INTERNAL REVENUE SERVICE

Uniform Issue List: 414.08-00

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T:EP:RA:T1

JUL 25 2000

Attn:

Legend:

Board A =

Church B =

Church C =

Church D =

Church M =

Directory N =

State O =

Plan X =

145

Ladies and Gentlemen:

This is in response to a letter dated July 23, 1999, as supplemented by additional correspondence dated November 24, 1999, and May 5, 2000, in which your authorized representative requested private letter rulings regarding the applicability of sections 414(e) and 403(b)(2) of the Internal Revenue Code ("Code") to Plan X.

The following facts and representations have been submitted:

Board A ("Board") is a State O not for-profit corporation chartered in 1913. The Board administers an endowment that provides retirement and welfare benefits to Church M ministers and missionaries and their beneficiaries. In 1999, the Board broadened its scope to include ministers and missionaries (and their beneficiaries) from other denominations and organizations which share beliefs and practices similar to Church M. To attain this objective, the Board operates either directly or through the medium of related organizations; it cooperates with such organizations in securing, so far as practicable, uniformity in the methods for the extension of such aid; it promotes interest in the better maintenance of the ministry among Church M and Church M-related organizations, and in other denominations which share similar beliefs and practices; also, it receives and administers funds to provide benefits to employees of Church M or other like-minded denominations, and such employees' beneficiaries. The Board may adopt measures to achieve the above-mentioned objectives.

Board A is one of four related boards of Church M. The closeness of the relationship between Board A and Church M is illustrated by the fact that, under the Board's Act of Incorporation and By-Laws, up to 18 of the Board's managers (directors) are elected by Church M's General Board. The remaining managers (between two and seven) of Board A are elected, by the members of the Board, from the general public on the basis of particular skills helpful to the Board in performing its functions. Each proposed amendment to the Board's By-Laws must be provided to Church M, in care of its General Secretary, at least 15 days prior to the date of the meeting at which a vote is taken with respect to such proposed amendment. Further, any change to the purpose of Board A must be approved by Church M's General Board. Accordingly, although it is separately incorporated, Board A serves Church M in its provision of retirement and related benefits.

In furtherance of its stated purpose under its charter, the Board has established and maintains Plan X. As it exists today, Plan X is intended to operate as an approved tax-sheltered annuity program under Code section 403(b)(9).

The decision to extend participation in Board-administered programs required the approval of Church M's general leadership. The Board chose to broaden access to its plans because it believes that this action will further the denominations' evangelical and

Ecumenical purposes and facilitate the blending of related churches by sharing resources and facilities. Each participating employer in Plan X is either a local congregation of Church M or an organization associated with Church M. Churches C and D promote education and missionary projects in conjunction with Church M member organizations. It is represented that all of these entities are organizations described in Code section 501(c)(3) and exempt from federal income taxation under section 501(a).

Board A, and Churches B, C, and D share organizational characteristics with, and hold religious beliefs and practices that are similar to Church M. Specifically, each is an "Organization" that is characterized by one or more of the following:

(i) A church or convention or association of churches, or a person acting under the direction of a church or convention or association of churches founded the Organization that shares beliefs and practices similar to Church M and is affiliated or associated with Church M;

(ii) The members, governing board, or officers of the church, or convention or association of churches share religious beliefs and practices similar to members of Church M; and, they have the right to appoint or elect a majority of the Organization's governing board of directors;

(iii) A church or convention or association of churches which holds religious beliefs and practices similar to Church M owns the property upon which sit facilities in which the Organization carries on a substantial portion of its activities; or, such church or convention or association of churches provided, in the past year or current year, more than 25% of the Organization's revenues;

(iv) A majority of the members of the Organization's governing board must be members of a church or convention or association of churches which is affiliated or associated with Church M;

(v) The Organization's articles of incorporation (or an equivalent document) provides that its primary purpose is to provide services or resources to a particular church or convention or association of churches that either is affiliated or associated with Church M, in furtherance of the Organization's teachings, tenets, and core beliefs;

(vi) The Organization's articles of incorporation (or an equivalent document) require that, upon dissolution, its assets (after provision for payment of all liabilities) go to a particular church or Organization that adheres to and follows the teachings, tenets and core beliefs found in paragraph (vii), below;

