200326038

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

Uniform Issue List: 403.00-00
414.00-00

APR 0 2 2003

T:EP:RA:T3

Attention:

Legend:

Board A =

Church B =

Plan X =

Dear :

This is in response to your request for a ruling dated January 25, 2001, submitted by your authorized representative, with respect to an arrangement under section 403(b)(9) of the Internal Revenue Code (the "Code"). Letters dated March 15, 2002, September 13, 2002, December 24, 2002, and January 6, 2003 supplemented the request.

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

Church B is an association of churches. Church B is recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Code, as is Board A as an integrated auxiliary of Church B. The Internal Revenue Service recognized Church B's subordinate organizations as exempt in a group determination letter dated ******** **, *****.

Church B established Plan X, a plan which is intended to meet the requirements of section 403(b) of the Code.

Board A's principal purpose is the administration of Plan X for the provision of retirement benefits for employees of Church B. Board A's by-laws recognize control by

Church B by vesting sole power in the General Assembly of Church B to appoint the members of Board A. Church B receives fees from the members of Board A for operating Plan X, from which it pays the expenses of such operation. The members of Board A are required to be teaching elders, ruling elders, or deacons of Church B. Teaching elders are ordained in and are members of the Church B denomination, but not of any particular local church that is part of Church B. Ruling elders and deacons are members of local churches that are part of Church B.

The religious purposes of Board A include enabling Church B personnel to carry on its ministry by providing for their retirements. Board A also serves religious and charitable purposes by relieving the suffering of poor ministers and lay workers and their dependents with monetary relief payments on the basis of financial need.

All administrative personnel employed by the administrative agency of Church B that Board A oversees are members of local churches that are part of Church B.

On dissolution of Board A and the trust it serves, all assets would be distributed (or held for eventual distribution when permitted) to participants of Plan X. Any non-trust assets held by the administrative agency of Church B would remain assets of Church B and would be redirected to other ministries of Church B.

Only eligible employees may participate in Plan X. Eligible employee is defined, in part, in sections 1.05, 1.08 and 2.01 of Plan X as an individual who is employed by Church B, and shall include any church that is affiliated with Church B. The term "Employee" shall also include a duly ordained minister of Church B engaged in the exercise of his ministry with the approval of the appropriate offices of Church B.

Pursuant to section 1.13, and Article IV of Plan X, contributions may be made to the Plan by (1) salary reduction contributions, (2) nondeductible employee contributions, (3) discretionary employer contributions, and (4) rollover contributions. Participants may make contributions to Plan X under a salary reduction agreement. Contributions made pursuant to a salary reduction agreement shall be subject to the limit on elective deferrals. All such salary reduction agreements shall be legally binding and irrevocable with respect to amounts earned while the agreement is in effect. A salary reduction agreement shall apply only with respect to compensation for services rendered to the employer by the participant which is not currently available and which has not been paid prior to the salary reduction commencement date. A participant may enter into more than one salary reduction agreement each year. A salary reduction agreement may be terminated at any time with respect to the future compensation not currently paid or available. Such contributions are made on a tax-deferred basis, and such contributions shall reduce the regular salary otherwise payable to the participant.

An eligible employee may make a rollover contribution to Plan X, which is a prior distribution from a plan described in section 403(b) of the Code. Section 6.12 of Plan X provides that a distributee receiving an eligible rollover distribution under Plan X may elect to have the distribution rolled over in a direct rollover to an eligible retirement plan.

The maximum amount of elective deferrals under Plan X , combined with elective deferrals under any cash or deferred arrangements under sections 401(k), 408(k), or 403(b) of the Code, are limited under section 5.01(c) of Plan X to the maximum dollar limit of section 402(g) of the Code. Pursuant to section 5.01(c)(2) of Plan X, this limitation may be increased by a qualified participant (if a participant has more than 15 years of service with Church B or another qualified employer). Section 5.01(b)(1) of Plan X limits overall annual additions to those of section 415 of the Code.

Under section 3.01 of Plan X, all contributions and all earnings allocated to the account of a participant shall be fully vested and nonforfeitable at all times. Pursuant to section 12.08 of Plan X, the participant may not anticipate, encumber, alienate or assign any of his rights, claims, or interests in Plan X or any part thereof.

Pursuant to section 7.03 of Plan X, the entire interest of each participant may commence distribution beginning no later than April 1 of the calendar year following the later of the calendar year in which the participant attains age 70 ½, or the participant retires from service.

Pursuant to section 6.02 of Plan X, distributions of a participant's accrued benefit may not be made prior to the time the participant has had a severance of employment, dies or becomes disabled, or attains age 59 ½ . Section 7.02 provides that all distributions will be made in accordance with section 401(a)(9) of the Code, including the minimum distribution incidental benefit requirements of section 1.401(a)(9)-2 of the Income Tax Regulations.

Based on the foregoing, you request the following rulings:

1. That Plan X is a church plan within the meaning of section 414(e) of the Code.

2. That Board A is an organization controlled by or associated with a church or a convention or association of churches and has as its principal purpose or function the administration or funding of a plan within the meaning of section 414(e)(3)(A) of the Code.

3. That Plan X satisfies the requirements of section 403(b) of the Code applicable to retirement income accounts and contains accounts that qualify as retirement income accounts under section 403(b)(9)(B).

4. That contributions made by an employer for an employee to the trust in compliance with the express terms of Plan X and the provisions of the Code and any earnings thereon will not be taxable to the employee when contributed or earned but will instead be taxable to the recipient only for the taxable year in which such amounts are distributed.

5. That for purposes of calculating the limits under section 415(c) of the Code, all years of service of a participant as an employee of a church, a convention or association of churches, or any other organization that is exempt from tax under section 501(c)(3) and shares common religious bonds and convictions with Church B will be treated as years of service for the same employer, and all contributions for annuity contracts for the participant by any of the foregoing during such years will be treated as contributions by the same employer.

6. That the failure of a participant's account to comply with the minimum distribution rules under section 401(a)(9) of the Code or the minimum distribution incidental benefit rules under section 401(a) will not affect the taxability of Plan X accounts of any other participant.

7. That the failure of the contributions on behalf of one participant to comply with the exclusion allowance described in section 403(b)(2) of the Code or section 415(c) defined contribution limit, or the section 402(g) elective deferral limit will not affect the taxability of contributions (and earnings thereon) made for any other participant, or the taxability of Plan X accounts of any other participant.

8. That the failure of the contributions on behalf of a participant to comply with the defined contribution limits described in section 415(c) of the Code will not disqualify any portion of that participant's account as a section 403(b) annuity other than the portion consisting of the contributions that exceeded that limit and earnings thereon.

9. That a loan of Plan X funds to a participant in compliance with the terms of Plan X will not constitute a distribution.

With respect to ruling requests 1 and 2, 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)(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.

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 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.

Church B is an association of churches. Church B is recognized as exempt from federal income tax as an organization described in section 501(c)(3) of the Code.

In view of the stated purpose of Church B, its organization and structure, its actual activities and its recognized status, Church B 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.

Having established that the employees of Church B are "church" employees, the remaining issue is whether Board A is an organization controlled by or 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 within the meaning of section 414(e)(3)(A) of the Code.

In this regard, Plan X is sponsored by Church B and is administered by Board A. Board A's principal purpose is the administration of Plan X for the provision of retirement benefits for employees of Church B. Board A's by-laws recognize control by Church B by vesting sole power in the General Assembly of Church B to appoint the members of Board A. Church B receives fees from the members of Board A for operating Plan X, from which it pays the expenses of such operation. The members of Board A are required to be teaching elders, ruling elders, or deacons of Church B. Teaching elders are ordained in and are members of the Church B denomination, but not of any particular local church that is part of Church B. Ruling elders and deacons are members of local churches that are part of Church B. The members of Board A share common religious bonds and convictions with Church B.

The religious purposes of Board A include enabling Church B personnel to carry on its ministry by providing for their retirements. It is represented that Board A also serves religious and charitable purposes by relieving the suffering of poor ministers and lay workers and their dependents with monetary relief payments on the basis of financial need. All administrative personnel employed by the administrative agency of Church B that Board A oversees are members of local churches that are part of Church B.

