Internal Revenue Service

Department of the Treasury
Washington, DC 20224

200047050

Uniform Issue List No.: 414.08-00

Contact Person:

Telephone Number:

In Reference to:

Attn:

Date: T:EP:RA:T1

AUG 30 2000

Church.....

Congregation.....

Plan.....

Home A.....

Home B.....

Dear :

This is in response to a letter dated June 28, 1999, as supplemented by additional correspondence dated May 1, 2000, and July 21, 2000, in which your authorized representative requested rulings on your behalf under section 414(e) of the Internal Revenue Code (the "Code").

You submitted the following facts and representations in support of your request:

Home A and Home B (the "Homes") are non-profit membership corporations which are entitled to participate in a group exemption from tax under Code section 501(a) by reason of section 501(c)(3) as entities listed in the Directory of the Church. Home A is a nursing home and intermediate care provider. Home B is an assisted living, retirement community. The Homes are operated by the Congregation.

The Congregation is organized under the auspices of and shares convictions with the Church. The Congregation, also listed in the Church's Directory, is an integral part of the Church by virtue of the health care ministries it performs pursuant to the central beliefs and tenets of the Church.

The Congregation sponsors the Homes in that it provides funding, Congregation members are required to hold the Homes' corporate officer positions, and the Congregation's governing body appoints Home A's and Home B's Boards of Directors.

In accordance with their Articles of Incorporation, Homes A and B are operated as homes for the aged, in accordance with the Church's tradition of charitable works, providing the elderly with all appropriate residential care, intermediate and skilled levels of nursing care, and all services for their welfare as their spiritual and corporal needs may suggest. The Homes achieve an integral part of the Church's apostolic mission and service by : (1) testifying to the transcendental spiritual beliefs concerning life, suffering, and death; (2) providing humble service to humanity, particularly to the poor; (3) striving for medical competence and leadership; and (4) maintaining fidelity to the teachings of the Church while ministering to the needs of the whole person.

The Plan is a defined benefit plan sponsored and maintained by Home A. Home B is a participating employer under the Plan. The Plan was originally effective January 1, 1986 and has been amended to comply with the Tax Reform act of 1986 and subsequent legislation. The Plan received a determination letter dated June 28, 1996, that it qualified under Code section 401(a). One or more members of the Congregation are appointed by Home A's Board of Directors to serve as trustee and plan administrator of the plan.

Upon the issuance of a favorable ruling, the Plan will be amended to provide that the Congregation members as selected by Home A's Board will serve on a committee the principal function or purpose of which is to administer the Plan. Specifically, section 1.7 will be amended to define the "Plan Administrator" as the Named Fiduciary or the one or more persons appointed by and serving at the pleasure of the Named Fiduciary to administer the Plan. Each such person must be a member of the Congregation, and the sole purpose or function of the Plan Administrator will be to administer the Plan. Section 1.7, as amended, further defines "Named Fiduciary" to mean one or more persons having fiduciary responsibility for the management and control of plan assets. This section provides that such persons must be the Board of Directors as nominated and elected by the Congregation.

Based on the above facts and representations, you request a ruling that as of its inception on January 1, 1986, the Plan satisfies the requirements of Code section 414(e) and constitutes a church plan thereunder.

To qualify under Code section 401(a), an employees' plan must meet certain requirements, including the minimum participation rules under section 410 and the minimum vesting requirements under section 411. A qualified plan may be subject to an excise tax under section 4971 if it does not comply with minimum funding standards under section 412. A church plan described in section 414(e), however, is excepted from these requirements unless an election is made in accordance with section 410(d). See sections 410(c)(1)(B), 411(a)(1)(B), 412(h)(4) and 4971(a). Further, church plans not filing a 410(d) election are not subject to Form 5500 (Annual Return/Report of Employee Benefit Plan) series filing requirements.

Code section 414(e)(1) generally defines a church plan as a plan established and maintained for its employee (or their beneficiaries) by a church or by a convention or association of churches which is exempt from taxation under section 501.

Code section 414(e)(3)(A) 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.

Code section 414(e)(3)(B) 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, 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 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.

Code section 414(e)(4)(A) provides that if a plan established or maintained for its employees by a church or convention or association of churches which is exempt from tax under section 501 fails to satisfy one or more of the requirements of section 414(e) and corrects the failure within the correction period, the plan is deemed to meet the requirements of section 414(e) for the year in which correction was made and all prior years.

In order for an organization that is not itself a church or convention or association of churches to have a church plan under Code section 414(e), 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 a church employee if the organization: (1) is exempt from tax under section 501, (2) is controlled by or associated with a church or convention or association of churches, and (3) provides for administration or funding of the plan by an organization described in section 414(e)(3)(A).

In this case, the Congregation has established Home A and Home B in furtherance of its health care ministries undertaken pursuant to the central beliefs and tenets of the Church. As indicated above, the Homes provide residential facilities and where necessary, custodial and nursing care for

the aged, achieving an integral part of the Church's apostolic mission by adhering to and imparting the spiritual beliefs of the Church concerning life, sickness, suffering and death and providing this type of service, particularly for the poor. The Congregation and the Homes are associated with the Church as evidenced by their listings in the Church Directory. The Service has determined that any organization listed in the Church's Directory is an organization described in section 501(c)(3) and exempt from tax under section 501(a). Also, any organization that is listed in the Church's Directory shares common religious bonds and convictions with the Church and is associated with the Church within the meaning of Code section 414(e)(3)(D) and section 414(e) as a whole. In addition, all of the members of the Boards of Directors of Homes A and B are Congregation members and are appointed by the Congregation's governing body.

If an organization is exempt from tax under Code section 501(a) and is controlled by or associated with a church or convention or association of churches by virtue of sharing common religious bonds and convictions, then that organization's employees are deemed to be Church employees. Accordingly, since Homes A and B are associated with the Church, the employees of Homes A and B are deemed to be employees of the Church under section 414(e)(3)(B). Conversely, the Church is deemed to be the employer of the Homes' employees under section 414(e)(3)(C).

Having established that the employees of Homes A and B are considered church employees, the remaining issue is whether the Plan is administered by a committee that is controlled by or associated with a church or and association or convention of churches the principal function or purpose of which is the administration or funding of a plan, as required by section 414(e)(4)(A).

Section 1.7 of the Plan will be amended to establish a Plan Administrator whose sole function will be to administer the Plan. The Board of Directors of Home A is responsible for selecting the member or members of the Congregation who comprise the Plan Administrator which will be responsible for the administration of the Plan. The Plan Administrator is controlled by Home A. Since Home A is a 501(c)(3) organization that shares common religious bonds and convictions with the Church and is listed in the Directory of the Church, the Plan Administrator qualifies as an organization described in Code section 414(e)(3)(A) because it is controlled by or associated with the Church through Home A, and its principal purpose or function will be the administration of the Plan maintained for Church employees.

Although the Plan failed to be administered by a committee the principal purpose or function of which is to administer the Plan, the Plan will be amended to provide for such a committee (the Plan Administrator) after the issuance of this ruling. This correction will be made within the applicable correction period. Accordingly, pursuant to the authority of Code section 414(e)(4), we conclude that the Plan is a church plan under section 414(e) and is deemed to be a church plan since its inception on January 1, 1986, as of the time the correction is made.

This letter expresses no opinion as to whether the Plan satisfies the requirements for qualification under Code section 401(a). The determination as to whether a plan is qualified

under section 401(a) is within the jurisdiction of the Manager, Employee Plans Determinations Programs, and the appropriate Area Office of the Employee Plans Examination Division.

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

John Swieca

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

Enclosures:
Copy of letter ruling
Copy of deleted letter ruling
Notice 437

cc: