DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

200025061

March 28, 2000

OP:E:EP:T1

Uniform Issue List No. 414.08-00

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ATTN: **********
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Legend:
Church A = **********
Congregation B = **********
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State C = *********
University = **********
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Plan X = **********
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Ladies and Gentlemen:

This is in response to a letter dated July 8, 1999, supplemented by additional correspondence dated March 6, 2000, in which your authorized representative requested rulings on behalf the above-named University under section 414(e) of the Internal Revenue Code.

In support of your ruling requests you have submitted the following statements and information:

Congregation B is a religious congregation founded under the auspices of Church A. As an organization "vowed to poverty and devoted to education," Congregation B founded, and provided the University (then a "College") in **** in State C, for the purpose of promoting and disseminating higher education in a manner consistent with the teachings, tenets, and core values of Church A. To this end, Congregation B also provided a "perpetual succession of competent

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teachers." The college became a University in **** and remains a Church A-affiliated institution with strong ties to Congregation B, offering students an excellent liberal arts education, training for professional careers and for the challenges, discoveries, and conflicts they will face in the future.

The University's By-Laws confer to its Board of Trustees broad authority over the institution's management and operation. The By-Laws provide that the University is overseen by a Board of Trustees composed of not less than five nor more than thirty-five members. The Trustees have the power to (1) appoint the President of the University, (2) authorize the annual budget, (3) authorize the conferring of all degrees, and (4) decide on other matters appropriate to the University's management. Currently, of the 35 members of the Board of Trustees, all but three are adherents of Church A. Eight Trustees are members of the Church A clergy, and of those seven are members of Congregation B.

The University is listed in the Official Directory of Church A for the United States. The Internal Revenue Service ("Service") has determined that organizations listed or appearing in the Official Directory of Church A are organizations described in section 501(c)(3) of the Code and exempt from tax under section 501(a).

In furtherance of its stewardship over the University, the Board of Trustees has adopted and maintains Plan X for the benefit of certain University employees and the beneficiaries of those employees. In ****, the Internal Revenue Service determined that Plan X was a qualified plan meeting the requirements of section 401(a) of the Code. Prior to ****, Plan X listed the University as its Plan administrator. In ****, however, the Board of Trustees amended Plan X, and a Retirement Plan Committee ("Committee") composed of two or more members replaced the University as the Plan Administrator. The Board also passed a separate resolution establishing the Committee. The Committee's sole purpose is the administration of Plan X. Membership on the Committee is limited to individuals who are adherents of Church A; they serve at the pleasure of the Board of Trustees.

Based on the preceding statements and representations, you request a rulings that:

1. On and after June 1, ****, Plan X is a church plan within the meaning of section 414(e) of the Code; and

2. Plan X is deemed to have been a church plan under section 414(e) of the Code and the rules of section 414(e)(4) for all years beginning on or after ********** and ending on **********.

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To qualify under section 401(a) of the Code, an employees' plan generally must, among other requirements, 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.

Section 414(e)(3)(A) of the Code provides that a plan 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 shall include an employee of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 of the Code, 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.

Section 414(e)(4) of the Code provides, in pertinent part, that if a plan, intended to be a church plan, fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that 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) provides, in pertinent part, that the term "correction period" means the period

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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 church plan requirements.

Section 414(e) was added to the Code by section 1015 of the Employee Retirement Income Security Act of 1974 (ERISA), 1974-3 C.B. 1. Section 1017(e) of ERISA provided that section 414(e) applied as of September 2, 1974, the date of ERISA's enactment. However, section 414(e) subsequently was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980 (MPPAA), Pub. L. 96-364, to provide that section 414(e) was effective as of January 1, 1974.

In order for an organization that is not itself a church or 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 convention or association of churches under section 414(e)(3)(B). Employees of any 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 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) of the Code.

In this case Congregation B is a religious congregation founded under the auspices of Church A. Congregation B furthers the teachings, tenets, and core values of Church A by establishing and teaching in numerous Church A-affiliated educational institutions. In ****, Congregation B established the University in furtherance of its mission of providing excellent liberal arts and professional training.

The University is chartered as a not-for-profit corporation in State C and retains its ties to Church A through its 35-member Board of Trustees. Of those 35 members, 32 are members of Church A, eight are members of Church A's Clergy, and seven are members of Congregation B. The University also is listed in the Official Directory of Church A. The Service has determined that an organization listed or appearing in the Official Directory of Church A is an organization described in section 501(c)(3) of the Code, and exempt from tax under section 501(a); an organization that is listed in the Church A Official Directory also is associated with Church A for purposes of the church plan rules. The fact that close institutional and philosophical ties have long existed among Church A, Congregation B and the University gives evidence to the fact that the organizations share common religious bonds and convictions. The University is, therefore, "associated" with Church A within the meaning of section 414(e)(3)(D) of the Code and for purposes of the church plan rules.

Further, University employees are employees of an organization that is exempt from tax under section 501(a) of the Code and associated with a church or convention or association of churches. It is concluded, therefore, that University employees are considered to be Church A employees under the rules of section 414(e)(3)(B) of the Code, and Church A is considered to be the employer of the University's employees for purposes of section 414(e)(3)(C).

Having established that University employees are considered to be employees of Church A, the remaining question is whether the Plan X Retirement Plan Committee is an organization, controlled by or associated with a church or convention or association of churches, that has as its principal purpose or function the administration or funding of a plan or plans for the provision of retirement benefits or welfare benefits, or both, within the meaning of section 414(e)(3)(A) of the Code.

In this case, until *******, ****, Plan X provided that the University was its Plan Administrator. As of that date, the University's Board of Trustees amended Plan X and promulgated a separate corporate resolution that established the Retirement Plan Committee. The Committee's sole purpose is the administration of Plan X. The three members of the Committee are adherents of Church A, and serve at the pleasure of the University's Board of Trustees. Accordingly, it is concluded that, for Plan years beginning on or after ******, ****, the plan currently is administered by an organization that is associated with a church or convention or association of churches, the principal purpose or function of which is the administration or funding of a plan or plans to provide retirement benefits, welfare benefits, or both to individuals who are or are considered to be Church A employees.

However, for years prior to the year in which the above-mentioned amendment was effective, the Plan named the University as the administrator of Plan X, a situation that did not meet the requirements of section 414(e)(3)(A) of the Code. Under the rules of section 414(e)(4), if a plan intended to be a church, plan fails to meet one or more of the church plan requirements, but the plan's sponsor corrects that failure prior to the expiration of the correction period, then that 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. In this case, the University amended Plan X to provide for the creation of a Retirement Plan Committee, and this amendment was adopted prior to the expiration of any correction period that might have applied. Accordingly the amendment to Plan X meets the requirements of section 414(e)(4). Therefore, Plan X satisfies the church plan rules for the year (****) in which the amendment was adopted, and for subsequent years. For all years dating back to *********, **** and ending on or before

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******, ****, as requested, Plan X is deemed to meet the requirements of section 414(e)(3)(A) of the Code in that Plan X is maintained by an organization that is associated with Church A, the principal purpose or function of which is the administration or funding of a plan providing retirement benefits of individuals deemed to be employees of Church A.

Accordingly the Service rules that:

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

2. Plan X is deemed to have been a church plan under section 414(e) of the Code and the rules of section 414(e)(4) for all years beginning on *********, **** and ending on *******, ****.

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. Also, this ruling expresses no opinion as to whether Plan X, as described herein, continues to satisfy the requirements of 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 Manager of Employee Plans Determinations Programs, Cincinnati, Ohio.

A copy of this ruling has been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government
Entities Division

Attachments:

- Deleted Copy of this Letter Ruling
- Copy of Cover Letter to Authorized Representative
- Notice 437, Notice of Intent to Disclose