Internal Revenue Service

Department of the Treasury

Washington, DC 20224

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199904041

Contact Person:

Telephone Number:

In Reference to:

Date:

NOV 3 1998

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Attn: **********

Legend:

Church A = **********
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Church B = **********
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Organization A = **********
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Pension Committee = **********
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Directory = **********
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Corporation A = **********
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Corporation B = **********
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* Corporation C = **********
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Corporation D = **********
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Corporation E = **********
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Partnership F = **********
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Corporation G = **********
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Corporation G-1 = **********
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* Hospital H = **********
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Hospital I = **********

* Hospital J = **********
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* Entity K = **********
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* Entity K-1 = **********
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* Entity L = **********
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* Entity M = **********
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* Entity O = **********
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* Entity P = **********
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* Entity Q = **********
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State S = ********

Plan T = **********
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Plan U = **********
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Plan V = **********
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Plan W = **********
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Plan X = **********
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Plan Y = **********
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Plan Z = **********
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* Tax-exempt not-for-profit corporations controlled by Corporation A.

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Ladies and Gentlemen:

This is in response to a ruling request submitted by your authorized representative on ********** as supplemented by additional correspondence dated ********* ****, **********, **********, **********, ***** *******, **********, **********, **********, ******** ********, **********, **********, **********, and **********. Your ruling request concerns whether the above-named welfare plans and retirement plans constitute "church plans" under section 414(e) of the Internal Revenue Code (the "Code") from their respective establishment dates through December 31, 1996.

The following facts and representations have been submitted:

Under the Articles of Incorporation of Corporation A, two of Corporation A's purposes are: (1) to promote, support, develop and encourage the charitable, educational and scientific purposes of Church A and other affiliated tax-exempt organizations of Church A; and (2) to establish, own, operate, maintain and conduct the affairs of hospitals, home health agencies, nursing homes, homes for the aged, substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, and other facilities or programs incidental thereto. From ********** 1988 until ********** 1995, the sole corporate member of Corporation A was Church A, acting through its Church Council (the highest administrative body of Church A). The Articles of Incorporation and Bylaws of Corporation A reserve powers to Church A with respect to approval of amendments to the Articles of Incorporation, appointment of all directors of Corporation A from candidates nominated by Corporation A and removal for cause of any directors so appointed, and approval of any merger, consolidation, liquidation, or sale of substantially all of the assets of Corporation A. At least a simple majority of the directors of Corporation A were required to be members of Church A.

Corporation A is a State S not-for-profit corporation. Corporation A is recognized as a tax-exempt organization described in section 501(c)(3) of the Code by a letter ruling from the Internal Revenue Service (the "Service") dated

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********** 1988. The letter was issued to the predecessor organization to Corporation A. The predecessor organization was renamed Corporation A on ******** 1992, and Corporation A otherwise represents a continuation of the predecessor corporation. At all relevant times Corporation A has been listed in the Church A Directory, a publication that lists certain organizations controlled by or affiliated with Church A.

In addition, the predecessor organization to Corporation A received a group exemption letter from the Service, dated ********** 1988, which holds that the related entities listed therein are tax-exempt organizations under section 501(c)(3) of the Code. Included in the ********** 1988 group exemption letter are: Hospital H, Hospital J, Entity K-1 (predecessor to Entity K), Entity L, Entity M, Entity N, Entity O and Entity Q.

Corporation A sponsors three Welfare Plans and four Retirement Plans for its employees and employees of its affiliates: Plan T, Plan U and Plan V are collectively referred to as "Welfare Plans." Plan W, Plan X, Plan Y and Plan Z are collectively referred to as "Retirement Plans."

Hospital H is a State S not-for-profit corporation. One of the purposes of Hospital H is to establish, own, operate, maintain, and conduct the affairs of hospitals, alcoholism treatment centers, drug abuse and other substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, day care programs and community health education programs, and other facilities and programs incidental thereto. The sole member of Hospital H is Corporation A. As the sole member of Hospital H, Corporation A has sole authority to approve all amendments to the hospital's Articles of Incorporation, Bylaws and mission statements, to appoint and remove all directors, to appoint and remove the chairperson and vice chairperson of the Board of Directors, and to approve any merger, consolidation, transfer, liquidation or the sale of all or substantially all the assets of the hospital. Hospital H is a tax-exempt organization under section 501(c)(3) of the Code and is listed in the group exemption letter dated ********** 1988. Hospital H is listed in the Church A Directory. Through Corporation A, Hospital H has been indirectly controlled by Church A.

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On ********** Corporation A and Hospital H signed a combination agreement with Corporation B and Hospital I. Corporation B and Hospital I, both of which are related to Church B, maintain several church plans which were the subject of favorable private letter rulings from the Service. Pursuant to the combination agreement, Organization A, a newly-created corporation, began to serve as the parent of the four parties to the combination agreement as of ********** 1995. Organization A (which initially had a different name) was organized under State S law on ********** 1994. On ********** 1995, the name of the corporation was changed to Organization A. Section 2.1 of the combination agreement concerns objectives and provides, in part, that the parties desire to unite two highly compatible health systems in order to: (i) sustain the values, reputations and leadership roles of the two founding health care systems and thereby preserve and extend faith-based, ecumenical health care delivery throughout the greater metropolitan area, (ii) capitalize on a common commitment to the principles of continuous quality improvement, (iii) develop an integrated medical care delivery system with the capability of providing high quality, cost effective health services in a seamless continuum of care and enhanced access to such services for a broad and diverse population, (iv) foster a primary care-based integrated regional delivery system to deliver quality patient care and to maintain qualified, diverse medical staffs, and (v) continue a common mission of serving the urban poor.

Under section 2.1 of Organization A's Bylaws Organization A has 24 Members ("Organization A Members"), twelve of whom are appointed by Church B or congregations thereof, and twelve of whom are appointed by Church A. Under section 2.5 of the Bylaws, a Church A-appointed Organization A Member may be removed from office, with or without cause, only by action of Church A. A Church B-appointed Organization A Member may be removed from office, with or without cause, only by action of Church B. These 24 Members have the authority to elect the Board of Directors of Organization A, which consists of not less than nineteen nor more than twenty-one voting members. The Board of Directors of Organization A consists, in part, of seven "Church A Directors," of whom at least four must be clergy or lay members of Church A, and the Board consists, in part, of ten "Church B Directors," of whom at least six must be clergy or lay members of Church B. Under section 3.5 of Organization A's Bylaws, any "Church A Director" may be removed, with or without cause, by a majority vote of the twelve Church A-appointed Organization A Members. Any "Church

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B Director" may be removed, with or without cause, by a majority vote of the twelve Church B-appointed Organization A Members.

No ruling or determination has been made by the Service as to whether Organization A is exempt from tax under section 501(c)(3) of the Code. As described below, Organization A ceased to exist on ********** 1997.

In your ruling request dated ********** and in a letter dated ********** it is represented that after the consummation date (********** 1995) of the aforesaid combination agreement the organizations and entities described in the ruling request are still controlled by churches within the meaning of section 414(e) of the Code. By letter dated ********** your authorized representative has represented that Church A and Church B constitute a "convention or association of churches" under section 414(e) of the Code for purposes of the Retirement Plans and Welfare Plans described herein. A letter from your authorized representative, dated ********** states that, pursuant to the terms of the combination agreement, Organization A became the sole corporate member of both Corporation A and Corporation B on ********** 1995. As a result, the Board of Directors of Organization A appointed the Board of Directors of Corporation A and Corporation B, and these two boards were made to be overlapping. Hospital H and Hospital I retained Corporation A and Corporation B as their sole corporate members, respectively. It was represented that the structure of Organization A can be analogized to a traditional corporate structure in which Organization A serves as the parent corporation, and Corporation A and Corporation B exist as Organization A's first-tier subsidiaries and Hospital H and Hospital I exist as second-tier subsidiaries.

Organization A's Bylaws, at section 4.12, provide that the Pension Committee shall administer the pension plans for the Corporation and its subsidiaries and employ agents, attorneys, accountants, actuaries and other persons to carry out the administration of the plan(s). The Pension Committee shall have five members, consisting of one Organization A director and four non-directors. By your letter dated ****** ********* it is represented that the members of the Pension Committee were first appointed at the ********** 1995 meeting of the Board of Directors of Organization A, and since that date the Pension Committee has administered the Retirement Plans and Welfare Plans sponsored by Corporation A. On

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********** 1995, the Board of Directors of Organization A amended its Bylaws to formally add that the Pension Committee shall administer the Welfare Plans as well as the Retirement Plans.

Corporation C was incorporated in State S to be operated exclusively for charitable, educational and scientific purposes and, in particular, to aid in and promote the prevention and treatment of human ailments and injuries including, but not limited to, through support of the programs and activities of Hospital H and its affiliates. Before Corporation C adopted its current name, it was the subject of a favorable ruling letter issued by the Service on ********** 1985, concluding that it was exempt from tax under section 501(c)(3) of the Code. Under the Bylaws of Corporation C only physicians employed by the corporation may own shares of stock of the corporation and no person shall own more than one share. The business affairs of Corporation C shall be managed by its directors, subject to the reserve powers granted to Hospital H. Under section 4.19 of the Bylaws of Corporation C, the Board of Directors of Hospital H shall have powers reserved to it over Corporation C to: (1) approve amendments to the Articles of Incorporation; (2) approve amendments to the Bylaws; (3) approve mission statements and strategic plans; (4) appoint the chairperson of the Board of Directors from the physicians nominated by the Board of Directors; (5) appoint the president of the corporation from the physicians nominated by the Board of Directors; (6) approve any merger, consolidation, dissolution or transfer of assets; (7) approve operating and capital budgets; and (8) approve debts, and approve outside auditors. In addition, eight of the fifteen directors of Corporation C are Hospital H's clinical division chairpersons. Under Hospital H's Bylaws, the president of Hospital H appoints the clinical division chairpersons, and the corporate member of Hospital H, Corporation A, in turn, appoints the president of Hospital H. In the event of a dissolution of Corporation C, its properties, after payment of all liabilities, will be transferred to Hospital H. It has been represented, therefore, that at all relevant times, Corporation C has been controlled by Hospital H, and, indirectly, controlled by Corporation A.

Hospital J was formed as a State S not-for-profit corporation. Hospital J was included in the tax-exempt organization group exemption letter dated ********** 1988. Hospital J's Articles of Incorporation stated that it shall be affiliated with Church A and that its sole corporate member

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shall be Corporation A. Articles of Amendment to the Articles of Incorporation of Hospital J filed on ******** 1988, named Entity K-1 as the sole member. The Bylaws of Hospital J state that its purposes are to establish, own, operate, maintain and conduct the affairs of hospitals, alcoholism treatment centers, drug abuse and other substance abuse centers, pharmacies, laboratories, training and research facilities and other facilities and programs incidental thereto. Hospital J merged into Hospital H on ********** 1991, pursuant to a plan of merger. While Hospital J retained a separate existence, its employees participated in the various Retirement and Welfare Plans. It is represented that Hospital J was controlled by a church at all relevant times by virtue of Church A's control over either of its sole members, Entity K-1 or Corporation A.

Each of Corporation A's not-for-profit entities has similar Bylaws. The provisions that the Bylaws have in common are as follows: (1) each entity is a non-profit corporation, (2) the sole member of each entity is Corporation A, (3) each entity is governed by a Board of Directors, (4) Corporation A has sole authority to appoint and remove directors of each entity, (5) Corporation A has sole authority to approve amendments to the Articles of Incorporation, Bylaws, mission statements, (6) Corporation A must approve any merger, consolidation, transfer, liquidation or sale of all or substantially all the assets, and (7) Corporation A approves operating and capital budgets. It is represented that each of the following entities controlled by Corporation A was indirectly controlled by Church A until ********** 1995, and that during the period from ********** 1995, through ******** *** 1996, these entities were indirectly controlled by a convention or association of Churches A and B within the meaning of section 414(e) of the Code.

Entity K-1 is a not-for-profit corporation listed in the group exemption letter dated ********** 1988. According to its Certificate of Incorporation, the purposes of Entity K-1 are to establish, develop, sponsor, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. Entity K-1 was renamed Entity K; its sole member is Corporation A and various reserved powers are conferred on the sole member: For example, the Board of Directors of Entity K-1 shall be elected annually by the sole member and may be removed by the sole

member for any reason, and the Board of Directors shall have the power to amend or repeal the Bylaws subject to the approval of the sole member. Entity K-1 was renamed Entity K on ******** 1992.

Under Entity K's Bylaws, restated ******** 1992, the purposes of Entity K are to establish, develop, sponsor, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. The Bylaws of Entity K at section 2.1 state that the corporate member of Entity K shall be Corporation A. The Bylaws of Entity K also state that it shall be affiliated with Corporation A. Entity K is listed in the Church A Directory.

Entity L is a not-for-profit corporation. Entity L is included in the tax-exempt organization group exemption letter dated ********** 1988. Under its Certificate of Incorporation, the purposes of Entity L are to establish, develop, sponsor, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and substance abuse treatment and mental illness. The sole member of Entity L is Entity K. As the sole member, Entity K has sole authority to exercise the following powers: to approve all amendments to the Certificate of Incorporation, Bylaws and mission statements; to appoint and to remove all directors; to nominate all candidates for the chairperson or vice chairperson of the Board of Directors; to appoint the president; and to approve any merger, consolidation, transfer, liquidation or sale of assets. All of Entity L's employees are leased from Hospital H, and the schedules submitted do not show any employees of Entity L as participating in any of the Retirement Plans or Welfare Plans.

Entity M was a not-for-profit corporation listed in the group exemption letter dated ********** 1988. Entity M's Bylaws show that the primary goal was to provide quality residential, partial hospitalization and out-patient care to adult and adolescent substance abusers and other related behavioral health care services. Its Bylaws show that the corporate member was Entity K-1. Although it is represented that Entity M ceased operations and employs no employees, your submission dated ********** 1995, shows that Entity M's former employees who participated in the Welfare Plans and Retirement

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Plans still retain deferred vested benefits under the various Retirement Plans.

Entity N is a non-profit corporation included in the tax-exempt organization group exemption letter dated ********** 1988. An amendment to the Articles of Incorporation of Entity N, adopted ******* 1986, provides that Corporation A shall be the sole corporate member, that the member shall elect the directors and may remove a director with or without cause, and that the member shall approve all amendments to the Articles of Incorporation and Bylaws of Entity N. The Articles of Incorporation of Entity N state that one of its purposes is to establish, develop, promote and conduct educational programs, research, treatment or detoxification facilities, housing centers, counseling services, and other charitable activities related to alcoholism and alcohol problems. An amendment to the Articles of Incorporation of Entity N, adopted on ***** *** 1988, provides that the sole corporate member shall be Entity K-1. A resolution of dissolution was adopted on ********** 1994, and Entity N ceased operations.

A Certificate of Amendment of Certificate of Incorporation of Entity O, dated ******* 1988, states that the purposes for which the corporation is organized are exclusively charitable, scientific or educational within the meaning of section 501(c)(3) of the Code. Entity O is included in the tax-exempt organization group exemption letter dated ********** 1988. On ********** 1988, the Certificate of Incorporation was corrected to state that upon dissolution of Entity O, the Board of Directors shall distribute all of the remaining assets to Entity Q. Entity Q was the former sole member of Entity O. However, on ********** 1994, Entity Q merged into Corporation A, its sole member. Corporation A subsequently became the sole member of Entity O. Under section 2.1 of the Bylaws of Entity O, Corporation A is named as the sole member, and, as such, the member shall have certain enumerated powers including the power to (1) appoint the Board of Directors, and remove members from it, (2) approve amendments to the Bylaws, and (3) approve all operating and capital budgets. At all relevant times Entity O has been controlled either directly or indirectly by Corporation A. Entity O is listed in the Church A Directory.

Entity P's Articles of Incorporation state that Entity P is to operate exclusively for charitable, scientific or educational purposes within the meaning of section 501(c)(3) of the Code. Some of the listed purposes of Entity P are (a)

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to engage in critical research in fields that connect topics dealing with health, faith and ethics, (b) to gather extant literature, generate new knowledge, and establish data bases to study the interactions among these fields, and (c) to provide scholarly reflection and resources (publications, films, seminars, conferences, etc.) which are intended to inform and influence the education and practice of religious leaders and health care providers. Entity P is listed in the Church A Directory. Entity P was the subject of a favorable determination letter from the Service dated ********** 1990, concluding that Entity P was exempt from tax under section 501(c)(3) of the Code. Under section 2.1 of Entity P's Bylaws the corporate member is Corporation A, and, as such, Corporation A has sole authority to appoint and remove all directors of Entity P. The Articles of Incorporation of Entity P provide that in the event of dissolution Entity P's remaining assets shall be transferred to Corporation A.

Entity Q was organized and operated as a non-profit corporation in State S and was included in the tax-exempt organization group exemption letter dated ********** 1988. The first purpose listed in its Articles of Incorporation is to support, aid and develop methods and means to make the lives of older people independent, healthful, meaningful and secure in an environment which emphasizes human service and concern, which includes, but is not limited to, the establishment of facilities for nursing care and elderly housing, facilities and programs for social services and education of older persons, their families, professionals who serve older persons and other members of the communities served by the corporation, and such other facilities or programs as may from time to time be appropriate to the accomplishment of these goals. The Articles of Incorporation of Entity Q also provide that, in the event of dissolution, the Board of Directors shall, after paying or making provision for the payment of all of the liabilities, distribute all of the remaining assets of the corporation by transferring such assets to Corporation A.

On ********** 1994, Entity Q was merged into Corporation A. Before the merger, the Bylaws of Entity Q stated that its corporate member was Corporation A, and, as such, Corporation A had sole authority to appoint and remove all directors of Entity Q.

Corporation G-1 is a State S for-profit corporation that is fully owned by Corporation A. The lines of business of

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Corporation G-1 are consistent with the Bylaws of Corporation A and the Articles of Incorporation of Corporation A and Corporation A's predecessor, which provide, in part, that Corporation A is organized to establish, own, operate, maintain and/or conduct the affairs of hospitals, home health agencies, nursing homes for the aged, substance abuse centers, rehabilitation centers, nursing centers, pharmacies, laboratories, training and research facilities, deaconess homes, and other facilities or programs incidental thereto . . . to contract with other organizations, for-profit and not-for-profit, with individuals, and with governmental agencies in furtherance of these purposes. Corporation G-1 does business under two names--Corporation G-1's stone center and Corporation G-1's survey research. Corporation G-1's stone center expands the healthcare ministry of Church A, Church B, Corporation A and Organization A by ministering to individuals suffering from kidney stones and gallstones through the provision of employees for a kidney stone/gallstone center. Corporation G-1's survey research business fulfills the educational and healthcare ministry aims of Corporation A by providing patient data to hospitals, improving patient care through its consulting activities, and ensuring quality patient care through its management services. It was submitted that Corporation G-1 does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Schedules submitted show a small number of employees of Corporation G-1 who participate in Plan Y and Plan Z; however, a representation was made that plan benefits were accrued while these employees were employed by a Code section 501(c)(3) tax-exempt entity controlled by Corporation A. It is represented that Corporation G-1 is indirectly controlled by Church A through Church A's control of its sole shareholder, Corporation A.

Corporation D is a State S for-profit corporation. Corporation D is 50 percent owned and controlled by Corporation A, an entity controlled by Church A, and 50 percent owned and controlled by Corporation B, which is controlled by Church B. As the sole shareholders of Corporation D, Corporation A and Corporation B have the power to appoint and to remove, with or without cause, an equal number of directors, to authorize the dissolution of Corporation D and to amend or to restate its Bylaws. The shareholders also have numerous approval powers, including the

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right to approve all amendments or restatements of the Articles of Incorporation, the annual budget, the distribution of dividends or other assets, the purchase, sale, lease, exchange, gift, pledge or mortgage of any real property, any borrowing, any affiliation, merger, or consolidation, and the issuance of shares. Corporation D fulfills the healthcare ministry aims of Church A, Church B, Corporation A, and Organization A by providing various services to patients including the National Second Opinion Program, employee health centers, claims administration, and psychiatric case management. The National Second Opinion Program provides patients seeking a second opinion with access to over 20,000 physicians representing over 40 different specialties and subspecialties in many areas of the country. Corporation D's employee health centers sponsor wellness programs, physical examinations, hearing/vision screening, radiology services, physical therapy, and drug and alcohol screenings for employers interested in maintaining the health of their employees. Therefore, it was submitted that Corporation D does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Corporation D, through a wholly-owned subsidiary, operates a health maintenance organization (an "HMO"), as well as a life, accident and health insurance company. It is stated that this subsidiary fulfills the ministry aims of Church A, Church B, Corporation A, and Organization A by increasing access to medical care by providing and safeguarding the financial resources for patients to access healthcare and by regulating the quality and cost of healthcare through its HMO. Through the subsidiary, Corporation A significantly expands its ability to minister to a broader variety of individuals. Therefore, it was submitted that the subsidiary does not engage in a trade or business that is unrelated to the healthcare ministry of Church A, Church B, Corporation A, or Organization A under section 414(e)(2) of the Code.

Schedules submitted show a small number of employees of Corporation D who participate in Plan Y and Plan Z; however, a representation was made that plan benefits were accrued while these employees were employed by a Code section 501(c)(3) tax-exempt entity controlled by Corporation A. It is submitted that Corporation D is indirectly controlled by churches because Corporation D is controlled by Corporation A and

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Corporation B, its only shareholders, which are, in turn, controlled by Church A and Church B, respectively.

Corporation E, a for-profit co poration, was incorporated on ********** 1984. Prior to ********** 1992, Corporation E was 50 percent owned by Corporation D, and the other 50 percent of the common stock was owned by an unrelated entity. On ********** 1992, Corporation D transferred its 50 percent interest in Corporation E to Corporation G-1. On ******** 1993, Corporation G-1 transferred its interest in 50 percent of the common stock of Corporation E to the aforementioned unrelated entity. It is represented that during the period prior to ******** 1993, Corporation D or Corporation G-1 could control Corporation E through its 50 percent ownership of Corporation E, and that Church A indirectly controlled Corporation E. Prior to ******** 1993, a few employees of Corporation E participated in two Retirement Plans and one Welfare Plan, and they ceased participation on that date.

Corporation E's Articles of Incorporation provide, in part, that the corporation is organized to establish, own, maintain and operate a hospital, clinic, surgical center, emergency center or any other facility providing services and treatment to persons suffering from illness or injuries; to provide accommodations for such persons and to provide medical, surgical, radiological and nursing services; to conduct a training school for nurses; to engage in research in the medical arts; to operate such hospital, clinic, surgical, or emergency center on a for-profit basis charging and receiving compensation for such services, treatment and accommodations, and to do all things necessary or incident to establishing, owning, maintaining and operating said institutions. Corporation E may also provide a broad range of human services, including such healthcare related services as it may become licensed to render, pastor counselling, community health education, and programs relating to the aging and further to render management services, including billing and collection services, data processing services, real estate management services, and general consultation and management services and to develop and conduct programs, courses, and seminars for research, study, and treatment of human beings in accordance with Christian values. Therefore, it is submitted that Corporation E did not engage in a trade or business that is unrelated to the healthcare ministry of Church A or Corporation A under section 414(e)(2) of the Code.

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It is stated that as owner of one half of Corporation E, either Corporation D or Corporation G-1 retained the power to insure that Corporation E was operated consistently with the religious and moral teachings of Church A. It is also represented that through its control of one half of the Board of Directors of Corporation E, either Corporation D or Corporation G-1 effectively could prevent the aforesaid unrelated owner of the other one half interest in Corporation E from taking actions which would violate the ethical and religious teachings of Church A.

Partnership F is a State S for-profit general partnership that is 50 percent owned by Hospital H and 50 percent owned by a State S limited partnership unrelated to Hospital H. Partnership F manages and operates a freestanding ambulatory surgical treatment center licensed by State S. The joint venture agreement at section 2.01 provides that a committee shall be established for purposes of implementing the management of the Joint Venture. Under section 2.02 of the agreement, Hospital H appoints three representatives out of a total of six to the management committee, and may replace these representatives at any time. It is stated that Hospital H controls its three representatives on the management committee and therefore can block any action inconsistent with the religious or moral teaching of Church A or Church B by voting against such actions. It is submitted that, at all relevant times, Partnership F has been controlled (indirectly) by a church or churches, by virtue of Church A's control of Hospital H prior to ********** 1995, and by virtue of Church A and Church B's control of Hospital H through Organization A on and after ********** 1995. Employees of Partnership F only participated in the Welfare Plans.

Corporation G, a State S for-profit corporation, was incorporated on ******** 1985. At that time 70 percent of its stock was owned by Corporation G-1 and 30 percent of its stock was owned by a hospital supply company. On ********** 1988, Corporation G-1 purchased all of the stock owned by the hospital supply company, and, therefore, all of the shares of Corporation G were owned by Corporation G-1. All the shares of Corporation G-1 were owned by the predecessor to Corporation A. On ********** 1992, Corporation G was merged into Corporation G-1.

Before its merger into Corporation G-1, Corporation G distributed health care products and provided operational support to hospitals through printing, graphic services,

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equipment sales and rental activities. The primary market for Corporation G's services was Corporation A. Corporation G's lines of business and activities are consistent with the Articles of Incorporation and Bylaws of Corporation A. It is stated that Corporation G expanded the healthcare ministry of Church A and Corporation A by providing operational and organizational support to the healing ministries of Corporation A by distributing health care products and providing graphic and printing support. It was submitted that Corporation G did not engage in a trade or business which was unrelated to the healthcare ministry of Church A and Corporation A under section 414(e)(2) of the Code.

It is represented that Corporation G was controlled by Corporation G-1 which was, in turn, controlled by Corporation A. Since the sole member of Corporation A was Church A, it is represented that Corporation G was indirectly controlled by Church A at all relevant times.

Corporation A, Hospital H, Entity K, Entity O, and Entity P are listed in Church A's Directory.

Corporation A sponsors three Welfare Plans (Plans T, U and V) for its employees and the employees of its affiliates. Due to the administrative process used by the recordkeeper, data was not available, absent a manual analysis, to determine precise participation figures for the 1988 and 1989 plan years.

Plan T is a medical plan, as amended and restated, effective ******** 1989. The following tax-exempt employers participate in, or have participated in, Plan T: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N and Entity P. The following for-profit employers participate in, or have participated in, Plan T: Corporation G, Corporation G-1, Corporation D and Partnership F.

Plan U, as amended and restated, effective ******** 1989, is a flexible benefits plan within the meaning of section 125 of the Code. The following tax-exempt employers participate in, or have participated in, Plan U: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P and Entity Q. The following for-profit employers participate in, or have participated in, Plan U: Corporation G, Corporation G-1, Corporation D and Partnership F.

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Plan V is a dental plan which was established effective ********** 1988. The following tax-exempt employers participate in, or have participated in, Plan V: Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P and Entity Q. The following for-profit employers participate in, or have participated in, Plan V: Corporation G, Corporation G-1, Corporation D and Partnership F.

With respect to Plans T, U, and V, the establishment date of each plan is the effective date for each plan as set forth above.

Corporation A also sponsors four Retirement Plans (Plans W, X, Y, and Z) for its employees and the employees of its affiliates. Due to the administrative process used by the recordkeeper, data was not available, absent a manual analysis, to determine precise participation figures for the 1988 and 1989 plan years.

Plan W is a defined benefit plan intended to qualify under section 401(a) of the Code, as amended and restated effective ********** 1988. Plan W states that Corporation A is designated as the plan administrator, and it has been administered by Corporation A (or its Board of Directors). As of ********** 1995, Plan W has been administered by the Pension Committee of Organization A. Plan W was the subject of a favorable determination letter dated ****** 1990. The following tax-exempt employers participate in, or have participated in, Plan W: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or have participated in, Plan W: Corporation D, Corporation E, Corporation G, and Corporation G-1.

Plan X is a defined contribution plan intended to qualify under section 401(a) of the Code, effective ******** 1988, and has been administered by Corporation A (or its Board of Directors). As of ********** 1995, Plan X has been administered by the Pension Committee of Organization A. Plan X was the subject of a favorable determination letter dated ********* 1990. The following tax-exempt employers participate in, or have participated in, Plan X: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or have

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participated in, Plan X: Corporation D, Corporation E, Corporation G, and Corporation G-1.

Plan Y is a defined contribution plan intended to qualify under section 403(b)(9) of the Code, effective ******** 1988, and, since that date, it had been administered by a State S not-for-profit corporation, a pension board, whose sole member was Corporation A. The pension board had been included in the tax-exempt organization group exemption letter dated ******* *** 1988. Section 6.1 of Plan Y provides that the pension board shall have full power to construe and interpret Plan Y provisions and to perform those functions generally considered the duties of a plan administrator. Section 6.1 also states that the sole purpose of the pension board is to establish and maintain the plan. As of ********** 1995, Plan Y has been administered by the Pension Committee of Organization A. The following tax-exempt employers participate in, or have participated in, Plan Y: Corporation A, Hospital H, Hospital J, Entity K, Entity K-1, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C. The following for-profit employers participate in, or have participated in, Plan Y: Corporation D, Corporation E, Corporation G and Corporation G-1. Schedules submitted show a small number of employees of for-profit employers as participants in Plan Y; however, a representation was made that Plan Y benefits were accrued while these employees were employed by Code section 501(c)(3) tax-exempt entities controlled by Corporation A.

Plan Z is a defined contribution plan intended to qualify under section 403(b)(9) of the Code, effective ******** 1988, as subsequently amended effective ********** 1994. Plan Z had been administered by Corporation A. As of ********** 1995, Plan Z has been administered by the Pension Committee of Organization A. The following tax-exempt employers participate in Plan Z: Corporation A, Hospital H, and Corporation C. The following for-profit employers participate in, or have participated in, Plan Z: Corporation D and Corporation G-1. Schedules submitted show a small number of employees of for-profit employers as participants in Plan Z; however, a representation was made that Plan Z benefits were accrued while these employees were employed by Code section 501(c)(3) tax-exempt entities controlled by Corporation A.

On ********** 1995, Organization A's Board of Directors, in accordance with the Bylaws of Organization A, appointed members to the Pension Committee for the administration of the Retirement Plans of Corporation A. The Bylaws of Organization

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A establish the Pension Committee for the administration of the Retirement Plans. Pursuant to Organization A's Bylaws, the members of the Pension Committee are appointed and may be dismissed jointly by the chairperson and president of Organization A, subject to the ratification by Organization A's Board of Directors. The members of the Pension Committee were appointed at the ********** 1995 meeting of the Board of Directors of Organization A. The Pension Committee is controlled by an association of Church A and Church B through Organization A. On ********** 1995, Organization A's Bylaws were amended to extend the formal responsibility of the Pension Committee to include the administration of the Welfare Plans. It is stated that the sole duty of the Pension Committee is to administer the Retirement Plans and Welfare Plans of Corporation A, and to employ agents, attorneys, accountants, actuaries or other persons as necessary or advisable to carry out the administration of the plans properly. It has been represented that the Pension Committee began to administer the Retirement Plans and Welfare Plans as of ********** 1995.

Prior to ********** 1995, Plans W, X, and Z named Corporation A or its Board of Directors as plan administrator. In your submission dated ********** documentation was furnished that indicates a retirement plan committee had been appointed by Corporation A as early as the 1991 plan year for the purpose of administering Plans W, X, and Z. It was represented that Corporation A's retirement plan committee constituted an organization, the principal purpose or function of which was the administration or funding of the retirement plans or programs for the employees of the entities which participated in Plans W, X, and Z for purposes of section 414(e)(3)(A) of the Code.

In your submission dated ********** it is stated that the above-mentioned Corporation A retirement plan committee did not administer the Welfare Plans. However, it is represented that the Welfare Plans have been administered in fact by Organization A's Pension Committee since ******* *** 1995, even though the formal amendment to the Bylaws of Organization A was not made until ********** 1995, extending the responsibility of Organization A's Pension Committee to include the administration of the Welfare Plans.

In a letter dated ********** the Service was informed that Corporation B (an organization controlled by Church B) and Organization A merged into Corporation A. The surviving

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corporation, Corporation A, adopted the Organization A Bylaws and modified its Articles of Incorporation to mirror Organization A's Articles of Incorporation. Corporation A then renamed itself Organization A. This transaction became effective as of ********** 1997.

Rulings are requested as to whether the three Welfare Plans and the four Retirement Plans described above constitute "church plans" under section 414(e) of the Code from their respective establishment dates through December 31, 1996.

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 taxation under section 501 of the Code.

Section 414(e)(2)(B) of the Code provides, in pertinent part, that the term "church plan" does not include a plan if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) or section 414(e)(3)(B), or their beneficiaries.

Under section 414(e)(3)(A) of the Code, a plan established for its employees by an employer which is not itself a church or a convention or association of churches but is associated with a church or a convention or association of churches 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.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or a convention or association of churches shall include 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

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from tax under section 501 shall be deemed the employer of any individual included as an employee under subparagraph (B) of section 414(e)(3).

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 the organization 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 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 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 a 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.

Corporation A is recognized to be exempt from tax under section 501(c)(3) of the Code. Corporation A controls Church A's health care institutions and programs. At all relevant times before ********** 1995, Corporation A was controlled directly by Church A. The sole member of Corporation A was Church A, and, through its Church Council, Church A exercised certain reserved powers with respect to the organization and operation of Corporation A, including appointing all members of Corporation A's Board of Directors.

From ********** 1995 through ********** 1996, Church A and Church B are represented to constitute a "convention or association of churches" for purposes of section 414(e) of the

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Code. Corporation A, Corporation B, Hospital H, and Hospital I entered into a combination agreement to consolidate the health care activities of Church A and Church B. Pursuant to the terms of the combination agreement, Organization A became the sole corporate member of both Corporations A and B on ********** 1995. As a result, the Board of Directors of Organization A appointed the Board of Directors of Corporation A and Corporation B, and these two boards were made to be overlapping. Hospital H retained Corporation A as its sole corporate member, and Hospital I retained Corporation B as its sole corporate member. In accordance with its Bylaws, Organization A was organized for religious, charitable, educational and scientific purposes including to promote, support, and perform the functions of Hospitals H and I and other organizations that support comprehensive health delivery systems. Church A appointed 12 Members to Organization A and Church B appointed 12 Members to Organization A. These 24 Members, in turn, elected a Board of Directors composed of between 19 and 21 directors to manage Organization A. Church A and Church B have direct control of Organization A. Because the Board of Directors of Organization A appointed the members of the Boards of Directors of Corporations A and B, Organization A had direct control of Corporation A. Under these circumstances the association of Churches A and B had indirect control over Corporation A.

The following concerns the tax-exempt entities controlled either directly or indirectly by Corporation A:

During all relevant times, Corporation A was the sole member of Hospital H. As the sole member, Corporation A controlled Hospital H because Corporation A reserved the right to approve amendments to Hospital H's Articles of Incorporation and Bylaws, and to appoint and remove directors including the chairperson and vice chairperson. Corporation A and Hospital H were recognized to be exempt from tax under section 501(c)(3) of the Code in the ********** 1988 letter ruling and the ********** 1988 group exemption letter, respectively. Although Hospital H was a party to the aforesaid combination agreement, Hospital H retained Corporation A as its sole member and continued to be controlled by Corporation A in a manner analogous to a first-tier subsidiary of Corporation A. Prior to ********** 1995, Hospital H was controlled indirectly by Church A through Corporation A. During the period from ********** 1995 through ********** 1996, Hospital H was controlled

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indirectly by an association of Churches A and B, through Organization A's direct control of Corporation A.

Hospital H controlled Corporation C for the following reasons: Hospital H controlled Corporation C, a tax-exempt entity under section 501(c)(3) of the Code, because Hospital H reserved substantial powers concerning amendment and approval of Corporation C's Articles of Incorporation and Bylaws, and the appointment of the chairperson and president of Corporation C. At least eight of Corporation C's 15 directors must be Hospital H's clinical division chairpersons. The president of Hospital H appoints the clinical division chairpersons, and Corporation A, in turn, appoints the president of Hospital H. During all relevant times Corporation C was indirectly controlled by Church A or an association of Churches A and B. Under these circumstances, Church A controlled Corporation C through Corporation A and Hospital H, and, after the combination agreement became effective on ********** 1995, an association of Churches A and B indirectly controlled Corporation C through Organization A and Corporation A.

Hospital J was merged into Hospital H on ********** 1991. Hospital J was listed in the group exemption letter dated ********** 1988. Articles of Amendment to the Articles of Incorporation filed on ******** 1988 named Entity K-1 as the sole member of Hospital J. Prior to that date, the sole member of Hospital J was Corporation A. Hospital J was controlled by a church at all relevant times by virtue of a church's control over either of its sole members, Entity K-1 or Corporation A. During all relevant years Church A or an association of Churches A and B indirectly controlled Hospital J through Corporation A and later through Organization A.

Corporation A controlled either directly or indirectly the following not-for-profit corporations: Hospital H, Hospital J, Corporation C, Entity K-1, Entity L, Entity K, Entity M, Entity N, Entity O, Entity P, and Entity Q. All of the above not-for profit corporations were listed in the ********** 1988 group exemption ruling letter, with the exceptions of Corporation C and Entity P which received separate favorable determinations as to their tax-exempt status under section 501(c)(3) of the Code. In addition, the following organizations are listed in the Church A Directory: Corporation A, Hospital H, Entity K, Entity O and Entity P.

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Under these circumstances, all the tax-exempt not-for-profit corporations that have employees who participate in the Retirement Plans and Welfare Plans (Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C) are organizations that were directly or indirectly controlled by Church A, and, on and after ********** 1995, were directly or indirectly controlled by an association of Churches A and B through Organization A. Under the principles of section 414(e)(3)(B) of the Code, the employees of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C are employees of organizations which are exempt from tax under section 501 and which are controlled by or associated with a church or a convention or association of churches.

Therefore, in view of the stated purposes and activities of Church A and Organization A and their control of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C, we conclude that the employees of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C are deemed employees of Church A prior to ********** 1995, and, on or after that date, are deemed employees of an association of Churches A and B under section 414(e)(3)(B) of the Code for purposes of the church plan rules. Additionally, under the principles of section 414(e)(3)(C) of the Code, Church A or an association of Churches A and B is deemed the employer of employees of Corporation A, Hospital H, Hospital J, Entity K, Entity M, Entity N, Entity O, Entity P, Entity Q, and Corporation C, and therefore Church A or an association of Churches A and B is treated as the employer of those organizations' employees for purposes of the church plan rules of section 414(e) of the Code.

In addition, employees of certain for-profit entities participated in the Welfare Plans and the Retirement Plans. These for-profit entities include Corporation D, Corporation E, Partnership F, Corporation G, and Corporation G-1.

Information provided by your authorized representative in a letter dated ********** shows that, for plan years 1990 through 1994, the number of participants in any Retirement Plan or Welfare Plan attributable to for-profit entities has always been an insubstantial portion of the overall number of participants in that Retirement Plan or

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Welfare Plan. Also, it is represented that, for the plan years 1995 and 1996, the overall number of participants in any Retirement Plan or Welfare Plan that continued to be used and the number of participants in that Retirement Plan or Welfare Plan attributable to for-profit entities would be approximately the same as for the plan years 1990 through 1994. Therefore, pursuant to section 414(e)(2)(B) of the Code, the Retirement Plans and Welfare Plans were maintained primarily for the benefit of church employees within the meaning of section 414(e)(1) or 414(e)(3)(B) of the Code, and the status of the Retirement Plans and Welfare Plans as church plans was not affected by the participation of these for-profit entities from the various dates of establishment of the Retirement Plans and Welfare Plans through December 31, 1996. Substantially all of the individuals included in each of the Retirement Plans or Welfare Plans were individuals described in section 414(e)(1) or section 414(e)(3)(B) of the Code, or their beneficiaries.

Having established that the employees of Corporation A, Hospital H, Hospital J, Corporation C, Entity K, Entity M, Entity N, Entity O, Entity P, and Entity Q are deemed to be employees of Church A or an association of Churches A and B, the remaining issue is whether the retirement committees administering the Retirement Plans and the Welfare Plans were organizations controlled by or associated with a church or a convention or association of churches, the principal purpose or function of which is the administration or funding of a plan or program within the meaning of section 414(e)(3)(A) of the Code.

The Bylaws of Organization A establish the Pension Committee for the administration of the Retirement Plans of Corporation A. Pursuant to Organization A's Bylaws, the members of the Pension Committee are appointed by the chairperson and president of Organization A, acting jointly and subject to ratification by Organization A's Board of Directors. The members of the Pension Committee were appointed at the ********** 1995 meeting of the Board of Directors of Organization A, and the Pension Committee of Organization A became the new committee that assumed the responsibility and function of administering the Retirement Plans and the Welfare Plans of Corporation A. The Pension Committee is controlled by an association of Church A and Church B through Organization A. On ********** 1995, Organization A's Bylaws were amended to extend the formal responsibility of the Pension Committee to include the

administration of the Welfare Plans. The sole duty of the Pension Committee is to administer the Retirement Plans and Welfare Plans of Corporation A, and to employ professionals or other persons as necessary to carry out the administration of the plans. Under these circumstances, the Pension Committee began to administer the Retirement Plans and Welfare Plans within the meaning of section 414(e)(3)(A) of the Code on ********** 1995.

Plan Y had been administered from its effective date, ******** 1988, until ********** 1995, by a pension board, which was a State S not-for-profit corporation exempt from tax under section 501(c)(3) of the Code. The sole member of the pension board was Corporation A, which was, in turn, controlled by Church A. The sole purpose of the pension board was to establish and maintain Plan Y. Thus, Plan Y was maintained, prior to ********** 1995, by the pension board, an organization whose principal purpose or function of which was 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, and such organization was controlled by a church or a convention or association of churches within the meaning of section 414(e)(3)(A) of the Code. As of ********** 1995, the pension board's function of administration of Plan Y was taken over by the Pension Committee of Organization A.

Prior to ********** 1995, Plan W, Plan X and Plan Z were administered by a retirement plan committee appointed by Corporation A or its Board of Directors, as early as the 1991 plan year. Since the information submitted does not show whether the retirement plan committee was in existence when the plans were established, there may not have been a valid retirement plan committee in existence before 1991. However, the apparent defect in the administrative committee for Plans W, X and Z prior to 1991 was corrected in 1991 when the above-mentioned retirement plan committee was formed by Corporation A. By virtue of the power of appointment of Corporation A's Board of Directors, Corporation A controlled the retirement plan committee. Church A had direct control of Corporation A and indirect control of the retirement plan committee for purposes of section 414(e)(3)(A) of the Code for 1991 and years thereafter.

Under section 414(e)(4) of the Code, if a plan intended to be a church plan fails to meet one or more church plan requirements and corrects its failure within the statutorily-

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defined correction period, then the 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. In this case, the failure of Plans W, X and Z to satisfy the requirements of section 414(e)(3)(A) of the Code for years prior to 1991 was corrected within the correction period defined in section 414(e)(4)(C)(i), and Plans W, X and Z are deemed to meet the requirements of section 414(e)(3)(A) for the year in which the correction was made (1991) and for all prior years pursuant to section 414(e)(4)(A).

No information was submitted to show that the Welfare Plans were maintained prior to ********** 1995 by an organization or committee whose principal purpose or function of which is the administration or funding of a plan or program for the provision of welfare benefits for the employees of a church or a convention or association of churches within the meaning of section 414(e)(3)(A) of the Code. However, it is represented that the Welfare Plans have been administered by the Pension Committee since ********** 1995, even though Organization A's Bylaws were not amended until ********** 1995, to extend the formal responsibility of the Pension Committee to include the administration of the Welfare Plans. In any event, the failure of the Welfare Plans (Plans T, U and V) to satisfy the requirements of section 414(e)(3)(A) of the Code for years prior to 1995 was corrected within the correction period defined in section 414(e)(4)(C)(i) of the Code, and the Welfare Plans are deemed to meet the requirements of section 414(e)(3)(A) of the Code for the year in which the correction was made (1995) and for all prior years pursuant to section 414(e)(4)(A).

Accordingly, we conclude that the Retirement Plans (Plans W, X, Y and Z) and the Welfare Plans (Plans T, U and V) qualify as church plans under section 414(e) of the Code from their respective establishment dates, as set forth above, through December 31, 1996.

This letter expresses no opinion as to whether Plans W and X 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 Key District Director's office of the Internal Revenue Service. Similarly, this letter expresses no opinion as to whether Plan Y and Plan Z meet the requirements of section 403(b) of the Code. Furthermore, this letter

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expresses no opinion as to whether Plans T, U, or V are cafeteria plans within the meaning of section 125 of the Code.

This letter expresses no opinion as to whether any organization referred to above is a "church plan" or a "qualified church-controlled organization" within the meaning of section 3121(w) of the Code.

This ruling letter was requested by Corporation A which sponsors the Retirement Plans and the Welfare Plans, and expresses no opinion with respect to any other employer participating in the plans under the church plan rules pertaining to plans maintained by two or more employers in section 1.414(e)-1(c) of the Income Tax Regulations.

The original and a copy of this letter have been sent to your authorized representatives in accordance with a power of attorney on file in this office.

Sincerely,

John G. Riddle, Jr.

John G. Riddle, Jr.
Chief, Employee Plans
Technical Branch 4

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437