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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEC 3 2002

T:EP:RA:T:2
UIL: 501.00-00
414.00-00

Legend:

Church C =

Church Official B =

Order =

Hospital A =

Hospital B =

Health System A =

Service Corp A =

Hospice A =

Subsidiary A =

Medical Center A =

Plan A =

Plan B =

Directory M =

This is in response to a ruling request dated June 20, 2001, as supplemented by additional correspondence dated July 22, 2002 and October 31, 2002, in which your authorized representatives request a ruling on your behalf concerning whether Plan A and Plan B are church plans described in section 414(e) of the Internal Revenue Code and have continued to meet the requirements of section 414(e) since their inception.

The following facts and representations have been submitted on your behalf:

Plan A was established effective July 1, 1982, by Hospital A for its employees and Plan B was established effective January 1, 1982, by Hospital B for its employees. Both plans are intended to qualify under section 401(a) of the Code. Hospitals A and B were exempt from tax under section 501(c)(3) of the Code and were included in Directory M, the official directory of Church C.

Plans A and B are now sponsored by Medical Center A which pursuant to a merger effective August 23, 2000, has been established to be the survivor corporation of the merger of several separate hospitals (including Hospital A and Hospital B) and related corporations. Medical Center A is jointly sponsored by the Order and Church Official B. It is listed in Directory M. The Order is an apostolic congregation of women that is also listed in Directory M. The constitution of the Order provides " the mission of the Order is to share in the ongoing mission of Jesus by responding to the signs of the times.....by revealing God's love in their lives [that is the lives of the members of the Order] and in their varied ministries with and for all in need, especially the poor". The Order is a part of Church C.

Under the 2000 merger, Medical Center A became the sole parent organization and Hospital A and Hospital B are Medical Center A facilities without separate corporate status. Medical Center A is also the sole member of Hospice A, which is listed in Directory M, and the sole shareholder of Subsidiary A. Subsidiary A is a for-profit corporation which functions as a professional billing service for physicians who have admitting privileges at Hospitals A and B. Medical Center A elects all of Subsidiary A's board of directors and may replace them at the annual shareholder meeting. Subsequent to the 2000 merger, Medical Center A employees at the Hospital A facility and Hospice A and Subsidiary A employees participate in Plan A. Medical Center A employees at the Hospital B facility participate in Plan B.

Subsequent to the establishment of Plans A and B in 1982, noted above, the entities whose employees participate in one or the other of the Plans went through a series of reorganizations, culminating in the merger of 2000. Commencing in 1984, Health System A was formed to serve as a holding company for Hospital A and Hospital B. Individual members of the Order served as the members of Health System A and elected its board of trustees. Together with individual members of the Order, Health System A was a member of Hospital A and Hospital B which remained separately incorporated. Health System A was listed in Directory M at all times pertinent to this determination.

In a 1998 reorganization, Hospital A and Hospital B were merged into Health System A and Hospital A and Hospital B ceased to exist as separate corporations. As a consequence of the 1998 merger and reorganization, Service Corp A became the sole member of Health System A. Service Corp A had been a Code section 501(c)(3) organization from its inception

until its effective termination as a result of the 2000 merger. Pursuant to its certificate of incorporation, the purpose of Service Corp A had been "to further any and all benevolent, charitable, scientific and education activities in which the [Order] now are and hereafter may become engaged." The bylaws of Service Corp A provide that its purposes will be "carried out in conformity with the Ethical and Religious Directives for [Church C] Health Facilities of the United States [Church C] Conference." Individual members of the Order were at all times members of Service Corp A and, as such, had the power to elect and remove the directors of Service Corp A.

As a result of the merger in 2000, Service Corp A and Health System A were dissolved as distinct entities and Medical Center A, as noted above, was established and operates the Hospital A and Hospital B facilities directly, without the benefit of separate corporate status. It is represented that Service Corp A never had any employees and consequently at no time were any such employees participants in Plans A or B.

The other entities whose employees participate in Plan A are Hospice A and Subsidiary A. Hospice A was formed in 1987 and Health System A was its sole member. In the 1998 reorganization, Service Corp A became the sole member of Hospice A and in the 2000 merger Service Corp A was dissolved and Medical Center A became the sole member of Hospice A. Subsidiary A was formed in 1995. It was originally a wholly-owned subsidiary of Health System A. In the 1998 reorganization, Service Corp A became the sole member of Health System A, which remained the sole shareholder of Subsidiary A. As a result of the 2000 merger and by operation of state law, Medical Center A acquired all of the outstanding stock in Subsidiary A and became its sole shareholder. Under the bylaws of Subsidiary A, each entity upon becoming sole shareholder had the power to elect and replace the directors of Subsidiary A.

With respect to listing in Directory M, the following is represented: The Order has been listed in Directory M since before 1982 and such listing has continued through the current time. Hospitals A and B were listed in Directory M during 1982 and thereafter until the 1998 reorganization when they were merged into Health System A. Health System A was in Directory M commencing in 1984 when it was created and thereafter until it was merged into Medical Center A in the 2000 merger. Hospice A has been in Directory M since it was created in 1987 and Medical Center A has been in Directory M since the 2000 reorganization when it was created. Medical Center A, Health System A, Hospital A, Hospice A and Subsidiary A were the only employers ever to maintain Plan A and Medical Center A, Health System A and Hospital B were the only employers ever to maintain Plan B.

As of December 31, 1999, Subsidiary A employees represented less than three percent of Plan A's active participants. Even after the exclusion of union bargaining unit members from Plan A, effective March 1, 2001, Subsidiary A employees will still only represent 4.8 percent of the active participants in the Plan.

Pursuant to the terms of the Plans, committees appointed by the board of trustees/directors of the respective Plans' sponsors have administered Plans A and B since their inception through the date of the 2000 merger. The principal purpose of the respective committees has been at all times the administration of the respective Plans. The respective Plans' terms also provide that the committee members may be removed by the respective boards of trustees/directors. On June 20, 2001, the board of directors of Medical Center A appointed a committee effective August 24, 2000, to administer the respective Plans since the

committees lapsed at the time of the 2000 merger and the defect had to be corrected. The principal purpose of the committee is the administration of Plan A and Plan B.

Based on the above facts and representations, rulings are requested that:

(1) Plan A constitutes a church plan as described in section 414(e) of the Code and has been such a church plan since its inception; and

(2) Plan B constitutes a church plan as described in section 414(e) of the Code and has been such a church plan since its inception.

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), Pub. L. 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provided that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) subsequently was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. L. 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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

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).

It is represented that all of the entities involved herein which had employees participating in Plans A or B (except Subsidiary A) are listed in Directory M, which is the official directory of Church C, and have been so listed during the time employees of the respective entity were participating in Plans A or B. The Internal Revenue Service has determined that any organization listed in Directory M is an organization described in section 501(c)(3) of the Code, that is exempt from tax under section 501(a). Also, any organization that is listed in Directory M shares common religious bonds and convictions with Church C and is deemed associated with Church C within the meaning of section 414(e)(3)(D) of the Code.

Accordingly, Hospitals A and B, Hospice A, Health System A and Medical Center A were and are exempt from taxation under section 501(a) and were and are also associated with Church C. Therefore, pursuant to section 414(e)(3)(B) and (C) of the Code, their respective employees are deemed to be employees of Church C and Church C is deemed to be the employer of such employees for purposes of the church plan rules. With respect to section 414(e)(2) of the Code, Subsidiary A's employees did not rise to five percent of active participants in Plan A even after the exclusion of union bargaining unit members from Plan A, effective March 1, 2001. Therefore, in this case, the employees of the for-profit subsidiary constitute an insubstantial percent of the participants in Plan A.

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.

Plans A and B have been administered by committees appointed by the board of directors/trustees of the respective Plan sponsors. Committee members also may be removed by the board of directors/trustees. Thus, the committees were under the control of the corporations sponsoring the Plans and appointing the members of the committees. Since the committees are controlled by the corporate Plan sponsors, they are indirectly associated with Church C. This is so because all of the corporate sponsors, except Subsidiary A, are associated with Church C. Further, since as represented above, the primary purpose of the committees is the administration of the respective Plans, the committees constitute organizations, the principal purpose or function of which is the administration of plans or programs for the provision of retirement benefits or welfare benefits, or both, for the employees

of the corporations. Therefore, the committees would qualify as organizations described in section 414(e)(3)(A) of the Code for the period through the merger and reorganization of 2000 when the committees lapsed. In this regard, as provided under section 414(e)(4)(A) 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. In the instant case, Plans A and B were administered by committees within the meaning of section 414(e)(3)(A) of the Code from their inception through August 23, 2000, the date of the 2000 merger and reorganization. Subsequent to the reorganization there were no committees. However the board of directors of Medical Center A appointed a committee on June 20, 2001, effective August 24, 2000, to administer Plans A and B. The principal purpose of the committee is the administration of the respective Plans. Thus, the defect was corrected as provided under section 414(e)(4)(A) of the Code.

Accordingly, in regard to your ruling request, we conclude that:

(1) Plan A constitutes a church plan as described in section 414(e) of the Code and has been such a church plan since its inception; and

(2) Plan B constitutes a church plan as described in section 414(e) of the Code and has been such a church plan since its inception.

This letter expresses no opinion as to whether Plan A and Plan B satisfy the requirements for qualification under section 401(a) of the Code. The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate office of the Internal Revenue Service.

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.

In accordance with a power of attorney on file in this office, the original of this ruling is being sent to one of your representatives and a copy is being sent to you and a second representative.

This letter was prepared by who may be reached 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 letter
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