Internal Revenue Service

U.I.L. 414.08-00

200044043

Department of the Treasury

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T2/5002313

AUG 7 2000

Attn:

Legend:

Church C =
Order B =
Association A =
Corporation B =
Organization M =
Entity D =
Conference G =
Directives A =
Hospital W =
Directory C =
Committee M =
Plan X =
Plan Y =
Individual A =
Individual B =
Individual C =
Region D =
State A =
Individual D =

Dear

This letter is in response to a ruling request dated October 27, 1999, as supplemented by correspondence dated May 10, June 5, 2000, and July 28, 2000, submitted on your behalf by your authorized representative, concerning the church plan status of Plan X and Plan Y under section 414(e) of the Internal Revenue Code ("Code").

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

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Church C is governed by Individual A. The worldwide Church C is territorially divided into separate dioceses, with each diocese governed by an individual bishop who is appointed by Individual A. Each bishop is charged with the total authority within his individual diocese to establish and enforce such laws and regulations as are necessary to the well being of Church C. Also, legal title to all real estate and other property of Church C within a diocese is held in the name of the diocesan bishop. Each bishop swears allegiance to Individual A.

Hospital W was established and began operating in 1850 by Individual B and Individual C. Church C, through Individual B and his successors, has controlled the ownership of Hospital W from its inception through the present time. Hospital W was formed as a State A corporation for the purpose of, among others, to own and operate an acute care hospital and other health care facilities having the capacity to provide a broad range of health care services for the benefit of the sick, injured, disabled, infirm, aged and poor of the community or communities within which Hospital W conducts its activities. Hospital W's medical staff is open to all qualified physicians in the community, operates a full time emergency room open to all persons regardless of their ability to pay, participates in Medicare and Medicaid programs, and provides substantial charity care to the community. Further, Hospital W abides by Directives A promulgated by Conference G, which expresses the moral teaching of Church C applicable to health care services. Hospital W is a member of Association A.

Hospital W, whose sole member is the Bishop of Region D by virtue of his office, is an instrumentality of Church C, operating under the direct supervision and control of Church C. The Articles of Incorporation provide that the sole member of Hospital W is and shall be the Bishop of Region D, and his successors, and that Hospital W shall be governed by a Board of Directors, which directors shall serve at the will and pleasure of the Bishop of Region D. The Bylaws of Hospital W provide that the Bishop of Region D shall automatically be a member of the Board of Directors and shall serve as its chairman. Furthermore, the Bylaws provide that Individual D (essentially the assistant to the Bishop of Region D) shall serve as secretary of the Board of Directors of Hospital W. The Bishop of Region D directly controls the government of Hospital W by controlling the appointment and election of members of the Board of Directors, which is the governing board of Hospital W, and by participating directly in the affairs of Hospital W as Chairman of the Board of Directors, and with Individual D serving as Secretary of the Board of Directors.

The goals of Church C include, among others, the promotion of religious faith, education, human development, and care for the sick and needy. From its inception in 1850 until the early 1960's, Order B, a Church C order of religious members, served as administrator of Hospital W.

The Articles of Incorporation of Hospital W provide that it is intended to be and shall constitute a charitable organization other than a private foundation and exempt from federal income tax under the provisions of section 501(c)(3) of the Code. Hospital W is

one of the agencies and instrumentalities operated, supervised, or controlled by or in connection with Church C through the office of Region D and is listed annually in Directory C. In addition, the Articles of Incorporation provide that upon dissolution of Hospital W, all assets which shall remain after payment of all liabilities shall be transferred and paid over to Individual B or his successor in interest, to be applied for the charitable purposes associated with the community or communities in which Hospital W operates.

The Bylaws of Hospital W provide that members of the Board of Directors shall be nominated and elected by the Board of Directors, subject to the ratification and approval of the Bishop of Region D. The Board of Directors consist of 25 members. The Bylaws provide further that any Director may be removed from office at any time, with or without cause, upon the affirmative vote of the Bishop of Region D.

Hospital W is the sole shareholder of Corporation B, which is a holding company. Corporation B has no employees and owns all of the stock of Organization M, which operates an ambulance service. Corporation B also owns all of the stock of Entity D, which provides medical billing services. Although Hospital W is the owner of, and is affiliated with, other entities, only the employees of Hospital W, Organization M, and Entity D participate in Plan X, and only the employees of Hospital W participate in Plan Y, which are the subjects of this private letter ruling request. Organization M and Entity D are for-profit entities.

Hospital W sponsors Plan X which has been amended and restated. Plan X was established on July 30, 1969, effective July 1, 1969, for the benefit of Hospital W's employees and the employees of its subsidiaries. Plan X was amended on November 24, 1998, effective January 1, 1999. Hospital W has maintained Plan X as a qualified plan under section 401(a) of the Code since its inception and has received favorable determination letters from the Internal Revenue Service, the most recent of which is dated June 9, 1994.

Plan X is currently administered for the exclusive benefit of approximately 1,637 active participants, including the employees of Organization M and Entity D which are for-profit entities. The total number of employees of Organization M who participate in Plan X is 30 and the total number of employees of Entity D who participate in Plan X is 53. The total number of participating for-profit employees of Organization M and Entity D comprises 5.07 percent of the total number of participants in Plan X. As of January 1, 1994, the employees of Organization M and Entity D first became eligible to participate in Plan X. Hospital W has no plans to expand the services of these organizations. Hospital W represents further that the percentage of participants who were employees of these for-profit entities who have participated in Plan X in years from 1994 to 1998 have been at or around 5 percent or less. The percentage of participants who were employees of the for-profit entities and who participated in Plan X in 1999 is approximately 4.3 percent, and

the percentage of participants who are currently employees of the for-profit entities and who currently participate in Plan X is approximately 4.5 percent.

Hospital W also sponsors Plan Y. Hospital W established Plan Y on November 24, 1998, effective January 1, 1999, as a qualified plan under Code section 403(b) for the benefit of its employees and the employees of its subsidiaries which are tax exempt and which elect to participate. Only eligible employees of Hospital W participate in Plan Y, of which there are 806. Employees of Organization M and Entity D are not eligible to participate in Plan Y.

Committee D administers Plan X and Plan Y. Members of Committee D are appointed by the Board of Directors of Hospital W. The members of the Board of Directors of Hospital W are appointed by, and serve at the pleasure of the Bishop of Region D. The principal function of Committee D is the administration of Plans X and Y. Committee D has administered Plan X and Plan Y since their respective inceptions.

It is represented that there are participants in Plan X and Plan Y who engage in unrelated trades or businesses. The number of participants who are involved in unrelated trades or businesses in Plan X is 18 out of 1,637 participants, which is 1.0995 percent of total participation. The number of participants who are involved in unrelated trades or businesses in Plan Y is seven out of 806 participants, which is 0.8684 percent of the total number of participants in Plan Y.

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

1. Plan X is a church plan in accordance with the requirements of section 414(e) of the Code, and has been a church plan since January 1, 1994.

2. Plan Y is a church plan in accordance with the requirements of section 414(e) of the Code, and has been a church plan since January 1, 1999.

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) was added to the Code by section 1015 of the Employee Retirement Income Security Act of 1974 (ERISA), Pub. L. 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provided that section 414(e) applied as of 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.

Section 414(e)(2) of the Code provides that a church plan does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of a church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses within the meaning of section 513 of the Code, or if less than substantially all of the individuals included in the plan are employees or deemed employees of a church, as described in section 414(e)(1) or section 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.

Church C is governed by Individual A and Individual A appoints the Bishop of Region D. Church C, through the Bishop of Region D, has controlled the ownership of Hospital W from its inception through the present time. Hospital W, whose sole member is the Bishop of Region D by virtue of his office, is an instrumentality of Church C, operating under the direct supervision and control of Church C. The goals of Church C

include, among others, the promotion of religious faith, education, human development, and care for the sick and needy. From its inception in 1850 until the early 1960's, Order B, a Church C order of religious members, served as administrators of Hospital W. The Bylaws of Hospital W provide that members of the Board of Directors shall be nominated and elected by the Board of Directors, subject to the ratification and approval of the Bishop of Region D. The Bylaws provide further that any Director may be removed from office at any time, with or without cause, upon the affirmative vote of the Bishop of Region D. Further, Hospital W is required to abide by Directives A, which expresses the moral teachings of Church C applicable to health care services. Because Individual A, who governs Church C, appoints the Bishop of Region D who is chairman of the Board of Directors of Hospital W, Hospital W is indirectly controlled by Church C.

In addition, Hospital W is associated with Church C by reason of sharing common religious bonds and convictions as evidenced by its listing in Directory C. The Internal Revenue Service has determined that any organization listed in Directory C is an organization described in section 501(c)(3) of the Code, that is exempt from tax under section 501(a). Also, an organization that is listed in Directory C shares common religious bonds and convictions with Church C and is therefore considered to be associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code and its employees are deemed to be employees of Church C.

In view of the stated purposes of Hospital W, its organization and structure, its actual activities, its common religious bonds with Church C, its recognized status within Church C and its inclusion in Directory C, we conclude that the employees of Hospital W meet the definition of employee in section 414(e)(3)(B) of the Code and are deemed to be employees 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. Accordingly, pursuant to sections 414(e)(3)(B) and (C) of the Code, employees of Hospital W are deemed to be employees of Church C, and Church C is deemed to be the employer of such employees, for purposes of the church plan rules.

Pursuant to section 414(e)(2) of the Code, Plan X and Plan Y are not maintained primarily for the benefit of employees employed in connection with one or more unrelated trades or businesses within the meaning of section 513 of the Code, and not less than substantially all of the participants in Plan X are individuals described in section 414(e)(1) or section 414(e)(3)(B). Plan X covers 1,637 participants and Plan Y covers 806 participants. Although there are participants in Plan X and Plan Y who engage in unrelated trades or businesses, the number of participants who are involved in unrelated trades or businesses in Plan X is 18 which is 1.0995 percent of total participation, and seven in Plan Y which is .08684 percent of total participation. In addition, Plan X covers employees of Organization M and Entity D, for-profit entities. The total number of employees of Organization M who participate in Plan X is 30 and the total number of

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employees of Entity D who participate in Plan X is 53. The total number of these for-profit employees comprises 5.07 percent of the 1,637 participants in Plan X. Hospital W has no plans to expand the services of these organizations. Hospital W represents further that the percentage of participants who were employees of these for-profit entities who have participated in Plan X from 1994 to 1998 has been at or around 5 percent or less. The percentage of participants who were employees of the for-profit entities and who participated in Plan X in 1999 is approximately 4.3 percent, and the percentage of participants who are currently employees of the for-profit entities and who currently participate in Plan X is approximately 4.5 percent. Such percentages are deemed insubstantial. Therefore, Plan X and Plan Y have 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 and Plan Y are considered to be employees of a church or a convention or association of churches.

Having established that these employees are church employees, the remaining issue is whether Committee D is an organization 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 maintains and administers Plan X and Plan Y for Hospital W. Committee D is controlled by and associated with Church C by virtue of the indirect control by Church C over Hospital W. Committee D's members are appointed by the Board of Directors of Hospital W which is controlled by Church C through the Bishop of Region D. Hospital W is under the direct control of the Bishop of Region D in that its Board of Directors serve at the will and pleasure of the Bishop. As such, Committee D is indirectly controlled by Church C. Because the principal function of Committee D is the administration of Plans X and Y, it is an organization that is considered 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 or program for the provision of retirement benefits for employees of a church or a convention or association of churches. Therefore, Committee D qualifies as an organization described in section 414(e)(3)(A) of the Code.

Based on the foregoing facts and representations, we conclude with respect to ruling request one 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 January 1, 1994.

Regarding ruling request number two, we conclude that Plan Y 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 January 1, 1999.

This letter expresses no opinion as to whether Plan X and Plan Y satisfy the requirements for qualification under sections 401(a) or 403(b) of the Code, respectively. 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, the original of this ruling is being sent to your authorized representative.

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities Division

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

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