200317022

INTERNAL REVENUE SERVICE

SEP 24 2002

***Uniform Issue List: 403.00-00***

T:EP:RA:T3

Attention:

LEGEND:

Employer M =

Church A =

Plan X =

Plan Y =

Plan Z =

Committee N =

Dear

This is in response to correspondence dated December 12, 2001, as supplemented by correspondence dated April 26 and July 29, 2002, submitted on your behalf by your authorized representative in which you request a private letter ruling.

The following facts and representations support your ruling request.

Employer M is a retirement home for the elderly that employs 280 individuals. Employer M provides various levels of care for residents, depending on a particular resident's need. Employer M also operates a day care center with a capacity for 36 children. All employees perform services exclusively for Employer M. Employer M is not engaged in any other business or work activities. Employer M is an organization described in section 501(c)(3) of the Internal Revenue Code and is tax exempt under section 501(a).

Employer M is an organization sponsored by and affiliated with Church A. The relationship between Employer M and Church A is multi-faceted and essential to Employer M's identity. Employer M is a Social Ministry Organization of Church

A, which means that Church A provides both oversight to and control over Employer M through its Board of Directors. Employer M's Board of Directors is comprised of members from seven local Church A congregations, which adds another layer of relationship between Church A and Employer M. In addition, the Employer M Home Auxiliary and the Employer M Endowment held by Church A provide additional ties between Employer M and Church A. Employer M receives financial support from Church A. Finally, Employer M's tax-exempt status is dependent upon its relationship to Church A.

Since January 1, 1992, Employer M has maintained Plan X, a defined contribution pension plan that operates in conjunction with Plan Y, a tax-deferred annuity plan. The effective date of Plan Y is also January 1, 1992; Plan Y was amended and restated on January 1, 1998. On April 15, 2002 Employer M also adopted Plan Z, a profit-sharing plan with a cash or deferred arrangement. All of the participants in Plans X, Y and Z are employees of Employer M. Employer M has not made the election under section 410(d) of the Code with regard to these Plans.

Through its Board of Directors, Employer M is the sponsor of Plan X, Plan Y and Plan Z. The Plans are administered by Committee N, which was established on April 15, 2002, by the Board of Directors of Employer M. Committee N was created to be a permanent, standing committee of the Board. The Board of Directors of Employer M appoints the members of Committee N. Committee N shall at all times be comprised of five members, one of whom will be the President of the Board of Directors of Employer M. Committee N regularly reports to the full Board of Directors of Employer M concerning the status of the administration and funding of Plan X, Plan Y and Plan Z. The sole purpose and function of Committee N is to supervise the administration and funding of Plan X, Plan Y and Plan Z. The Employer M Director of Personnel and Payroll is the staff member who reports to the Board of Directors on retirement plan matters.

Employer M wishes to consolidate the assets of its retirement plan participants into one unified investment and reporting system. Currently, the Plans' assets are divided among several companies in various annuity contracts; three separate companies manage funds and provide reports on five separate contracts. Even though there are legitimate historical reasons for such a scattering of plan assets, it is difficult for the employees, administrators and local financial advisor to make asset reports manageable and understandable. This situation is further complicated by contract demands of large surrender charges due under annuity contracts. In order to make investment reporting easier for the employees to understand and to simplify plan administration, Employer M desires to consolidate all of its assets into one, unified investment system. Rather than freeze the current assets and continue reporting on the status of those investments to participants, Employer M wants to roll over or transfer all plan assets from Plan Y to Plan Z.

Based on the above, you request the following rulings:

1. Plan X, Plan Y and Plan Z qualify as church plans within the meaning of section 414(e) of the Code, and have so qualified since their dates of adoption.

2. Plan X, Plan Y and Plan Z are exempt from the filing requirements of section 6058 of the Code.

3. Employer M's transfer or rollover of all plan assets from Plan Y to Plan Z will not cause participants' assets to be includible in income until the assets are distributed.

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 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)(3)(A) of the Code provides that a plan established and maintained for its employees (or their beneficiaries) by a church or 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.

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 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).

Employer M is an organization sponsored by and affiliated with Church A. Employer M is tax exempt under section 501(a) of the Code through its association with Church A. Employer M is a Social Ministry Organization of Church A, receives financial support from Church A, and receives oversight from Church A through its Board of Directors, which is comprised of members from seven local Church A congregations.

In view of the stated purpose of Employer M, its organization and structure, its actual activities and its recognized status within Church A, Employer M employees meet the definition of 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 convention or association of churches.

However, an organization must also 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. 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.

In this regard, Plan X, Plan Y and Plan Z are maintained by Employer M and have been administered by Committee N since April 15, 2002. Committee N was established by the Board of Directors of Employer M to be a permanent, standing committee of the Board. The members of Committee N are appointed by the Board of Directors of Employer M. At all times, one of the members of Committee N will be the President of the Board of Directors of Employer M. Committee N regularly reports to the full Board of Directors of Employer M concerning the status of the administration and funding of the Plans. All of these features insure that Committee N is indirectly

controlled by and associated with Church A through its relationship with Employer M. The sole purpose and function of Committee N is the supervision and administration of Plans X, Y and Z.

Also, as provided under section 414(e)(4) of the Code, where a 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 is made and for all prior years. Committee N was established to administer Plan X, Plan Y and Plan Z on April 15, 2002.

Therefore, the administration of Plan X, Plan Y and Plan Z satisfies the requirements regarding church plan administration under section 414(e)(3)(A) of the Code. Accordingly, Plans X, Y and Z are maintained by an organization that is controlled by or associated with a church or convention or association of churches, and the principal purpose or function of which is the administration of the Plans for the provision of retirement benefits for the employees of Employer M.

Accordingly, with respect to your first ruling request, we conclude that Plan X, Plan Y and Plan Z qualify as church plans within the meaning of section 414(e) of the Code and have so qualified since their dates of adoption.

Regarding your second ruling request, section 6058(a) of the Code provides that every employer who maintains a pension, annuity, stock bonus, profit-sharing or other funded plan of deferred compensation described in Part I of Subchapter D of Chapter 1, or the plan administrator (within the meaning of section 414(g)) of the plan, shall file an annual return stating such information as the Secretary may by regulations prescribe with respect to the qualification, financial condition, and operations of the plan; except that, in the discretion of the Secretary, the employer may be relieved from stating in its return any information which is reported in other returns.

Announcement 82-146, 1982-47 I.R.B. 53 provides that church pension benefit plans that do not elect coverage under section 410(d) of the Code are not required to file annual information returns for pension benefit plans.

Therefore, with respect to your second ruling request, since Plan X, Plan Y and Plan Z are church plans within the meaning of section 414(e) of the Code and have not elected coverage under section 410(d), we conclude that Plan X, Plan Y and Plan Z are relieved from the reporting requirements of section 6058 of the Code.

Regarding your third ruling request, section 401(a) of the Code provides the general requirements for qualification for a stock bonus, pension or profit-sharing plan of an employer.

Section 403(b) of the Code provides the requirements for tax-sheltered arrangements. In pertinent part, section 403(b)(1) provides that amounts contributed by the employer shall be excluded from the gross income of the employee for the taxable year to the extent that the aggregate of such amounts does not exceed the applicable

limit under section 415, provided the employee performs services for an employer which is exempt from tax under section 501(a) of the Code as an organization described in section 501(c)(3).

Section 403(b)(10) of the Code requires that arrangements pursuant to section 403(b) of the Code must satisfy requirements similar to the requirements of section 401(a)(9) and similar to the incidental death benefit requirements of section 401(a) with respect to benefits accruing after December 31, 1986, in taxable years ending after such date, In addition, this section requires that, for distributions made after December 31, 1992, the requirements of section 401(a)(31), regarding direct rollovers, are met.

Section 403(b)(11) of the Code provides, in general, that section 403(b) annuity contract distributions attributable to contributions made pursuant to a salary reduction agreement (within the meaning of section 402(g)(3)(C)) may be paid only when the employee attains age 59½, has a severance of employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship.

Section 403(b)(7) of the Code provides, in general, that the amounts paid by a qualifying employer to a custodial account which satisfies the requirements of section 401(f)(2) shall be treated as amounts contributed by the employer for an annuity contract for his employee if the amounts are to be invested in regulated investment company stock to be held in that custodial account, and under the custodial account no such amounts may be paid or made available to any distributee before the employee dies, attains age 59½, separates from service, becomes disabled (within the meaning of section 72(m)(7)), or, in the case of contributions made pursuant to a salary reduction agreement, encounters financial hardship.

Revenue Procedure 90-24, 1990-1 C.B. 97 discusses whether the transfer of all or part of the holder's interest in a Code section 403(b) arrangement to another Code section 403(b) arrangement constitutes an actual distribution to the holder within the meaning of section 403(b)(1). Rev. Rul. 90-24 concludes that a direct transfer between Code section 403(b) investment vehicles does not constitute an actual distribution under section 403(b)(1) of the Code.

The premise underlying Revenue Procedure 90-24 involves transfers between arrangements described in section 403(b) of the Code. Nontaxability of such transfers, as discussed in the revenue ruling, does not encompass transfers from arrangements described in section 403(b) to arrangements not described in section 403(b), such as section 401(a).

In addition, since a rollover is in the nature of a distribution, a distributable event which meets the requirements of section 403(b)(11) and section 403(b)(7) of the Code must occur in order for an individual participant to take advantage of such action.

Therefore, with respect to your third ruling request, we conclude that Employer M's transfer or rollover of all plan assets from Plan Y to Plan Z will cause participants' assets to be includible in income as a taxable distribution.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations which may be applicable thereto.

This ruling expresses no opinion with respect to whether Plan X and Plan Z satisfy the requirements for qualification under section 401(a) of the Code, or whether Plan Y is considered an arrangement as described in section 403(b) of the Code.

This letter 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 as precedent.

Pursuant to a power of attorney on file with this office, the original of this ruling letter is being sent to your authorized representative. Should you have any concerns regarding this letter, please contact **********, ID# ********, **********, at **********.

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3
Tax Exempt and Government Entities Division

Enclosures:
Deleted copy of ruling letter
Notice of Intention to Disclose