Uniform Issue List Number 414.08-00

Internal Revenue Service

199933053

Department of the Treasury

Washington, DC 20224

Person to Contact:
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Refer Reply to:
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Attn: XXXXXXX

Legend:

Church A	XXXXXXXXXX
Congregation B	XXXXXXXXXXX XXXXXXXXXXX XXXXXXXXXXXX
Organization C	XXXXXXXXXXXXXXX XXXXXXXXXXXXXXXX
Directory P	XXXXXXXXX
State K	XXXXXXXXXX
Committee D	XXXXXXXXXXX XXXXXXXXX
Subcommittee E	XXXXXXXXXX XXXXXXXXXXXX
Plan X	XXXXXXXXXXXX XXXXXXXXXXXX
Plan Y	XXXXXXXXXXX

Ladies and Gentlemen:

This letter is in response to your request for a private letter ruling, submitted on your behalf by your authorized representative, dated June 2, 1998, as supplemented by correspondence dated February 4, 1999, and March 19, 1999, concerning whether Plan X and Plan Y are church plans within the meaning of section 414(e) of the Internal Revenue Code (the"Code").

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In support of your ruling, the following statements, information and representations have been submitted:

Congregation B is a religious congregation of Church A, established in . Congregation B is an institute consisting of two hundred sixty professed congregants. Congregation B is listed in Directory P; the Internal Revenue Service has determined that any organization listed or appearing in Directory P is an organization described in Code section 501(c)(3) and is exempt from tax under section 501(a). Congregation B is founded and sponsored by Organization C.

Organization C was formed for the purpose of acquiring, maintaining and operating educational facilities and, in general, doing any and all things that may be necessary, advisable or customary in connection with the conduct of an institute of higher learning. Under its Bylaws, Organization C is to be managed and operated in a manner consistent with the teachings, traditions, theology and religious laws of Church A and consistent with the sponsorship of Congregation B.

Organization C was incorporated under State K's Non-Profit Corporation Law on . Organization C is a co-educational, comprehensive institution of higher education and is listed in Directory P. It is, therefore, an organization described in Code section 501(c)(3) and exempt from tax under Code section 501(a).

Organization C is organized as a membership corporation under the law of State K. The members of Organization C are the Provincial Council of Congregation B, and three other members of Congregation B who are appointed by Congregation B's Provincial Director. The Provincial Council is the governing body of Congregation B. Members of the Provincial Council are elected by Congregation B. The Provincial Director (the "Director") is elected by Congregation B and is responsible for the exercise of spiritual leadership in governing Congregation B. The Director acts as the official representative of Congregation B, promotes interaction with local churches, administers Congregation B, exercises responsibility for the ministries of Congregation B, and assigns congregants to do various works.

The general business affairs of Organization C are managed by its Board of Trustees; however, certain powers and duties are reserved to Congregation B. Powers reserved to Congregation B include, among others, the power to: (a) require compliance with

Church A's religious law, as consistent with the ongoing sponsorship of Organization C by Congregation B; (b) approve amendments to the mission and purpose of Organization C; (c) disapprove any action by the Board of Trustees regarding amendments to Organization C's Articles of Incorporation and Bylaws if, in Congregation B's opinion, such action could negatively affect the mission and purpose of Organization C; and (d) reject a nomination to the Board of Trustees, or a candidate for the Office of President of Organization C.

Organization C's Board of Trustees is required to be comprised of no fewer than 20 nor more than 40 trustees: it currently has 38 members. Of the 38 members, eight are members of Congregation B, one member is the President of Organization C and is a clergyman with Church A. He reports directly to the Board of Trustees.

Organization C established Plan X, a welfare benefit plan for its employees and their beneficiaries, effective August 1, 1966. In 1993 Plan X was merged with several other welfare plans maintained by Organization C. Organization C also established Plan Y, a tax-deferred annuity program described in section 403(b) of the Code, effective January 1, 1966, for the benefit of its employees and their beneficiaries.

Prior to January 1999, Organization C's Director of Human Resources was in charge of the day-to-day administration of Plans X and Y; and Committee D of Organization C had oversight authority regarding administration and funding. This oversight of Plans X and Y was a principal function of Committee D. Effective January 1999, Committee D of Organization C established Subcommittee E, a separate benefits subcommittee whose sole and exclusive function is to exercise oversight authority regarding the funding and administration of Plans X and Y. Subcommittee E will meet separately from Committee D to deal specifically with issues concerning Plans X and Y.

The members of Committee D are appointed by Organization C's Board of Trustees. The current members of Committee D include the President of Organization C, the Executive Vice President of Organization C (who is a member of Congregation B), two other Trustees who are members of Congregation B, the Director of Human Resources, the Assistant Director of Human Resources, and one faculty member.

Members of Subcommittee E include, among others, the Chairperson of Committee D, the Executive Vice President of Organization C, and the Director of Human Resources of Organization C. Membership in Subcommittee E consists of persons appointed and controlled by Organization C's Board of Trustees.

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Based on the facts and representations described above, your authorized representative requests a ruling that Plan X and Plan Y are church plans within the meaning of section 414(e) of the Code. Further, you request a ruling that Plans X is a church plan effective as of November 1, 1998, and that Plan Y is a church plan effective as January 1, 1999.

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 tax under section 501 of the Code.

Code section 414(e)(3)(A) 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 the term "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 section 414(e)(3)(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.

Section 414(e)(4)(A) of the Code provides, in pertinent part, 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 section for the year in which the correction was made and for all prior years. Section 414(e)(4)(C) provides, in pertinent part, that the term

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"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 that is not itself a church or convention or association of churches to have a church plan under section 414(e) of the Code, that organization 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. Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under section 501 of the Code; (2) is controlled by or associated with a church or convention or association of churches; and, (3) provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A) of the Code.

In this case Congregation B is an organization founded under the auspices of Church A. Congregation B has founded and sponsored Organization C to further the religious teachings and tenets of Church A by providing comprehensive co-educational higher education in a manner consistent with the teachings, traditions, theology, and religious law of Church A. Organization C is a not-for-profit organization chartered under the laws of State K. The members of Organization C consist of the members of Congregation B's Provincial Council plus three additional members of Congregation B. The members of Congregation B reserve the authority to approve or disapprove numerous actions taken by Organization C's Board of Trustees; these powers are designed to assure that Organization C is operating in a manner consistent with the teachings and tenets of Church A and the continued sponsorship of Congregation B. Numerous members of Congregation B also are members of the Organization C Board of Trustees. Finally, both Congregation B and Organization C are listed in Directory P, the official directory of Church A in the United States. The Internal Revenue Service has determined that an organization listed or appearing in Directory P is an organization described under section 501(c)(3) of the Code and exempt from tax under section 501(a). Any organization that is listed in Directory P of Church A also shares common religious bonds with Church A, and is, therefore, associated with a church or convention or association of churches within the meaning of section 414(e)(3)(D) of the Code.

Accordingly, for all the reasons given above, it is concluded, under the rules of section 414(e)(3)(B) of the Code, that the employees of Organization C are employees of an

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organization that is associated with a church or convention or association of churches, and are deemed to be employees of that church or convention or association of churches. In this case the employees of Organization C are deemed to be employees of Church A for purposes of the church plan rules. Conversely, under the rules of section 414(e)(3)(C), Church A is considered to be the employer of Organization C's employees.

Having established that the employees of Organization C are deemed to be Church A employees, it still must be established that Plan X and Plan Y are maintained by an organization, the principal purpose or function of which is the administration or funding a plan pursuant to section 414(e)(3)(A) of the Code.

In furtherance of its educational ministry, Organization C established Plans X and Y to provide certain employee benefits, including medical insurance, life and accidental death and dismemberment insurance, dental insurance, and a retirement plan for its employees and their dependents.

Plan X and Plan Y are administered by Subcommittee E. Subcommittee E was established by Committee D of Organization C to exercise oversight authority over the administration and funding of Plans X and Y. Subcommittee E's sole and exclusive function is to exercise oversight authority regarding the funding and administration of Plans X and Y as required under section 414(e)(3)(A) of the Code. Subcommittee E will report to the Board of Trustees of Organization C through the medium of Committee D. Members of Subcommittee E include, among others, the Chairperson of Committee D, the Executive Vice President of Organization C, and the Director of Human Resources of Organization C. Membership in Subcommittee E consists of persons appointed and controlled by Organization C's Board of Trustees. In this case, Subcommittee E is an organization associated with Church A through Congregation B, Organization C, and Committee D. Under the rules of Code section 414(e)(3)(A), subcommittee E's purpose or function is the administration of Plans X and Y for the provision of welfare benefits and retirement benefits, respectively, for individuals (and their dependents) who are deemed to be Church A employees.

Accordingly, invoking the rule of section 414(e)(4)(A) of the Code, we rule that Plan X is deemed to be a church plan within the meaning of section 414(e) as of November 1, 1998; and we rule that Plan Y is a church plan within the meaning of section 414(e) as of January 1, 1999.

We are not ruling, directly or indirectly, on whether Plan X constitutes a cafeteria plan within the meaning of section 125 of

the Code. This ruling shall not be construed as approving any of the plans referred to herein under section 125 or any other provision of the Code except section 414(e).

This ruling expresses no opinion on the status of Plan Y under section 403(b) of the Code. This ruling is limited to the status of Plans X and Y under section 414(e).

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,

John Swieca

John Swieca
Chief, Employees Plans
Technical Branch 1

Enclosures:
Copy of this letter
Deleted Copy of this letter
Notice 437

cc: