administration of Plan X through the committee.

Based on the aforementioned facts and representations, your authorized representative requests a ruling that:

1. Plan X constitutes a church plan within the meaning of section 414(e) of the Code; and,

2. Plan X has constituted a church plan since January 1, 1997, its original effective date.

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) (3) (A) of the Code provides that a plan, otherwise qualified, will qualify 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.

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 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 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).

Entity C is listed in Directory D, which is the official directory of Church K. The Internal Revenue Service has determined that any organization listed in Directory D is an organization described in section 501(c)(3) of the Code, that is exempt from tax under section 501(a). Also, any organization that is listed in Directory D shares common religious bonds and convictions with Church K and is deemed associated with Church K within the meaning of section 414(e)(3)(D) of the Code.

Accordingly, Entity C is exempt from taxation under section 501(a) and is also associated with Church K. Therefore, pursuant to section 414(e)(3)(B) and (C) of the Code, employees of Entity C are deemed to be employees of Church K and Church K is deemed to be the employer of such employees for purposes of the church plan rules since January 1, 1997, its original effective date.

However, an organization must also establish that its plan 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) of the Code, an organization must have as its principal purpose the administration of the plan and must also be controlled by or associated with a church or a convention or association of churches.

You represent that Plan X provides for its administration by a committee appointed under such Plan by resolution of the Board of Directors of Entity C. As an organization so appointed under Plan X, the principal purpose of the committee is the administration of Plan X. The committee, as administrator of Plan X, has various powers and duties, including the determination of all questions arising in the administration, interpretation and application of Plan X. Under Plan X, committee members are appointed by and serve at the pleasure of the Board of

Directors of Entity C. Committee members may be removed with or without cause at any time by the Board of Directors of Entity C.

Entity C is listed in Directory D. Any organization listed in Directory D is considered to be associated with Church K. As Entity C is associated with Church K, this assures that the committee which is controlled by Entity C, is indirectly associated with Church K. Since the principal purpose of the committee is the administration of Plan X, the committee constitutes an organization that is controlled by or associated with Church K, and has as its principal purpose or function the administration or funding of Plan X.

Therefore, we conclude that Plan X constitutes a church plan within the meaning of section 414(e) of the Code since January 1, 1997, its original effective date.

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.

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 Director's Office of the Service.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government
Entities Division

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