Internal Revenue Service

Uniform Issue List 414.08-00

Department of the Treasury

Washington, DC 20224 200108044

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Contact Person:
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Telephone Number: **********
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In Reference to:
********** T:EP:RA:T4
Date:
OCT 23 2000

Attn: **********
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Legend:

Church A = **********

Congregation A = **********
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Diocese B = **********
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Corporation C = **********
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Plan X = **********

Directory D = **********
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Ladies and Gentlemen:

This is in response to a letter dated June 4, 1999, as supplemented by letters dated November 30, 1999, February 22, 2000, and March 23, 2000, in which your authorized representative requested letter rulings on your behalf concerning whether Plan X qualifies as a church plan under section 414(e) of the Internal Revenue Code (the "Code").

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In support of the ruling requests, the following facts and representations have been submitted:

Corporation C was co-founded by Congregation A and Diocese B: both are Church A institutions. Corporation C was incorporated in 1969 to provide care, shelter and maintenance for elderly and infirm people and to carry on philanthropic, charitable and religious activities in consonance with the doctrines of Church A. Other general purposes are to own, hold, operate and maintain a home or homes necessary and proper to provide such care. No part of the earnings shall inure to the benefit of any incorporator, director, member or private individual, nor shall the Corporation engage in any activity other than those incidental and necessary to carry out its purposes in a manner consistent with the requirements of section 501(c) of the Code. In the event of liquidation or dissolution, none of the property of the Corporation shall be distributed to any incorporator, director, member or private individual, but the net assets of the corporation remaining after payment and satisfaction of its proper debts and liabilities shall be devoted to such charitable uses as will accomplish as nearly as possible the purposes for which the Corporation was formed.

Under its By-Laws, the Members of Corporation C shall be the Bishop of Diocese B, who shall be the chairman, the Superior General of Congregation A, who shall be vice-chairman, two Members of the General Counsel of Congregation A, and two persons designated by the Bishop of Diocese B. A majority of Corporation C's Members are officers of Church A's institutions. The Members elect the Board of Directors, and the authority for the management of Corporation C is vested in a Board of Directors. Except for the administrator of Corporation C, who is appointed by the Superior General of Congregation A and approved by the Board of Directors, the officers are elected by the Board of Directors. Pursuant to Article VI, at paragraph 4, all Members, directors and officers shall at all times conduct the business of Corporation C and its policies and practices in a manner

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consistent with the canons, laws, rules and regulations of Church A and Diocese B.

Corporation C was held to be a tax-exempt entity under section 501(c)(3) of the Code under the annual group ruling dated June 3, 1998. That letter covers all organizations listed in Directory D, including Corporation C, Diocese B and Congregation A.

As further evidence of Corporation C's association with Church A, Corporation C, Diocese B and Congregation A are listed in Directory D.

Plan X, a defined benefit plan, was restated and executed April 23, 1993, for the purpose of providing retirement income security for certain employees of Corporation C. Plan X provides at Section 8.01, in part, that the plan administrator has complete control of the administration of the plan. The plan administrator has the power to construe the plan provisions and to determine questions relating to the employees' eligibility to participate, the amount of benefit to any participant, beneficiary, spouse or contingent annuitant may become entitled. Corporation C was named as the administrator of the plan.

On April 19, 1999, the secretary of Corporation C certified that the Board of Trustees adopted Amendment No. 3 to Plan X to establish an administrative committee and to designate the administrative committee as plan administrator. Amendment No. 3 amended section 8.05 of Plan X in its entirety to provide that the committee shall consist of two or more individuals designated by the employer, Corporation C. The employer shall designate an individual to serve on the committee only if the individual shares common religious bonds and convictions with Church A, and each member of the committee shall serve at the pleasure of Corporation C. The committee has the sole purpose of administering the plan, and is provided with broad authority in order to fulfill its responsibilities.

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Neither Corporation C nor the administrator of Plan X have ever made an election under section 1.410(d)-1(c) of the Income Tax Regulations to have the provisions of the Employee Retirement Income Security Act of 1974 apply to Plan X.

Based on these facts and representations, your authorized representative requested the following rulings:

Plan X, as amended on April 19, 1999 is a "church plan" described in section 414(e) of the Code, and is deemed to be a "church plan" since April 23, 1993, within the meaning of section 414(e)(4)(A) of the Code.

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

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

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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 a 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) of section 414(e)(3).

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)(A) of the Code provides 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 this subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) provides, in pertinent part, that the term "correction period" means the period 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.

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. In

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

In this case, Corporation C is controlled by Congregation A and Diocese B which are Church A institutions, and Corporation C shares common religious bonds and convictions with Church A as well as Congregation A and Diocese B.

Congregation A, Diocese B and Corporation C are listed in Directory D. The Internal Revenue Service has determined that any organization listed or appearing in Directory D is an organization described in section 501(c)(3) of the Code that is exempt from tax under section 501(a). Also, the Service has determined that organizations that are listed in Directory D also are considered to be associated with, and share common religious bonds with, Church A.

In view of the control of Corporation C by Congregation A, and Diocese B, their relationship to Church A, the stated purposes of Corporation C, and their listing in Directory D, we conclude that the employees of Corporation C are deemed employees of Church A under section 414(e)(3)(B) of the Code for purposes of the church plan rules. Additionally, under the principles of section 414(e)(3)(C) of the Code, Church A is deemed the employer of employees of Corporation C, and therefore is treated as the employer of that organization's employees for purposes of the church plan rules of section 414(e) of the Code.

Having established that the employees of Corporation C are deemed to be employees of the Church, the remaining issue is whether the retirement committee which administers Plan X is 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

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program within the meaning of section 414(e)(3)(A) of the Code.

Prior to April 19, 1999, Corporation C was the administrator of Plan X. Corporation C was not an organization whose principal stated purpose or function was the administration of Plan X. Accordingly, Plan X failed to meet one of the requirements that it had to meet in order to be a church plan prior to that date.

Plan X's failure to meet the requirement described above was corrected on April 19, 1999, when, by resolution of Corporation C's board of trustees, a retirement committee was formed.

Plan X is currently administered by a retirement committee named by Corporation C. The principal purpose and function of the retirement committee is the administration of Plan X, as required under section 414(e)(3)(A) of the Code. Membership of the retirement committee consists of persons named by Corporation C. Corporation C, in turn, is controlled by Congregation A and Diocese B. Therefore, the retirement committee for Plan X is currently 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 of a plan for the provision of retirement benefits for individuals (and their beneficiaries) who are deemed to be employees of a church or a convention or association of churches within the meaning of section 414(e)(3)(A) of the Code.

The correction was made within the correction period defined in section 414(e)(4)(C)(i) of the Code.

Accordingly, based on these facts and representations we conclude as follows:

Plan X, as amended on April 19, 1999, is a "church plan" described in section 414(e) of the Code, and is deemed to be

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a "church plan" since April 23, 1993, within the meaning of section 414(e)(4)(A) of the Code.

This letter expresses no opinion whether Plan X is a qualified plan under section 401(a) or 403(a) of the Code. The determination as to whether a plan remains qualified under section 401(a) is within the jurisdiction of the appropriate Key District Director's 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.

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

Sincerely yours,

John G. Riddle, Jr.

John G. Riddle, Jr., Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437