200331010

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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAY 9 2003

Uniform Issue List: 414.08-00

T:EP:RA:UK:T4

LEGEND:

Corporation A =

Committee B =

Church C =

Company D =

Congregation E =

Organization F =

Division G =

Assembly H =

Division I =

Committee J =

State N =

Plan X =

Date 1 =

Date 2 =

Date 3 =

Ladies and Gentlemen:

On December 30, 2002, your authorized representative requested rulings on your behalf under section 414(e) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted in support of the rulings requested:

Corporation A is a nonprofit corporation organized under the laws of State N and exempt from tax under section 501(c)(3) of the Code. Corporation A is a health care system which operates and manages both owned and leased nursing homes, senior residences, a home health agency, rehabilitative services, a hospital, and other related facilities, primarily for the elderly. Corporation A is a social ministry organization, which has been formally affiliated with Church C since the inception of Church C and with the predecessors to Church C since its incorporation on November 30, 1923.

Corporation A has other tax-exempt subsidiaries. Company D is the only subsidiary of Corporation A with employees. Company D is a participating employer in Plan X, a money purchase pension plan. As part of Group Exemption letters issued by the IRS to Church C on Date 1 and Date 2, 1988, Company D received a determination that it was exempt from Federal Income Tax under section 501(c)(3) of the Code.

Corporation A and Company D historically have been social ministry organizations formally affiliated with Church C and operated in accordance with the requirements established by Church C's Division for Social Ministry for Affiliated Organizations (the "Church C Guiding Principles"). The Church C Guiding Principles include commitments to do the following: participate with Congregation E, Synods/Districts, church bodies and other affiliated/recognized social ministry organizations by seeking to meet the human needs of those who are vulnerable and powerless and by advocating dignity and justice for all people; address human care and justice needs; maintain open communication and cooperation with all ministry partners; govern responsibly; and attain excellence in service, management, and stewardship of all resources. These commitments are to be demonstrated by, among other things, a consistent mission statement, a declaration of intent to be affiliated with Church C, endorsement by Church C, membership and active participation in Organization F, consistent organizational practice, a Board of Directors with a majority of Church C members, and exchange of information with Church C bodies. Employees of Corporation A and Company D work to accomplish the organization's mission and are not employed in connection with any unrelated trade or businesses. Corporation A's Mission Statement reflects these commitments. Corporation A is listed in Church C's directory of social ministry organizations.

Article II of Corporation A's Amended and Restated Articles of Incorporation approved Date 3, 1999, states that Corporation A's primary purposes include: "to support, aid and

develop methods and means to make the lives of older people as independent, healthful, meaningful and secure as possible in an environment that emphasizes Christian care and concern." Article II also states the "corporation intends to be affiliated with [Church C] and to function in accordance with the requirements and interdependent accountabilities established by" Division G of Church C. Article IX states that, on dissolution, Corporation A's assets will be distributed to one or more social ministry organizations affiliated with Church C.

Article II of the Amended and Restated Bylaws of Corporation A states that the members of Corporation A shall consist of individuals who are concurrently members of Assembly H. Section III states that the Board of Trustees will consist of between 7 and 13 trustees, all of whom will be elected by Assembly H. Section 3.03 states that a majority of the trustees will consist of members of Congregation E. Section 4.02 of the Bylaws states that the Board will appoint or remove the President. Section 5.04 authorizes the appointment of Committee B by the Board of Trustees. It also states that Committee B shall consist of 5 members who are members of Church C congregations. Article VII requires that certain amendments to the Articles of Incorporation and Bylaws must be submitted for review by Church C's Division I prior to approval, providing consistency with the Church C Guidelines.

Assembly H is an electoral body elected by the 6 State N synods of Church C. Assembly H is an unincorporated tax-exempt organization. Synods of Church C elect delegates or members to Assembly H. Assembly H is the membership organization of Corporation A that meets annually to elect the Corporation A Board of Trustees. Section 1 of the Amended and Restated Bylaws of Assembly H states that Assembly H shall be "operated exclusively for such religious, charitable, scientific, and educational purposes as will qualify it for exemption under section 501(c)(3) of the Internal Revenue Code. The purposes of Assembly H shall be: (a) to serve as an electoral body for certain corporations exempt from federal income tax under section 501(a) of the Code, and to serve as corporate members under the State N Nonprofit Corporation Act; (b) to support, aid and develop methods and means to make the lives of older people as independent, healthful, meaningful and secure as possible in an environment that emphasizes Christian care and concern; and (c) to engage in, advance, support, promote, and administer charitable causes and projects of every kind and nature whatsoever, if and to the extent consistent with the foregoing purpose. Section 2 of the Amended and Restated Bylaws of Assembly H provides for two categories of members: judicatory members, which comprise approximately 55% of the total number of members, and at-large members, which shall comprise approximately 45% of the total number of members. Section 3 states that judicatory members shall be members of Church C. Judicatory members are elected by the six State N Synods of Church C. The bishop of each of the six State N synods is one of the judicatory members elected by that synod. Section 4 states that at-large members are members of congregations of Church C. At-large members are elected by Assembly H at its annual meeting after

consideration of the slate of nominees recommended by Committee J. Committee J, according to Section 13, is responsible for developing the slate of nominees to replace at-large members whose terms are expiring, to fill offices of Assembly H, and to articulate criteria for members to be elected by the State N Synods of Church C. Committee J shall conduct its activities according to the Bylaws of Corporation A.

Company D is a State N nonprofit corporation that is exempt form tax under the group exemption of Church C. Corporation A has the exclusive authority to elect all of Company D's Board of Directors. Company D's Amended and Restated Articles of Incorporation and Restated Bylaws sate that Company D is organized and operated to support Corporation A and Corporation A's tax-exempt subsidiaries, and that Company D intends to be a social ministry organization affiliated with Church C. Members of Company D's Board of Directors are appointed and may be removed by Corporation A's Board. Amendment to Company D's Articles and Bylaws and the election of Company D's officers must be approved by Corporation A's Board. Upon dissolution, the assets of Company D will be distributed to Corporation A if Corporation A is still a tax-exempt organization. If Corporation A is not a tax-exempt organization upon dissolution of Company D, Company D's assets will be distributed to a social ministry organization affiliated with Church C.

Corporation A adopted and implemented Plan X, a money purchase pension plan, effective January 1, 2000. Committee B serves as plan administrator of Plan X. Committee B was appointed by Assembly H of Corporation A for the principal purpose of maintaining and administering Plan X. Committee B is comprised of committee members who share common religious bonds and convictions with Church C.

Since January 1, 2000, employers participating in Plan X, subject to approval by Corporation A, have included Corporation A and Company D.

Based on the aforementioned facts and representations, you, through your authorized representative, request a ruling that Plan X qualifies as a church plan under section 414(e) of the Code, and that all employees of Corporation A and Company D are deemed to be employees of a church or convention or association of churches.

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)(2) of the Code provides that the term "church plan" does not include a plan (A) which is established and maintained primarily for the benefit of employees (or their beneficiaries) who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513); or (B) if less than substantially all of the individuals included in the plan are church employees (as described in section

414(e)(1) or 414(e)(3)(B)).

Section 414(e)(3)(A) of the Code provides that a plan, otherwise qualified, will qualify 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 a 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 convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization to have a church plan under section 414(e) of the Code, it must establish that its employees are employees or deemed employees of a church or a 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 a convention or association of churches. In addition, in the case of a plan established by an organization that is not itself a church or a convention or association of churches, the plan must be maintained by an organization described in section 414(e)(3)(A) of the Code.

In this case, Corporation A is associated with Church C. The Articles of Incorporation of Corporation A state that its purpose is to provide services to the elderly in a manner which emphasizes Christian care and concern, and also state an intention to be affiliated with Church C and to function in accordance with the Church C Guiding Principles. Furthermore, the Articles of Incorporation of Corporation A state that, on dissolution, Corporation A's assets will be distributed to social organizations affiliated with Church C. Corporation A is also listed in Church C's directory of Social Ministry Organizations. Other facts set forth above also demonstrate the close relationship between Church C and Corporation A. Furthermore, as set forth above, Corporation A

has effective control over its subsidiary, Company D. Accordingly, pursuant to section 414(e)(3)(B) and (C) of the Code, employees of Corporation A and Company D are deemed to be employees of Church C through Corporation A's and Company D's affiliation with Church C. In addition, Church C is deemed to be the employer of employees of Corporation A and Company D, for purposes of the church plan rules of section 414(e) of the Code.

Having established that the employees of Corporation A and Company D are considered church employees, the remaining issue is whether Plan X is administered by a committee that is controlled by or associated with a church or an association or convention of churches the principal function or purpose of which is the administration or funding of a plan, as required by section 414(e)(3)(A) of the Code. You have represented that Plan X is administered by Committee B, which has as its function the administration of Plan X. The members of Committee B are elected by the Board of Trustees of Corporation A, which in turn is elected by Assembly H, which is comprised of members elected by the synod assemblies of the six Church C Synods located in State N. Furthermore, in establishing Committee B, Assembly H required that members of the committee must share common religious bonds and convictions with Church C. Thus Committee B qualifies as an organization described in section 414(e)(3)(A) because it is controlled by or associated with Church C, and its principal purpose or function is the administration or funding of plans maintained for Church C employees.

Therefore, we conclude that Plan X is a "church plan" within the meaning of section 414(e) of the Code and that, for purposes of section 414(e), employees of Corporation A and Company D are deemed to be employees of a church or convention or association of churches.

This letter expresses no opinion as to whether Plan X is qualified 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 Area Manager's Office of the Internal Revenue Service.

This letter expresses no opinion as to whether any organization referred to above is a "church" or a "qualified church-controlled organization" within the meaning of section 3121(w) of the Code. Furthermore, this letter expresses no opinion as to whether employees of Corporation A and Company D are employees of Church C for any purpose other than for purposes of section 414(e) of the Code.

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 that may be applicable thereto.

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.

This ruling letter was prepared by , of this Group. He may be contacted at

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

Sincerely yours,

Alan C. Pipkin
Manager, Technical Group 4
Employee Plans

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