Uniform Issue List No. 414.08-00

200313019

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

DEC 30 2002

T:EP:RA:T1

**********
**********
**********

ATTN: **********
President & Chief Operating Officer

Legend:

| | | |
|---|---|---|
| Hospital A | = | ********** |
| Organization B | = | ********** |
| Religion C | = | ********** |
| Churches of City D | = | ********** |
| City D | = | ********** |
| State E | = | ********** |
| System F | = | ********** |
| System G | = | ********** |
| Affiliate H | = | ********** |
| Affiliate I | = | ********** |
| Hospital J | = | ********** |
| Agency P | = | ********** |
| Plan X | = | ********** |
| Plan Y | = | ********** |
| Plan Z | = | ********** |

Ladies and Gentlemen:

This is in response to a letter dated March 20, 2001, supplemented by additional correspondence dated January 4, 2002, and December 9, 2002, in which your authorized representative requested rulings on your behalf under section 414(e) of the Internal Revenue Code ("Code"). In support of your ruling requests you have submitted the following statements and information:

City D is part of a large metropolitan area in the United States. For purposes of this ruling, the Churches of City D ("Churches") are religious congregations that practice Religion C. These Churches are organizations described in Code §§ 170(b)(1)(A)(i) and 501(c)(3), that are exempt from tax under the provisions of § 501(a). Although the Churches of City D (and the Churches of Religion C in general) are broadly diverse in terms of philosophy and religious practice, they share a commitment to the maintenance of organizations that can relieve human suffering and promote the welfare of others – activities that are important elements of Religion C life and faith.

The City D Churches (and Church members as individuals) participate in, contribute to, and assist in maintaining Organization B. Organization B is a community-based agency which supports numerous affiliated organizations by offering programs intended to provide communal, cultural, and religious support for City D's Churches and for individuals professing to belong to Religion C. Organization B exists to serve as a means by which the City D Churches and other religiously affiliated institutions and individuals can support communal functions, specifically for co-religionists of Religion C, as well as activities of a general humanitarian character. Communal activities supported and underwritten by Organization B include: care and protection of the indigent and elderly, promotion of religious education (in all of its philosophical diversity), vocational and family counseling, creating a climate of respect for the diversity in Religion C's teachings, tenets, and religious practices, and support for co-religionists' churches and institutions outside of the City D metropolitan area. The IRS has determined that Organization B is an entity described in Code § 501(c)(3), that is exempt from tax under § 501(a). The IRS also has ruled that certain retirement plans maintained by Organization B are church plans under the rules of Code § 414(e).

Hospital A is a nonstock (not-for-profit) corporation chartered in State E, and located in City D. Hospital A was founded in ****, and today offers a complete range of quality health programs for the elderly and disabled. In addition to its nursing home, the service continuum includes: a nonsectarian specialty hospital, comprehensive geriatric medicine and psychiatry programs, adult day programs throughout its service area, and management of multiple senior assisted living complexes. Hospital A is a constituent agency of Organization B. Organization B provides financial support for Hospital A and other charitable organizations through contributions and fundraising in Religion C Churches throughout the City D area, from the individual members of Religion C Churches and from members of Organization B. The Internal Revenue Service has determined that Hospital A is an entity described in Code § 501(c)(3), that is exempt from tax under § 501(a).

Hospital A is a leader in the development of nursing, medical and social services for the elderly within the Religion C community of City D; its Mission Statement and Charter specify that it will conduct its programs within the values inherent in Religion C, including the continuation of its tradition of service to the Religion C community. In furtherance of Religion C's teachings and tenets, Hospital A is the only Religion C nursing home in City D with a full-time chaplaincy department. Hospital A's Chaplain conducts Religion C services daily and on major Religion C holidays. Hospital A also observes other Religion C laws and restrictions. Based on particular religious needs, Hospital A's policies provide for an admissions preference for adherents of Religion C with regard to its nursing home facility.

Although Hospital A's Board of Directors ("the Board") generally has the authority traditionally conferred on such entities, its charter prohibits either the Board or its members from taking action that would change the Hospital's close relationship with Religion C. Hospital A's bylaws provide for the election of directors, subject to a charter requirement that two-thirds of the directors shall be adherents of Religion C (as defined by Organization B) and contributing members of Organization B. This charter provision may not be amended without the consent of Organization B. In practice, all of Hospital A's Board members are adherents of Religion C. Hospital A's facilities are on premises leased from Organization B for one dollar per year, and its corporate member is not permitted to take any action that would constitute a reversionary event under that lease.

In *********, System F (a broad-based hospital group also located in City D) became the sole member of Hospital A. Subsequently, in 1998, System F merged with another health care system, System G, from which System F emerged as the surviving entity. The IRS has determined that System F is an organization described in Code § 501(c)(3) that is exempt from tax under § 501(a). The IRS also has ruled that certain retirement plans of Hospital J, which forms part of System F, are church plans within the meaning of Code § 414(e). You represent that System F remains the "parent corporation" of Hospital A and Hospital J.

On January 1, ****, Hospital A entered into an affiliation agreement with Affiliate H, another organization committed to providing services to the elderly, and particularly the elderly of Religion C. Hospital A is the sole member of Affiliate H, and the affiliation did not affect the terms of Hospital A's corporate charter.

By letter dated January 4, 2002, you represent that Hospital A has now become the sole shareholder of Affiliate I, an organization that currently serves as the property management company for six tax-exempt senior housing corporations located in City D. Each of these six corporations owns and operates either a senior housing facility or senior assisted living facility that principally, though not exclusively, serves members of Religion C, in coordination with social services provided by other constituent agencies of Organization B. The original purpose of Affiliate I was "to manage, operate, and otherwise maintain housing and other facilities provided to the elderly and disabled" by Agency P. Agency P also is a constituent agency of Organization B. The IRS has

determined that Affiliate I is an organization described in Code § 501(c)(3), that is exempt from tax under § 501(a). The employees of Affiliate I will be afforded the opportunity to participate in the Plans X, Y, and Z.

Hospital A has established, and currently maintains Plans X, Y, and Z ("the Plans") for the benefit of its employees and their beneficiaries. Plan X is a defined benefit pension plan; Plan Y is a Code § 403(b) tax-sheltered annuity arrangement for eligible non-bargaining unit employees; and Plan Z is a Code § 403(b) arrangement for eligible bargaining unit employees. Plan X may currently be administered by Hospital A, or by a committee appointed by Hospital A. Plans Y and Z currently are administered by Hospital A. In your letter of December 9, 2002, you represent that the Plans will be amended, as soon as administratively feasible, to reflect that they are administered by a committee appointed by Hospital A's Board of Directors and serving at the pleasure of the Board. The principal purpose or function of the committee shall be the administration or funding of the Plans.

Based on the preceding statements and representations you have requested the following rulings:

1. Plan X is a church plan as defined in Code § 414(e);

2. Plan Y is a church plan as defined in Code § 414(e); and

3. Plan Z is a church plan as defined in Code § 414(e).

To qualify under section 401(a) of the Code, an employees' plan generally must, among other requirements, 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). Further, only the employer or administrator of a plan subject to ERISA is required to file Form 5500 or Form 5500C (Annual Return/Report of Employee Benefit Plan); church pension benefit plans, and various welfare benefit plans that are church plans are excused from the filing. See Announcement 82-146, 1982-47 I.R.B. 53, and sections 1A and 2B of the instructions to Form 5500.

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 tax under section 501.

Section 414(e)(3)(A) of the Code 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.

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 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).

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) of the Code provides, in pertinent part, 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 section 414(e) for the year in which the correction was made and for all prior years. Section 414(e)(4)(C) 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 that is not itself a church or convention or association of churches to have a church plan under section 414(e) of the Code, that organization 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). Employees of any organization maintaining a plan are considered to be church employees if the organization: (1), is exempt from tax under section 501 of the Code; (2), is controlled by or associated with a church or convention or association of churches: and (3), provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A) of the Code.

In this case, Hospital A is a not-for-profit corporation, chartered in State E and located in City D, that offers a complete range of quality health-care programs for the elderly and disabled. In addition to its nursing home, Hospital A's service continuum includes: a nonsectarian specialty hospital, comprehensive geriatric medicine and psychiatry programs, adult day programs throughout its service area, and management of multiple senior assisted living complexes. Hospital A is a constituent agency of Organization B. Organization B provides financial support for Hospital A and other charitable

organizations through contributions and fundraising in Religion C Churches throughout the City D area, from the individual members of Religion C Churches, and from members of Organization B. Organization B provides a bridge for Hospital A to the Religion C Churches. Hospital A is a leader in the development of nursing, medical and social services for the elderly within the Religion C community of City D; its Mission Statement and Charter specify that it will conduct its programs and business while adhering to the values inherent in Religion C, including the continuation of its tradition of service to the Religion C community. Through Organization B, Hospital A and the Religion C Churches continue the Religion C commitment to the maintenance of organizations that can relieve human suffering and promote the welfare of others – activities that are important elements of Religion C's life and faith. In addition, Hospital A is the only Religion C nursing home in City D with a full-time chaplaincy department. In furtherance of Religion C's teachings and tenets, Hospital A's Chaplain conducts Religion C services daily and on major Religion C holidays. Hospital A also observes other Religion C laws and restrictions. Based on particular religious needs, Hospital A's policies provide for an admissions preference for adherents of Religion C with regard to its nursing home facility. The IRS has determined that Hospital A is an entity described in Code § 501(c)(3), that is exempt from tax under § 501(a).

Based on the foregoing information, through Hospital A's multiple legal, ethical, and organizational connections to Organization B and Religion C Churches, it is concluded that Hospital A shares the Religion C commitment to the maintenance of organizations that relieve human suffering and promote the welfare of others. As such, it is further concluded that Hospital A shares common religious bonds and convictions with the Religion C churches, and is, therefore, associated with the Churches of Religion C in City D within the meaning of § 414(e)(3)(D) of the Code. Moreover, under the rule of Code § 414(e)(3)(B), if an organization is controlled by or associated with a church or convention of churches as provide under § 414 (e)(3)(D), the employees of that organization are deemed to be employees of that church or convention or association of churches. Accordingly, the employees of Hospital A and certain affiliates and subsidiaries mentioned in this case (Affiliate H, Affiliate I, and Agency P) also are considered to be employees of a church or convention or association of churches for purposes of the church plan rules of Code § 414(e). Conversely, under the rule of Code § 414(e)(3)(C), the Churches of City D are deemed to be the employer of Hospital A's and Affiliate I's employees.

Having established that employees of Hospital A and its affiliates and subsidiaries are considered to be employees of one or more City D Churches, the remaining issue is whether Plans X, Y, and Z are administered by an organization, associated with a church or convention or association of churches, the principal purpose or function of which is the administration or funding of a plan or plans for individuals deemed to be church employees, within the meaning of Code § 414(e)(3)(A).

In this case, Hospital A is named as the Plan Administrator. However the Hospital A Board of Directors will amend Plans X, Y, and Z to provide that they are to be administered by a Benefits Committee, appointed by and serving at the pleasure of

Hospital A's Board of Directors. The sole purpose of the Benefits Committee will be to administer Plans X, Y, and Z for the benefit of individual deemed to be employees of the Churches and their beneficiaries. Under the rule of Code § 414(e)(4), any Plan so amended shall be deemed to be a church plan for the year in which the amendment is made, and for all prior years.

Accordingly, it is ruled that Plans X, Y, and Z as they are proposed to be amended are church plans within the meaning of § 414(e) of the Code.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under Code § 401(a). The determination as to whether a particular plan or program is qualified under § 401(a) is under the jurisdiction of Office of Employee Plans Determinations, Cincinnati, Ohio.

Also, this letter expresses no opinion as to whether Plan Y or Plan Z are tax-sheltered annuity programs under Code § 403(b). The Plans' sponsor may obtain a separate private letter ruling on that issue from the Office of Employee Plans Rulings and Agreements, Washington, D.C.

Copies of this letter and related documents have been sent to your authorized representative in accordance with a power of attorney on file in this office. If you have any questions pertaining to the ruling, please contact ********** ********** for further information.

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.

Sincerely,

Andrew E. Zuckerman, Manager
Employee Plans Rulings and Agreements
Technical Group 1

Enclosures:

- Deleted Copy of this Letter
- Notice of Intention to Disclose, Notice 437
- Copy of Notification Letter (Form 1155) to Authorized Representative