Accordingly, it is our view that that Plan X is 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 or funding of Plan X for the provision of retirement benefits for the deemed employees of a church or convention or association of churches.

Therefore, we conclude, with respect to your ruling requests 1 and 2 , that Plan X is maintained by an organization described in section 414(e)(3)(A) of the Code, and that Plan X qualifies as a church plan within the meaning of section 414(e).

With respect to ruling requests 3, 4, and 5, section 403(b)(1) of the Code states 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 (1) 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), or the employee performs services for an educational institution (as defined in section 170(b)(1)(A)(ii) of the Code) which is a state, a political subdivision of a state, or an agency or instrumentality of any one or more of the foregoing; (2) the annuity contract is not subject to section 403(a) of the Code; (3) the employee's rights under the contract are nonforfeitable except for failure to pay future premiums; (4) such contract is purchased under a plan which meets the nondiscrimination requirements of paragraph (12), except in the case of a contract purchased by a church; and, (5) in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract meets the requirements of section 401(a)(30).

Section 403(b)(1) of the Code provides further that the employee shall include in his gross income the amounts actually distributed under such contract in the year distributed as provided in section 72 of the Code.

Section 403(b)(9) of the Code provides that a retirement income account provided by a church shall be treated as an annuity contract described in section 403(b), and amounts paid by an employer described in paragraph (1)(A) to such an account shall be treated as amounts contributed by the employer for an annuity contract for the employee on whose behalf such account is maintained. The term "retirement income account", for purposes of this section, means a defined contribution program established or maintained by a church, a convention or association of churches, including an organization described in section 414(e)(3)(A) to provide benefits under section 403(b) for an employee described in paragraph (1) thereunder or his beneficiaries.

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 401(a)(9) of the Code, generally, provides that the required beginning date for commencement of benefits is April 1 of the calendar year following the later of the calendar year in which the employee attains age 70 ½, or the calendar year in which the employee retires. Section 401(a)(9) specifies required minimum distribution rules for the payment of benefits from qualified plans.

Section 403(b)(11) of the Code provides, generally, 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 59 ½, has a severance of employment, dies, becomes disabled (within the meaning of section 72(m)(7)), or in the case of hardship. Such contract may not provide for the distribution of any income attributable to such contributions in the case of hardship.

Section 403(b)(1)(E) of the Code provides that in the case of a contract purchased under a plan which provides a salary reduction agreement, the contract must meet the requirements of section 401(a)(30). Section 401(a)(30) requires a section 403(b) arrangement, which provides for elective deferrals, to limit such deferrals under the arrangement, in combination with any other qualified plans or arrangements of an employer maintaining such plan providing for elective deferrals, to the limitation in effect under section 402(g)(1) for taxable years beginning in such calendar year.

Section 402(g)(1)(A) of the Code provides, generally, that the elective deferrals of any individual for any taxable year shall be included in such individual's gross income to the extent the amount of such deferrals exceeds the applicable dollar amount. For 2003, the applicable dollar amount is $12,000. Such amount is increased by an amount equal to $1,000 for each year through 2006.

Section 402(g)(7) of the Code provides that, in the case of a qualified employee of a qualified organization, with respect to employer contributions used to purchase an annuity contract under section 403(b) under a salary reduction agreement, the limitation of section 402(g)(1), as modified by section 402(g)(4), for any taxable year shall be increased by whichever of the following is the least: (i) $3,000, (ii) $15,000 reduced by amounts not included in gross income for prior taxable years by reason of this paragraph, or (iii) the excess of $5,000 multiplied by the number of years of service of the employee with the qualified organization over the employer contributions described in paragraph (3) made by the organization on behalf of such employee for prior taxable years (determined in the manner prescribed by the Secretary). A "qualified organization" for these purposes means any educational organization, hospital, home health service agency, health and welfare

service agency, church, or convention or association of churches and includes any organization described in section 414(e)(3)(B)(ii) and a "qualified employee" means any employee who has completed 15 years of service with the qualified organization.

