200045032

INTERNAL REVENUE SERVICE
TECHNICAL ADVICE MEMORANDUM

8/14/2006

Employee Plans Area Manager

OP:E:EP:T3

Uniform Issue List = **414.08-00**

Taxpayer =

Taxpayer's Address =

Taxpayer's Identification No. =

Years Involved =

Date of Conference =

Legend:

Hospital A =

University B =

Denomination C =

Board D =

Convention E =

Foundation F =

Affiliated Health Care Provider G =

Affiliated Health Care Provider H =

Affiliated Health Care Provider I =

Affiliated Health Care Provider J =

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Affiliated Health
Care Provider K =

Affiliated Health
Care Provider L =

Affiliated Health
Care Provider M =

Affiliated Health
Care Provider N =

Affiliated Health
Care Provider O =

Affiliated Health
Care Provider P =

Affiliated Health
Care Provider Q =

Affiliated Health
Care Provider R =

Affiliated Health
Care Provider S =

Affiliated Health
Care Provider T =

Affiliated Health
Care Provider U =

Affiliated Health
Care Provider V =

Hospital Z =

Directory W =

Plan X =

Plan Y =

State AA =

Convention BB =

Country CC =

Country DD =

Issues

1. Whether both Plan X and Plan Y are church plans as defined in section 414(e) of the Internal Revenue Code, effective on and after **********?

2. Whether both Plan X and Plan Y were deemed church plans under section 414(e)(4) of the Code, from and after their inception through **********?

3. Whether Plan X and Plan Y are church plans as defined in section 414(e) of the Code effective on or after **********, as a result of the split by Hospital A from University B?

Facts

Hospital A, a charitable hospital that is tax-exempt under section 501(c)(3) of the Code, sponsors Plan X and Plan Y. Hospital A is listed in Directory W. Hospital A established Plan X and Plan Y for its employees in furtherance of its health care ministry. Hospital A has sponsored Plan X since **********, and Plan Y since **********. Board D administers Plan Y.

Hospital A has always been affiliated with Denomination C and Denomination C church's ministry of healing. From its inception, all members of the board of trustees of Hospital A have been required to be members in good standing of registered Denomination C churches.

Hospital A has a number of affiliated health care providers. They are Affiliated Health Care Providers G, H, I, J, K, L, M, N, O, P, Q, R, S, T, U, and V. Hospital A controls the appointment of the boards of directors of each of the affiliated health care providers. All participating affiliated health care providers are listed in Directory W. All of the affiliated health care providers are tax-exempt under section 501(c)(3) of the Code. Each of the affiliated health care providers which Hospital A has acquired also has a number of members of Denomination C on its board. Each of the boards of the affiliated health care providers is appointed by Hospital A's board of trustees, which is composed solely of members of Denomination C. All of the affiliated health care providers and Hospital A have adopted Plan Y. Affiliated Health Care Providers G, H, I, J, K, L, and Hospital A participated in Plan X.

In *****, Hospital A (then known as Hospital Z) and University B asked Convention E to place both entities under one governing board. In ****, University B reorganized the nomination of its board by changing from a board appointed by Convention E to a Board of Regents of which 25 percent was appointed by Convention E, and all were required to be members of Denomination C. University B obtained a ruling that its tax-deferred annuity plan under section 403(b) of the Code continued to be a church plan after the reorganization.

On **********, Hospital A separated from University B by amending its articles and bylaws to delete University B's power to appoint the members of Hospital A's board and replacing it with the requirement that all board members must be members in good standing of Denomination C.

Hospital A, as an entity of Denomination C, reports to Convention E, and is included in Directory W. Convention E is a tax-exempt corporation organized under the laws of State AA and its members are members of Denomination C churches located in State AA. Convention E is a convention or association of churches, which is organized for purposes which are purely religious, missionary, educational and beneficent, the carrying on of missionary work, the support of public worship, and the spread of the gospel of Jesus Christ throughout the world, the education, training and enlistment of the people, and ministering to the needs of the sick, helpless, aged or infirm. Hospital A is closely tied to and supports Convention E. Hospital A wrote five of the chapters in a chaplain training program of Convention E. Hospital A trains 30 chaplains each year and in order to be included in the chaplain training program, each must be endorsed by Convention BB. Convention E has a church ministry department and includes Hospital A as an active participant. Hospital A is on a crisis response team of Convention E and does hands on ministry training for Convention E.

Hospital A's bylaws states that "It was founded and continues to carry out a ministry of healing within the humanitarian, charitable and religious aims and ideals of [Denomination C]." Hospital A's bylaws also state that a major objective of Hospital A is "to have a Christian emphasis throughout its work." Hospital A supports Convention E and its ministries through providing meeting rooms and other services.

Hospital A, as an entity of Denomination C, has followed Denomination C principles and teachings regarding euthanasia and abortion, the ethical policies within Hospital A's affiliated hospitals and the guidelines for care that Hospital A and Denomination C provide as they pursue furthering the healing ministry of Jesus Christ.

Hospital A supports furthering Denomination C ministries through its chaplaincy program which a Denomination C minister heads and which helps train seminary students to be Denomination C chaplains. Hospital A receives financial support from Foundation F, which is governed and controlled by a board of trustees, which has 100 percent of its members being members of Denomination C churches. Upon dissolution, the assets of Hospital A will be distributed first to pay all debts, second to be distributed or conveyed in accordance with any conditions requiring return, transfer or conveyance which occurs by reason of the dissolution, and finally the assets shall be distributed only for tax-exempt purposes to organizations exempt from tax under section 501(c)(3) of the Code pursuant to a plan of distribution approved by the board of trustees, all of whom must be members of Denomination C. The assets would be distributed to continue to further the Denomination C principle of furthering the healing ministry of Jesus Christ and to further other Denomination C entities and their Denomination C ideals and principles.

Hospital A, at all times while it has sponsored Plan X and Plan Y has been listed in Directory W. Hospital A's affiliated entities are also listed in Directory W. All entities considered to be associated with Denomination C are listed in Directory W. A total of

****** persons are employed by Hospital A and a total of ****** persons participated in Plan Y, and ***** persons are participants in Plan X as of December 31, 1997. Only *** of the employees eligible to participate in Plan Y are providing services in an unrelated trade or business and none of those perform services solely for an unrelated business. No employees participating in Plan X provide services in an unrelated trade or business.

Hospital A adheres to Denomination C principles in its operations in that it does not permit any alcoholic beverages at any Hospital A sponsored event, and it participates in medical missions including those in Country CC and Country DD. It uses Convention E assistance in resolving issues where medical care and Denomination C theology, teachings or ethics overlap. Hospital A's chief executive officer participates in the annual meeting of chief executive officers of Denomination C hospitals and Hospital A has established an endowment for health related educational programs and for a student health center at University B.

Pursuant to Article *** of Plan X, as amended, and Articles VIII and X of Plan Y, Plan X is administered by the Plan X Administration Committee and Plan Y is administered by Board D. The Plan X Administration Committee is appointed by the President of Hospital A and confirmed by the board of trustees of Hospital A. The President is appointed by board of trustees of Hospital A, all of whom are members in good standing of a Denomination C church, and can be removed by the board. Sections **** and **** of Plan X provide that the Plan X Administration Committee shall have the full power to construe and interpret Plan X, to determine benefits thereunder and to perform those other functions generally considered the duties of a plan administrator. Plan X is intended to qualify under section 401(a) of the Code.

Plan Y is administered by Board D. The board of trustees of Board D is elected by Convention BB. Convention BB is a congregational structure with messengers being sent by congregations who voluntarily associate with and contribute to Convention BB. Only Denomination C congregations may be members of Convention BB. Convention BB is the sole member of Board D. Convention BB has always controlled the election of the board of trustees of Board D since its inception.

Plan Y is a tax-deferred annuity plan intended to qualify under section 403(b) of the Code. Plan Y is a church retirement income account under section 403(b)(9), sponsored by Hospital A. Plan Y may only be adopted by entities affiliated with Convention BB. Board D is a separate administrative organization described in section 414(e)(3)(A) of the Code, and section 1.414(e)-1(f) of the Income Tax Regulations. The administrative committees for Plan X and Plan Y have as their primary function the administration of Plan X and Plan Y, respectively. The Plan X Administrative Committee and Board D were Plan X and Plan Y's administrators since the inceptions of Plan X and Plan Y.

Law and Rationale

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) was added to the Code by section 1015 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provides that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96-364, to provide that section 414(e) was effective as of January 1, 1974.

Section 414(e)(2) of the Code provides that the term "church plan" does not include a plan (A) which 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); or (B) if less than substantially all of the individuals included in the plan are church employees (as described in section 414(e)(1) or 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 his or her 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).

Hospital A and its affiliates are organizations described in section 501(c)(3) of the Code that are exempt from tax under section 501(a). Hospital A and its affiliates are associated with Denomination C by virtue of sharing common religious bonds and convictions as evidenced by the following:

Hospital A at all times while it sponsored Plans X and Y, was listed in Directory W and Hospital A' s bylaws provide that Hospital A is required to operate in a manner consistent with the philosophy, teachings and practices of Denomination C. Members of the board of trustees of Hospital A must be members of Denomination C churches. From and after the date of the inception of Plan X and Plan Y, Hospital A has been an organization which has been associated with Denomination C.

In addition, Hospital A is associated with Convention E, a convention or association of churches. Hospital A, as an entity of Denomination C, reports to Convention E. Convention E's members are members of Denomination C churches. Convention E is organized for purposes which are purely religious, missionary, educational and beneficent, the carrying on of missionary work, the support of public worship, and the spread of the gospel of Jesus Christ throughout the world, the education, training and enlistment of the people, and ministering to the needs of the sick, helpless, aged or infirm. Hospital A is closely tied to and supports Convention E.

Furthermore, based on the facts you submitted concerning the participants in Plan X and Plan Y, Plan X and Plan Y are not maintained primarily for the benefits of employees who are employed in connection with one or more unrelated trades or businesses, and substantially all of the individuals included in Plan X and Plan Y are considered to be church employees, as defined in section 414(e)(3)(B) of the Code.

Also, in the case of a plan established by an organization that is not itself a church or a convention or association of churches, but is associated with a church or convention or association of churches as described in section 414(e)(3)(D), the organization must 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. Since Hospital A is not in itself a church, Plans X and Y must be maintained 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.

As represented above, the administrators of Plan X and Plan Y have been the administrators since the inception of Plan X and Plan Y. Plan X is administered by an administrative committee that is appointed by the President of Hospital A and confirmed by the board of trustees of Hospital A, all of whom must be members in good standing of a Denomination C church. Plan Y is administered by Board D. The board of trustees of Board D is elected by Convention BB. Only Denomination C churches may be members of Convention BB. Convention BB is the sole member of Board D. Convention BB has always controlled the election of the board of trustees of Board D since its inception. The administrative committees thus share common religious bonds and convictions with Denomination C, and therefore, are considered associated with Denomination C. Since the primary purpose of the administrative committees is the administration of Plan X and Plan Y, the administrative committees constitute organizations described in section 414(e)(3)(A) of the Code.

Conclusion

1. Both Plan X and Plan Y are church plans as defined in section 414(e) of the Code effective on and after **********.

2. Both Plan X and Plan Y were deemed church plans under section 414(e)(4) of the Code from and after their adoption by Hospital A through **********.

3. Plan X and Plan Y are church plans as defined in section 414(e) of the Code effective on or after **********, as of the date of the split by Hospital A from University B.