Internal Revenue Service

Department of the Treasury

Washington, DC 20224

199911059

SIN: 414.08-00

Person to Contact:

Telephone Number:

Refer Reply to: OP:E:EP:T:3

Date: DEC 22 1998

Legend:

Church A =

Synod B =

Denomination D =

State C =

Corporation L =

Corporation M =

Corporation N =

Corporation O =

Corporation P =

Corporation Q =

Corporation R =

Plan X =

Plan Y =

Plan Z =

Ladies and Gentlemen:

This is in response to your letter of August 13, 1998, as supplemented by additional correspondence dated October 30, 1998, November 16, 1998, November 19, 1998, November 30, 1998 and

December 10, 1998, in which your authorized representative requested a ruling on your behalf concerning whether Plan Y and Plan Z qualify as church plans under section 414(e) of the Internal Revenue Code.

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

In a letter ruling dated July 27, 1994, the Internal Revenue Service determined that under section 414(e)(3)(B) of the Code, the employees of Corporation M would be deemed employees of Church A and that under section 414(e)(3)(C) of the Code, Church A would be deemed the employer of the employees of Corporation M. The ruling also concluded that Plan X (which is currently named Plan Y) was a church plan within the meaning of section 414(e)(1) of the Code.

Since the time of the July 27, 1994, letter ruling, Corporation M and Plan X have undergone several changes. Corporation M is now part of a controlled group of corporations, of which Corporation L is the parent. On July 2, 1997, Corporation L was created as the parent corporation of Corporation M and Corporation N. On November 26, 1997, Corporation O joined Corporations M and N as a subsidiary of Corporation L. Corporation O has three of its own subsidiaries, Corporations P, Q and R. All of the above named corporations are not-for-profit corporations chartered in State C, described in section 501(c)(3) of the Code and exempt from tax under section 501(a).

Prior to the changes under consideration in this ruling, Plan X, which was sponsored by and covered the employees of Corporation M, was administered by an entity known as the pension plan committee which was established July 1, 1977, by a resolution of the board of trustees of Corporation M. The committee was made up of five individuals including three members of the finance committee of the board of trustees and two employees. Members of the committee were appointed and removed by the board of trustees of Corporation M. The pension plan committee administered Plan X through July 2, 1997, the date Corporation L was created as the parent corporation of Corporations M and N. Effective July 2, 1997, with the creation of Corporation L, the chief financial officer and the director of human resources of Corporation L became the pension plan committee on an interim basis. These positions are directly accountable to an officer of the Corporation L board.

On February 17, 1998, the board of trustees of Corporation L adopted resolutions to: (1) make Corporation L, instead of Corporation M, the sponsor of Plan X, (2) adopt Plan X for Corporation L, (3) change the name of Plan X to Plan Y, (4)

provide for the inclusion of the employees of Corporations L and N in Plan Y, effective April 1, 1998 and (5) adopt a new and additional plan, Plan Z. Plan Z was effective April 1, 1998, and covered the employees of Corporation L, M and N. In September of 1998, the board of trustees of Corporation L authorized the inclusion of the employees of Corporation O and its subsidiaries, Corporations P, Q and R in Plan Y and Plan Z, effective January 1, 1999. All of the changes initiated by the board of trustees of Corporation L in February and September 1998 were administered by the pension plan committee. It is now the intention of the board of Corporation L to terminate the interim committee arrangement referred to above and return the pension plan committee to the form it originally retained under Corporaton M, except that now it would report to the board of Corporation L and its members would be appointed and removed by that board. During this entire period, the principal purpose of the pension plan committee was and is the administration of Plan Y and Plan Z.

Plan Y was restated on April 30, 1998. A favorable determination letter on the status of Plan Y under section 401(a) of the Code was received July 29, 1998. Plan Z is also intended to qualify under section 401(a) of the Code and a determination letter will be requested.

At issue in this request is the effect of the reorganization of Corporation M and the creation of the Corporation L controlled group of corporations (as described above) on the status of the affected emmployees under section 414(e)(3)(B) of the Code as employees of a church, i.e., Church A. Hence, the following review of the relationship of the Corporation L controlled group to Church A.

The bylaws of Corporation L provide that it is dedicated to providing a complete range of human services to the elderly, the handicapped and the needy. The bylaws state it is Corporation L's intention to be affiliated with Church A. Furthermore, Corporation L intends to function in accordance with the requirements and interdependent accountabilities established by the Division for Church in Society of Church A, Synod B and with other churches of Denomination D, as appropriate. Synod B is the part of Church A that is located in the northeastern section of State C, where the Corporation L controlled group provides services. Denomination D includes other churches which share the same historical origin as Church A. Synod B and Church A are organizations described in section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code.

Corporation L is overseen by a board of trustees. The board consists of between 15 and 21 persons. At least a majority of the board members shall at all times be members of Denomination D congregations. At least 25 percent of the members of the board

shall at all times be Church A rostered clergy. A majority of the positions to be filled each year shall be elected by Synod B. The president and chief executive officer of Corporation L has always been an ordained minister of Church A.

"Fundamental transactions" of Corporation L must be approved by two-thirds of the board of trustees as well as be approved by Synod B. Fundamental transactions include, among other things, amendments to the bylaws and articles of incorporation, mergers, acquisitions and bankruptcy.

Corporation L is listed in the Church A official yearbook (Yearbook). The Yearbook is a listing of all organizations affiliated with Church A, including churches and regional organizations of churches, as well as social ministry organizations.

Corporation M is dedicated to providing services to the elderly, the handicapped and the needy. Corporation M's expression of its intent to be affiliated with Church A is substantially the same as that of Corporation L. Corporation M is overseen by its board of directors. A minimum of one third of the board members shall be members of Denomination D congregations. Board members are elected by Corporation L. Any change in the board of directors must be approved by Corporation L and vacancies are filled by Corporation L. The president and chief executive officer of Corporation L is also the president and chief executive officer of Corporation M. The current president and chief executive officer is an ordained minister of Church A. Corporation M is listed in the Church A Yearbook as one of Church A's social ministry organizatons.

Corporation N is also dedicated to providing services to the elderly, the handicapped and the needy. Corporation N's expression of its intent to be affiliated with Church A is substantially the same as that of Corporation L. Corporation N is overseen by its board of directors. A minimum of one third of the board members must be from Denomination D congregations. Board members are elected by Corporation L. Any changes to the board must be approved by Corporation L and vacancies are filled by Corporation L. The president and chief executive officer of Corporaton L is the president and chief executive officer of Corporation N and is currently an ordained minister of Church A.

Corporation O's purpose includes providing management services to its subsidiaries, Corporations P, Q and R which are engaged in providing nursing services. Corporation O seeks to assist these organizations in the fulfillment of their mission and social responsibility. It further seeks to assess the health and health related needs of the community served and when appropriate to plan programs to meet these needs. Corporation O

is managed and controlled by its board of directors. Included in the board of directors shall be the chairman, secretary and treasurer of the board of trustees of Corporation L or their designees as long as such designee is a member of the board of trustees of Corporation L. Over one-half of the members of the board of directors must be approved by Corporation L. Any elected member of the board of directors of Corporation O may be removed at any time for any reason by Corporation L. Any vacancies are filled by Corporation L. In addition, Corporation L must approve, among other items, amendments to the bylaws or articles of incorporation, election of officers and any significant business arrangement.

As indicated above, Corporations P, Q and R are in the business of providing nursing care services. Each is overseen by its board of directors. As parent, Corporation O elects the respective boards of directors of Corporations P, Q and R and may remove any elected member of the boards at any time with or without cause. Corporation O must approve, among other items, amendments to the bylaws or articles of incorporation, election of officers and any significant business arrangement of these subsidiaries.

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

1. Plan Y, as the successor of Plan X , continued to be a church plan within the meaning of section 414(e) of the Code when employees of Corporation L and Corporation N joined Corporaton M employees as Plan Y participants effective April 1, 1998.

2. Plan Z qualified as a church plan within the meaning of section 414(e) of the Code as of the Plan's effective date, April 1, 1998, when the employees of Corporations L, M and N were covered.

3. Both Plan Y and Plan Z will continue to be church plans within the meaning of section 414(e) of the Code beginning January 1, 1999, when the employees of Corporation O and its subsidiaries Corporations P, Q and R will begin participation in Plans Y and Z.

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 secton 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 by virtue of the organization's affiliation with the church or convention or association of churches and that the plan will be administered by an organization of the type described in section 414(e)(3)(A).

Church A, Synod B and Corporations L, M, N, O, P, Q and R are described in section 501(c)(3) of the Code and exempt from tax under section 501(a) of the Code. Corporation L is the parent corporation of Corporations M, N and O. Corporation O is in turn the parent of Corporations P, Q and R. Corporation L and all the subsidiaries are extensions of the human services ministry of Church A.

At least 25 percent of the members of the board of trustees of Corporation L are at all times rostered clergy of Church A. A majority of the positions on the board of Corporation L that are filled each year are elected by Synod B, a part of Church A. The president and chief executive officer of Corporation L has always been an ordained minister of Church A. Thus, Corporation L is

controlled by Church A. Corporation L is also associated with Church A because it shares common religious bonds and convictions as indicated by the following: Corporation L's bylaws state that it intends to be affiliated with Church A. Corporation L represents it intends to hold itself accountable to the standards set by Church A for its activities. Corporation L is listed in the Yearbook of Church A. Further, as indicated above, 25 percent of Corporation L's board and its president are Church A clergy.

Corporation L appoints the boards of Corporations M and N and the president and chief executive officer of Corporation L also serves as the president and chief executive officer of Corporations M and N. Corporations M and N are indirectly controlled by Church A through Corporation L and in addition have many marks of association with Church A in their own right.

Corporation O and its subsidiaries Corporations P, Q and R are also controlled by Church A and associated with it through Corporation L. Three officers of the board of Corporation L or their designees must serve on the board of Corporation O. Corporation L must approve over half of the board of Corporation O. Any elected member of the board of Corporation O may be removed at any time for any reason by Corporation L. Any vacancies are filled by Corporation L. Corporation O in turn elects the boards of Corporations P, Q and R and may remove any elected member of the board at any time with or without cause.

Based on the above, it is concluded that the employees of Corporations L, M, N, O, P, Q and R qualify as employees of a church under section 414(e)(3)(B) of the Code and that Church A is deemed the employer of such employees in accordance with section 414(e)(3)(C) of the Code.

However, an organization must also establish that its plan is established and maintained by a church or a convention or association of churches or by an organization described in section 414(e)(3)(A) of the Code. To be described in section 414(e)(3)(A) of the Code, an organization must have as its principal purpose the administration of the plan and must also be controlled by or associated with a church or a convention or association of churches.

In this case, the members of the pension plan committee have at all times been composed of employees, members of board committees, or officers of Corporations L or M and therefore directly under the control of Corporation M until July 2, 1997, when Corporation L was created and assumed control. Accordingly, the pension plan committee is indirectly associated with Church A because Corporations M and L are associated with Church A.

In addition, since the principal purpose of the pension plan committee has always been the administration of Plan Y (the former Plan X) and Plan Z, the pension plan committee constitutes an organization the principal purpose or function of which is the administration of plans or programs for the provision of retirement benefits or welfare benefits or both for the employees of Corporation L, and its subsidiaries. Therefore, the committee qualifies as an organization described in section 414(e)(3)(A) of the Code.

Accordingly, in regard to your ruling requests, we conclude as follows:

1. Plan Y, as the successor of Plan X , continued to be a church plan within the meaning of section 414(e) of the Code when employees of Corporation L and Corporation N joined Corporaton M employees as Plan Y participants effective April 1, 1998.

2. Plan Z qualified as a church plan within the meaning of section 414(e) of the Code as of the Plan's effective date, April 1, 1998, when the employees of Corporations L, M and N were covered.

3. Both Plan Y and Plan Z will continue to be church plans within the meaning of section 414(e) of the Code beginning January 1, 1999, when the employees of Corporation O and its subsidiaries Corporations P, Q and R will begin participation in Plans Y and Z.

This letter expresses no opinion as to whether Plans Y and Z 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.

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

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

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Enclosures:
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