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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

SIGNIFICANT INDEX
NO. 414.08-00

OP:E:EP:T:2

Contact Person:

Telephone Number:

In Reference to:

Attn:

Date: APR 5 1999

at Counsel

Employee I.D. No.

Legend:

Entity A =

Entity AM =
Entity AN =
Entity UH =
Entity UHS =
Entity UMS =
Entity UMW =
Entity SJ =
Entity SL =

Entity SA =
Entity ARD =
Entity USC =
Entity CAS =
Order A =

Entity B =

Entity C =
Entity SC =

Committee C =

Ethical Directive N =

City L =
State M =
Plan X =

Plan A =

Plan L =

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Plan ARD =

Plan K =

Church N =
Church O =
Church P =
Congregation P =

Executive P =

Clerk P =

Bishop E =

Diocese E =

Dear Mr.

In letters dated August 11, 1997, May 13, June 3, and July 24, 1998, you requested a ruling concerning whether Plans X and K are church plans within the meaning of section 414(e) of the Internal Revenue Code.

The following facts and representations have been submitted:

Entity B manages hospitals and health care provider organizations throughout the midwest and southwest, including hospitals and health care organizations in State M. Entity B is controlled by Entity A, a religious community affiliated with Church N. The elected leadership of Entity A and one other member of Entity A are the members and directors of Entity SC. Entity SC sponsors Plan X, a defined benefit pension plan benefiting employees of various entities in the Entity B health care network and educational entities controlled by Entity A. Plan X is administered by Committee C, the majority of whose members are appointed by Entity SC. Committee C's sole function is to administer Plan X and the other retirement plans which are qualified under section 401(a) or 403(b) of the Code, and are maintained on behalf of the entities in the Entity B system and

certain not-for-profit entities, 50 percent of whose directors are appointed by the Regional Leadership Team of Entity A.

Order A is a religious congregation of women organized within, and sharing common religious bonds and convictions with, Church N. Order A is divided into twenty-five geographic divisions or provinces. One of those divisions is Entity A. Entity A is controlled by a Regional Leadership Team. The Regional Leadership Team of Entity A is comprised of individuals all of whom are members of Order A serving in the regional community of City L and are elected by the members of Order A serving in the regional community of City L. Order A and Entity A are listed in the Official Church N Directory. The mission of Entity A is service to the poor, sick, and uneducated. In order to carry out this mission, Entity A establishes hospitals and health care institutions.

Entity SC is a State M not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code, whose members are the Regional Leadership Team of Entity A and one other member of Entity A appointed by the Regional Leadership Team of Entity A. A principal purpose of Entity SC is to fulfill more effectively the mission of Church N by initiating plans and programs to encourage, facilitate and support the education and provision of health care and ministry services to the poor, sick and uneducated. Entity SC is listed in the Official Church N Directory.

To further its health care ministry, Entity A formed Entity B. Entity B is a State M not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code, whose members are the Regional Leadership Team of Entity A. Entity B serves as a holding company to manage and supervise the various health care entities in the Entity B system. Entity B is listed in the Official Church N Directory. Each member of the Entity B Board of Directors is either appointed directly by or subject to the approval of the Regional Leadership Team of Entity A.

Committee C consists of nine members approved by Entity SC. Eight of the members are appointed directly by Entity SC and the remaining member is appointed by Entity UH and must be approved by Committee C. All members of Committee C may be removed at any time in the sole discretion of the Board of Directors of Entity SC. The sole purpose and function of Committee C is the administration and supervision of Plan X and other retirement

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plans qualified under section 401(a) or 403(b) of the Code maintained on behalf of the entities in the Entity B system.

Entity B currently supervises, owns and operates a total of thirty-four various corporations and other entities in the Entity B health care system. Specifically, Entity B coordinates the capital development, purchasing, auditing, and other activities of such health care entities. In the Entity B health care system, Entity B, directly or indirectly, is the sole corporate member of each not-for-profit corporation and the sole shareholder of each for-profit corporation; determines the number of trustees for each not-for-profit corporation and the number of directors for each for-profit corporation; appoints all such trustees and directors; and may remove (with or without cause) any trustee or director. Except for Entity AM, Entity AN, and Entity UHS, all of such entities are tax-exempt as organizations described in section 501(c)(3) of the Code. The Regional Leadership Team of Entity A controls all other not-for-profit and for-profit entities in the Entity B health care system who participate in Plan X.

Historically, Entity SJ was the only hospital in the Entity B health care system located in City L and its employees were included in Plan X. In 1995, Entity SL and Entity SA combined operations with Entity SJ to form a unified health care network comprised of all three hospitals. Entity UH was formed by Entity B as a holding company to manage and supervise these three hospitals, as well as Entity UMS, Entity UMW and Entity UHS, which are related health care entities in the City L area.

Entity UH is a not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code. Entity UH is not listed in the Official Church N Directory. Entity UH's Articles of Incorporation state that it:

> shall operate to direct, oversee and support the mission of the Supported Organizations (Entity SA, Entity SJ and Entity SL) as part of an integrated health care delivery system. In carrying out its purposes the Corporation shall at all times seek to promote Christ's concern for the care of the sick and injured.

Entity B is the sole member of Entity UH. The ten members of the Board of Directors of Entity UH are appointed as follows:

(a) Entity UH's President/Chief Executive Officer, is appointed directly by Entity B; (b) three members are appointed directly by Entity SJ which appointments are approved by Entity B; (c) three members are appointed directly by Entity SA; and (d) three members are appointed directly by Entity SL.

With respect to the directors nominated by Entities SA and SL, Entity B has approval rights subject to a "three strikes" rule. In any given instance, if the first and the second nominations by the nominating Hospital are refused by Entity B, that Hospital has the unilateral right to appoint its third choice.

At all times, (a) Entity B and one Entity SA-appointed member may remove another Entity SA-appointed member; (b) Entity B may remove any member appointed by Entity SJ; and (c) Entity B and one Entity SL-appointed member may remove another Entity SL-appointed member.

Entity SA is a not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code. Entity SA's Articles of Incorporation provide that Entity SA shall at all times be operated as a Church N medical center in conformance with the Ethical and Religious Directives for Church N medical centers. The Board appoints the Hospital's Chief Executive Officer, but he or she is an employee of Entity B and reports to Entity UH's Chief Operating Officer. Entity SA's Board of Directors consists of no less than ten and no more than fifteen members and is self perpetuating. While no member is appointed directly by a Church N official or organization, the Bylaws provide that a majority of the members of the Board of Directors must be of the Church N faith. Entity SA has received notice that it will be listed in the next publication of the Official Church N Directory.

Entity SJ is a not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code, and is listed in the Official Church N Directory. All members of Entity SJ's Board of Directors are appointed by Entity B. The Board appoints the Hospital's Chief Executive Officer. Entity SJ's Bylaws expressly state that it shall operate to serve the mission of Entity A, to evidence the policies of Entity A, and to witness the teachings of Church N regarding Christian health services and charity. In addition, Entity SJ's Bylaws state that it shall not provide for or cooperate in any medical procedures which are contrary to Ethical Directive N or to the philosophy and the mission of Entity A.

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Entity SL, is a not-for-profit corporation exempt from tax as an organization described in section 501(c)(3) of the Code. Entity SL is affiliated with Church O and Church P, not Church N; therefore, Entity SL is not listed in the Official Church N Directory. However, Entity SL's Board of Directors has four church-appointed members: Executive P, Clerk P, Bishop E, and another Church O member appointed by the Bishop. Any one of these four church-appointed members has veto power over all other nominations to the Board. The Board appoints Entity SL's Chief Executive Officer but he or she reports to Entity UH's Chief Operating Officer. Entity SL's Articles of Incorporation expressly provide that Entity SL shall be conducted under the auspices of Diocese E and Congregation P.

Entities UMS and UMW are not-for-profit corporations, organized as exempt from tax as organizations described in section 501(c)(3) of the Code, and are subsidiaries of Entity UH. The primary functions of Entities UMS and UMW are to establish and maintain clinics at permanent health facilities; to develop arrangements for providing health services; to foster teaching and research; and to provide orientation and training programs for personnel employed at each facility. The Bylaws of Entity UMS and Entity UMW each provide that the Entity may not promote or engage in any activities with respect to physicians practicing at or otherwise affiliated with Entity SA or Entity SJ that are contrary to Ethical Directive N as promulgated by the local Bishop. Entity UMS and Entity UMW each have Boards of Directors of at least seven and no more than twelve members. The Board members include: the Chief Executive Officer of Entity SA for Entity UMS or Entity SL for Entity UMW; the Chief Operating Officer of Entity UH (whose appointment is directly controlled by Entity B); the Chief Executive Officer of Entity UMS or Entity UMW, respectively; and all remaining Board members must be physicians affiliated with the respective Entity. The physician members of the Board are subject to approval by Entity UH.

Entity UHS is a for-profit limited liability company. The primary function of Entity UHS is to operate the occupational medicine departments of the Entity UH member hospitals, to deliver medical equipment to patients' homes and to operate the retail pharmacy and optical shops for Entity UH member hospitals. The members of Entity UHS are Entity UH, Entity SA, Entity SJ and Entity SL. Entity UH is the Managing Member of Entity UHS. As the Managing Member, Entity UH is authorized to appoint all of the other managers of Entity UHS. Entity UHS's Board of Managers must have at least nine but not more than fifteen managers. In

addition, Entity UH, as Managing Member, has the right to remove any manager at any time with or without cause. Entity B indirectly controls Entity UHS through its control of Entity UH. Entity UHS has approximately 400 employees. The employees of Entity UHS are not currently eligible to participate in Plan X. However, as part of the merger of Entity SA's Plan, Plan A, Entity SL's Plan, Plan L, and Entity ARD's Plan, Plan ARD, into Plan X, Entity UHS employees will be eligible to participate in Plan X.

Entity ARD is a not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code, and is listed in the Official Church N Directory. Entity C, a not-for-profit corporation, is the sole member of Entity ARD and Entity B is the sole member of Entity C. Entity ARD's Amended and Restated Articles of Incorporation provide that Entity ARD shall be operated in accordance with Ethical Directive N and the mission and philosophy of Entity A. Further, Entity ARD's Articles of Incorporation and Bylaws may not be altered, amended or repealed without the prior approval of Entity B. Entity ARD's Board of Trustees consists of no less than ten and no more than thirteen members and includes the following: one member must be the President of Entity C (which position is controlled by Entity B); two members must be Order A members; and the remaining members must be selected from the medical staff of Entity ARD, citizens of the community served by Entity ARD and other representatives of Entity C and related Entity B entities. Entity C has the right to remove a Board member at any time.

Entity USC is a not-for-profit corporation, exempt from tax as an organization described in section 501(c)(3) of the Code and is listed in the Official Church N Directory. Entity B is the Class B member of Entity USC and Entity CAS is the Class A member. Entity USC's Bylaws state that it was organized to provide services as part of an integrated delivery system for Entity UH in providing health care services to the City L service area. Entity B appoints Entity USC's President and Chief Executive Officer from the list of candidates approved by Entity CAS. The fourteen members of Entity USC's Board of Directors are as follows: Entity USC's Chief Executive Officer (appointed by Entity B); three members appointed by Entity B; three members appointed by Entity CAS; and seven members from the immediate community appointed jointly by Entity B and Entity CAS. Entity B has the power to remove any community board member, with or without cause, after consultation with, but not the approval of Entity CAS.

Prior to January 1, 1998, Entity SJ (along with numerous other entities controlled by Entity A) participated in Plan X, Entity SA sponsored Plan A, Entity SL sponsored Plan L and Entity ARD sponsored Plan ARD. Effective as of January 1, 1998, Entity USC merged Plan A, Plan L and Plan ARD into Plan X, and Entities ARD, SA, SL, UH, UHS, UMS, UMW and USC became participating employers in Plan X. There are approximately 21,200 participants in the merged plan, of which approximately 350 participants, or 1.7 percent are employed by Entity UHS and other nontax-exempt entities in the Entity B system.

Plan K is a newly established retirement plan designed to qualify as a cash or deferred profit-sharing plan under section 401 of the Code and was effective as of January 1, 1998. Plan K is sponsored by Entity SC and is administered by Committee C for the benefit of the employees of Entity UH and any affiliate that is a party to an agreement with Entity UH on the common governance of health care entities affiliated with Entity UH, any other entity with respect to which any such affiliate either directly or indirectly retains the power to appoint and remove at least 80 percent of the members of its Board of Directors or Board of Trustees, and any other affiliate that adopts Plan K with the consent of Entity SC. There are currently approximately 13,000 employees employed by Entity UH of which approximately 400 are employed by Entity UHS, a nontax-exempt entity. Of those employees, approximately 9,400 would be eligible to participate in Plan K, of which approximately 43 participants or 0.5 percent would be employed by a nontax-exempt entity.

Plan K is administered by Committee C whose principal purpose and function is to administer Plan X, Plan K and other retirement plans which are qualified under section 401(a) or 403(b) of the Code and maintained on behalf of the entities in the Entity B system and certain not-for-profit corporations 80 percent of whose directors are appointed by the Regional Leadership Team.

The merger of Plan X, Plan A, Plan L and Plan ARD would simplify administration and reduce the cost of maintaining four separate plans. All employees of the Entity B system would participate in the same pension plan.

Based on the foregoing facts and representations, you request the following rulings:

(1) that the single plan, resulting from the merger of Plan A, Plan L and Plan ARD into Plan X and the adoption of such combined

Plan X by Entity UH, Entity UHS and Entity ARD, is a "church plan" within the meaning of section 414(e) of the Code; and

(2) that Plan K is a "church plan" within the meaning of section 414(e) of the Code.

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 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 that section.

The governing documents of each of the entities in question assure adherence to the teachings and philosophies of the sponsoring church. Each organization in the Entity B system, except Entities AM, AN, C, SL, UH, UMS, UMW and UHS, is listed or will be listed in the Official Church N Directory. Any organization that is listed in the Official Church N Directory shares common religious beliefs and teachings with Church N. With respect to Entity SL, its Articles of Incorporation provide that Entity SL shall be conducted under the auspices of Diocese E and of Congregation P. Thus, Entity SL shares common religious bonds and convictions with Church O and Church P.

Churches N, O, and P have formed an association of churches for the purpose of providing certain consistent health care services in accordance with a mutual acknowledgement of each faith's value as stated in the Faith Discipline Statement. Consequently, all of the tax-exempt entities included in the Entity B health care system, including Entity ARD, Entity SA, Entity SL, Entity UH, UMS, UMW and USC are associated with a church or convention or association of churches, within the meaning of section 414(e) of the Code. Therefore, the employees of each entity in the Entity B health care system that is exempt from tax under section 501(a) of the Code, under the principles of section 414(e)(3)(B) of the Code, are deemed to be employees of a church or a convention or association of churches.

Furthermore, based on the facts you submitted concerning the for-profit organizations, Entities AM, AN and UHS, substantially all of the individuals included in the Entity B health care system who participate in Plan X and/or Plan K are considered to be church employees.

However, an organization must also establish that its retirement and welfare plans are established and maintained by a

church or a convention or association of churches. Since Entity SC is not in itself a church, Plans X and K must be maintained either by Church N, Church O, or Church P 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 convention or association of churches.

It has been submitted that Plans X and K are managed and controlled by Committee C, of which eight of the nine members are appointed by Entity SC, which is listed in the Official Church N Directory, and the remaining member is appointed by Entity UH and approved by Committee C. The sole purpose of Committee C is the administration of Plan X, Plan K, and other retirement plans qualified under section 401(a) or 403(b) of the Code maintained on behalf of the entities in the Entity B health care system. As such, Committee C is an organization described in section 414(e)(3)(A) of the Code.

Therefore, with respect to ruling request one we conclude that the single plan, resulting from the merger of Plan A, Plan L and Plan ARD into Plan X and the adoption of such combined Plan X by Entity UH, Entity UHS and Entity ARD, is a "church plan" within the meaning of section 414(e) of the Code. With respect to ruling request two we conclude that Plan K is a "church plan" within the meaning of section 414(e) of the Code.

These conclusions apply only with respect to the organizations identified in this ruling, and express no opinion with respect to organizations that subsequently adopt Plan X or Plan K.

This letter expresses no opinion as to whether Plans X and K 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.

A copy of this letter has been sent to your authorized representative in accordance with a Power of Attorney on file in this office.

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted Copy of this Letter
Notice of Intention to Disclose