(vii) The Organization follows basic teachings, tenets, and core beliefs like those of hurch M including 1) a belief in the supremacy of the scriptures, rather than the church or a hierarchy, 2) a belief in religious liberty, in the freedom to worship without any compulsion by or from the state, 3) a belief in the practice of , rather than , 4) a belief in the autonomy of the local church, and 5) a belief in the priesthood of all believers;

(viii) The Organization requires members of its governing board, or its officers, to subscribe to a statement including the teaching, tenets, and core beliefs set forth in (vii) above;

(ix) A church or convention or association of churches which shares religious practices and beliefs similar to Church M is included in Directory N, Church M's directory of affiliated or associated Organizations.

The participating organizations share significant common religious beliefs and practices with Church M organizations. Many of these beliefs and practices are codified in the By-Laws of Church M Churches, including the preservation and propagation of freedoms and characteristics and respect for the independence of the individual church.

Church B shares the following core beliefs with Church M Churches: the belief that scripture is the word of God and the supreme authority; the belief in the local church, with the primary task of proclaiming the gospel of Jesus Christ; the belief in (rather than infants); the belief in the independence of the local church which must be free from ecclesiastic or political authority; and the belief in the separation of church and state. Church B is open to membership only for churches who subscribe without reservation to its core beliefs.

Church C shares the following core beliefs with Church M Churches: the belief in the development and organization of an alliance of individuals and congregations dedicated to the preservation of historic principles, freedoms and traditions; the belief in the freedom of the individual to read and interpret the scriptures; the belief in the freedom of the local church; the belief in the servant role of leadership including the full partnership of all God's people in missions and ministry; and the belief in the principle of a free church in a free state and the opposition of any effort by either church or state to use the other for its own purposes.

Church D shares the following core beliefs with Church M Churches: the belief in bringing together Church members who desire to call out God's gifts in each person in order that the gospel of Jesus Christ will be spread throughout the world; the belief in being committed to the preservation and propagation of individual and historic freedoms and distinctions; the belief in the priesthood of all believers; the belief in the acceptance

of the authority of the Bible without the aid of creeds; and the belief in the autonomy of each church and the separation of church and state in the interests of religious liberty.

Based on the foregoing facts and representations, you have requested the following rulings:

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

2) Provided that Plan X satisfies Code section 403(b)(9), qualified employment with Board A and Churches B, C, and D under Plan X will count as service for purposes of the maximum exclusion allowance under Code section 403(b)(2).

A plan is not subject to the coverage requirements of Code section 410 (see Code section 410(c)(1)(B)), the vesting requirements of Code section 411 (see Code section 411(e)(1)(B)), or the funding requirements of Code section 412 (see Code section 412(h)(4), if the plan is a church plan pursuant to Code section 414(e) and the church has not elected under Code section 410(d) to have such requirements apply. However, such a plan must satisfy the coverage, vesting, and funding requirements as in effect on September 1, 1974.

Code section 414(e)(1) 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 Code section 501(a).

Code section 414(e)(3)(A) provides that a church plan 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.

Code section 414(e)(3)(B) defines "employee" to include a duly ordained, commissioned, or licensed minister or 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 Code section 501, and which is controlled by or associated with a church or a convention or association of churches.

Code section 414(e)(3)(C) provides that a church or a convention or association of churches which is exempt from tax under Code section 501 shall be deemed the employer of any individual included as an employee under subparagraph B.

Code section 414(e)(3)(D) 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 church plan it must establish that its employees are employees or deemed employees of the church or convention or association of churches under Code section 414(e)(3)(B). In addition, a church plan must be established and maintained for its employees by a church or a convention or association of churches which is exempt from tax under Code section 501 as provided in section 414(e)(1); or, it must be maintained by an organization described in section 414(e)(3)(A).

In this case, you have stated that Board A and Churches B, C, D, and M are organizations described in Code section 501(c)(3) and exempt from tax under section 501(a). Board A is associated with Church M through its administration of funds which provide benefits to employees of Church M Churches. You have further demonstrated that a large majority of Board A's Directors are appointed by Church M's executive body. Finally, you have shown that Board A shares a commitment to the teachings, tenets, and core beliefs of Church M. For example, 1) a belief in the supremacy of the scriptures, rather than the church or a hierarchy, 2) a belief in religious liberty, in the freedom to worship without any compulsion by or from the state, 3) a belief in the practice of , rather than , 4) a belief in the autonomy of the local church, and 5) a belief in the priesthood of all believers.

In addition, you have shown that employees covered by Plan X are either employees of Church M or of an organization associated with Church M (Board A, Churches B, C, or D). In view of the stated purpose of Board A and Churches B, C, and D, their organization, structure, and actual activities, and their adherence to a consistent set of teachings, tenets, and core beliefs, we conclude that Board A, and Churches B, C, and D share "common religious bonds and convictions", with Church M and are, therefore, "associated" with Church M within the meaning of Code section 414(e)(3)(D), and for purposes of the church plan rules.

Further, because the employees of Board A, and Churches B, C, and D are employees of organizations associated with a church or convention or association of churches, they may also be deemed employees of that church or convention or association of churches under the rules of Code section 414(e)(3)(B). Accordingly, we conclude that the employees of Board A, and Churches B, C, and D may also be

deemed to be Church M employees under the rules of section 414(e)(3)(B) and for purposes of the church plan rules. Conversely, Church M is considered to be the employer of employees of Board A, and Churches B, C, and D under the rules of Code section 414(e)(3)(C).

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 Code section 414(e)(3)(A). To be described in Code section 414(e)(3)(A), 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.

It has been submitted that Plan X is administered by Board A and, as noted above, Board A and Churches B, C, and D are associated with Church M. In addition, because the principal purpose of Board A is the administration of Plan X, Board A constitutes an organization, the principal purpose or function of which is the administration or funding of plans or programs for the provisions of retirement benefits for employees of Board A and Churches B, C, and D. Therefore, Plan X is maintained by an organization described in Code section 414(e)(3)(A) for purposes of the church plan rules.

Accordingly, with respect to ruling request one, we rule that Plan X, as maintained by Board A, is a church plan under Code section 414(e).

Code section 403(b)(1) provides that amounts contributed by an employer to purchase an annuity contract for an employee are excludable from the gross income of the employee in the year contributed to the extent of the applicable "exclusion allowance", provided certain requirements are met.

Code section 403(b)(2)(A) defines an employee's "exclusion allowance" as an amount equal to the excess, if any, of the amount determined by multiplying 20% of includible compensation by the number of years of service, over the aggregate amount contributed by the employer for annuity contracts and excludible from the gross income of the employee for any prior year.

Code section 403(b)(9) states that a retirement income account is a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in Code section 414(e)(3)(A) to provide benefits under Code section 403(b) for an employee described in Code section 403(b)(1) or his beneficiaries. Code section 403(b)(9)(A)(i) further provides, in part, that a retirement income account shall be treated as an annuity contract described in Code section 403(b)(1).

Code section 403(b)(2)(C) provides that, for purposes of Code sections 403(b)(2) and 415(c)(4)(A), (i) all years of service by (I) a duly ordained, commissioned, or licensed minister of a church, or (II) a lay person, as an employee of a church, a convention or association of churches, including an organization described in Code section 414(e)(3)(B)(ii), shall be considered as years of service for one employer, and (ii) all amounts contributed for annuity contracts by each such church (or convention or association of churches) or such organization during such years for such minister or lay person shall be considered to have been contributed by one employer. Code section 403(b)(2)(C) further provides that the terms "church" and "convention or association of churches " have the same meaning as when used in Code section 414(e).

Because Board A and Churches B, C, and D are associated with Church M, their employees are employees of organizations described in Code section 414(e)(3)(B)(ii). Thus, we conclude with regard to ruling request number (2), that all years of service with Board A and Churches B, C, and D shall be considered years of service with one employer for purposes of computing an employee's maximum exclusion allowance under Code section 403(b)(2). This ruling assumes that Plan X satisfies the requirements of Code section 403(b)(9).

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

This ruling is directed only to the taxpayer who requested it. Code section 6110(k) provides that it may not be used or cited by others as precedent.

Sincerely yours,

(Signed) John Swieca

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

Enclosures:
Deleted Copy of the Ruling
Notice 437

cc: