Internal Revenue Service

SIN 414.08-00

Department of the Treasury

Washington, DC 20224

199942051

Contact Person:

In Reference to:

Date:
OP:E:EP:T:2/5002313

JUL 28 1999

Attn:

Legend:
Church C =
Order A =
Entity F =
Committee D =
Directory B =
Plan X =

B Province =
State A =

Dear

This letter is in response to a ruling request dated March 30, 1999, as supplemented by correspondence dated June 18, 1999, submitted on your behalf by your authorized representative, concerning whether Plan X qualifies as a church plan within the meaning of section 414(e) of the Internal Revenue Code ("Code").

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

Entity F was incorporated in 1957 by Order A, a religious congregation which was founded under the auspices of Church C. Order A incorporated Entity F for the purpose of organizing a college or university for the education of women, for the promotion of learning and for general educational purposes, all in the context of Order A's organizational philosophies, and in a manner consistent with Church C's philosophies.

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Entity F was established as a nonprofit corporation under the laws of State A, and is operated exclusively for charitable and educational purposes. Entity F is listed in Directory B and has been recognized as exempt from federal income taxation under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code.

Pursuant to Article VI of the amendment to the Articles of Incorporation, Entity F is required to have five Members at all times. The Members are to include (i) the leader of the B Province of Order A, (ii) two or more members of Order A, or (iii) other individuals who are members of Entity F's Board of Trustees. A majority of Entity F's Members (at least three of Entity F's Members) are required to be members of Order A. Authority for the management of Entity F is vested in its Board of Trustees, each member of which is appointed by Entity F's Members. These requirements are designed to ensure that Order A, a congregation organized under the auspices of Church C, will retain influence over Entity F.

Article II of the Amended and Restated By-Laws (Bylaws) of Entity F also states that at least three of Entity F's Members shall be members in good standing of Order A and that the Members shall elect Entity F's Trustees annually. Article IV, section 1, of the Bylaws provides that at least five Trustees shall be members in good standing with Order A, and if any of such Trustees cease to be a member of Order A in good standing, she shall cease to be a member of said Board of Trustees and shall forfeit all claims she may have by reason of such membership.

Article VII of the amendment to the Articles of Incorporation empowers the Board of Trustees to control, manage and direct the business, properties and affairs of Entity F.

Plan X, which was established by Entity F, is a qualified plan under section 401(a) of the Code. Plan X was adopted effective January 11, 1978, to provide retirement income to certain employees of Entity F. Although Committee D, which administers Plan X, had been established in 1978, it did not operate as an administrative committee until July 1, 1998 at which time Plan X was amended to limit Committee D's membership to Church C individuals. Committee D was empowered to serve as the Plan X administrator pursuant to a Board of Trustees Resolution adopted December 7, 1998. Under the amendment, Committee D has the sole purpose of administering Plan X, and is provided with broad authority in connection with Plan X. Committee membership is limited to Church C individuals. Committee D is authorized

to construe Plan X and resolve any ambiguities, inconsistencies or omissions in Plan X, to establish rules for its administration, to prepare and file reports with respect to Plan X, to appoint investment managers to invest funds held in Plan X's trust, and exercise discretionary authority in a manner consistent with Plan X in order to fulfill Committee D's responsibilities under Plan X. The members of Committee D, who are appointed by Entity F's Board of Trustees, are the Director of Human Resources of Entity F, the President of Entity F, and the Vice President of Financial Affairs of Entity F.

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

1. Plan X, as amended, is a church plan within the meaning of section 414(e) of the Code.

2. Plan X's church plan status is effective for the plan year beginning July 1, 1998 and for all prior years.

Section 414(e)(1) of the Code defines the term "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) was added to the Code by section 1015 of the Employee Retirement Income Security Act of 1974 (ERISA), Public Law 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provides that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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 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 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) states that if 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 fails to meet one or more of the requirements of this subsection and corrects its failure to meet such requirements within the correction period, the plan shall be deemed to meet the requirements for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i), in pertinent part, defines the term "correction period" as the period ending 270 days after the date of the 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 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) of the Code.

In this case, Entity F is an organization described in section 501(c)(3) of the Code which is exempt from federal income tax under section 501(a). Entity F is associated with Church C by reason of sharing common religious bonds and convictions as evidenced by its listing in Directory B. Any organization listed in Directory B is considered associated with Church C and its employees are deemed to

be employees of Church C. Also, Entity F is indirectly controlled by Church C because Entity F was established by Order A, which was founded under the auspices of Church C.

If an organization is associated with Church C and shares religious bonds with Church C, that organization's employees are deemed to be Church C employees. In this case, in view of the common religious bonds between Church C and Entity F, the control of Entity F by the Trustees, the connection of the Trustees to Church C, through the organization and structure of Entity F, its inclusion in Directory B, and its actual activities, the employees of Entity F meet the definition of "employee" in section 414(e)(3)(B) of the Code and are deemed to be employees of a church or a convention or association of churches by virtue of being employees 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. Accordingly, pursuant to sections 414(e)(3)(B) and (C) of the Code, employees of Entity F are deemed to be employees of Church C, and Church C is deemed to be the employer of such employees, for purposes of the church plan rules.

Having established that the employees of Entity F are church employees, the remaining issue is whether Committee D is an organization 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 within the meaning of section 414(e)(3)(A) of the Code.

Committee D, during the period July 1, 1998 to the present, has been controlled by and associated with Church C by virtue of the control by and association of Church C over Order A and Entity F. During this period Committee D has consisted of three members who are appointed by Entity F's Board of Trustees, all of whom are required to be members of Church C. Specifically, the members of Committee D are the Director of Human Resources of Entity F, the President of Entity F, and the Vice President of Financial Affairs of Entity F. Thus, Committee D is controlled by Entity F, which is controlled by Order A, which is an integral part of Church C.

In this regard, it has been submitted that Plan X has been administered by Committee D. Committee D performs any and all acts necessary in connection with the administration of Plan X. Because the sole purpose and function of Committee D is the administration of Plan X, Committee D is controlled by and 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 for the provision of retirement

benefits for employees of Entity F. Therefore, Committee D qualifies as an organization described in section 414(e)(3)(A) of the Code.

Prior to July 1, 1998, Plan X was not administered by an organization whose principal purpose was the administration of a plan controlled by or associated with a church or a convention or association of churches. However, as provided under section 414(e)(4)(A) of the Code, where a plan fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then the plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction is made and for all prior years. Because Committee D was established by Plan X's amendment, effective July 1, 1998, and meets the requirements of section 414(e)(3)(A), Plan X is deemed to meet the requirements of section 414(e)(3)(A) for all years since its inception.

Based on the foregoing facts and representations, we conclude that:

1. Plan X, as amended, qualifies as a church plan within the meaning of section 414(e) of the Code.

2. Plan X's church plan status is effective for the plan year beginning July 1, 1998, and for all prior years since its inception.

This letter expresses no opinion whether Plan X satisfies the requirements for qualification under section 401(a) of the Code. The determination whether a plan is qualified under section 401(a) is within the jurisdiction of the appropriate Key District Office of the Internal Revenue Service.

These rulings are directed only to the taxpayer who requested them. Section 6110(k)(3) of the Code provides that they may not be used or cited by others as precedent.

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

Sincerely yours,

Joyce E. Floyd

Joyce E. Floyd
Chief, Employee Plans
Technical Branch 2

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