Section 415(a)(2) of the Code provides, in relevant part, that an annuity contract described in section 403(b) shall not be considered described in section 403(b), unless it satisfies the section 415 limitations. In the case of an annuity contract described in section 403(b), the preceding sentence applies only to the portion of the annuity contract exceeding the section 415(b) or 415(c) limitations.

Section 415(c)(7)(B)(i) of the Code provides that all years of service by (I) a duly ordained, commissioned or licensed minister of a church, or (II) a lay person, as an employee of a church, a convention or association of churches, including an organization described in section 414(e)(3)(B)(ii), shall be considered as years of service for one employer.

Part IV(d)(4) of the General Explanation of the Tax Equity and Fiscal Responsibility Act of 1982 ("Act") contains, in pertinent part, the following information regarding investments made by or on behalf of participants, for whom contributions are made into a retirement income account as described in section 403(b)(9) of the Code:

> The Act also provided that generally the tax rules relating to tax-sheltered contracts apply to retirement income accounts provided by a church for its employees. Under the Act, a retirement income account means a program which is a defined contribution plan (sec. 414(i)) and which is established or maintained by a church to provide retirement benefits for its employees under the tax-sheltered annuity rules. Thus, a church-maintained retirement income account differs from a tax-sheltered annuity only in that the account is not maintained by an insurance company.
>
> The assets of a church-maintained retirement income account for the benefit of an employee or his beneficiaries may be commingled in a common trust fund made up of such accounts. However, that part of the common fund which equitably belongs to any account must be separately accounted for (i.e., it must be possible at all times to determine the account's interest in the fund) and cannot be used for or diverted to any purposes other than the exclusive benefit of such employee and beneficiaries.

In this case, you represent that Church B, an employer described in section 501(c)(3) of the Code which is exempt from tax under section 501(a), has established Plan X as its section 403(b) program for its employees. All contributions and the earnings thereon are fully vested and nonforfeitable at all times. Plan X does not meet the requirements of a section 403(a) annuity contract. The restrictions of transferability are present in Plan X as required by section 401(g) of the Code.

Plan X satisfies the restrictions, under section 403(b)(11) of the Code, that amounts attributable to elective deferrals shall not be distributable earlier than upon the attainment of age 59 ½ , severance of employment, death, disability, or hardship. In addition, Plan X

satisfies the section 403(b)(10) requirements and limits contributions in accordance with section 415 of the Code.

Accordingly, we conclude with respect to ruling requests 3, 4, and 5:

3. That Plan X satisfies the requirements of section 403(b) of the Code applicable to retirement income accounts and contains accounts that qualify as retirement income accounts under section 403(b)(9)(B).

4. That contributions made by an employer for an employee to the trust in compliance with the express terms of Plan X and the provisions of the Code and any earnings thereon will not be taxable to the employee when contributed or earned but will instead be taxable to the recipient only for the taxable year in which such amounts are distributed.

5. That for purposes of calculating the limits under section 415(c) of the Code, all years of service of a participant as an employee of a church, a convention or association of churches, or any other organization that is exempt from tax under section 501(c)(3) and shares common religious bonds and convictions with Church B will be treated as years of service for the same employer, and all contributions for annuity contracts for the participant by any of the foregoing during such years will be treated as contributions by the same employer.

Your ruling request numbers six through nine are hypothetical. Pursuant to section 8.02 of Revenue Procedure 2003-04, 2003-1 I.R.B. 123, a letter ruling will not be issued on alternative plans of proposed transactions or on hypothetical situations. Accordingly, we are not ruling on those requests.

This ruling is contingent upon the adoption of the amendments to Plan X, as stipulated in your correspondence dated September 13, 2002, December 24, 2002, and January 6, 2003.

This ruling does not address any provisions that may violate the nondiscrimination requirements of section 403(b)(12) and 401(m) of the Code. This ruling does not extend to any operational violations of section 403(b) of the Code by Plan X, now or in the future.

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

Pursuant to a power of attorney on file in this office, a copy of this letter is being sent to your authorized representative.

Any questions concerning this ruling should be addressed to ********** (ID **-*******) at (***) ***-**** (not a toll free number).

Sincerely yours,

/s/ Frances V. Sloan

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

Enclosures:
Notice 437
Deleted copy of ruling letter

CC: