Internal Revenue Service

SIN 414.08-00

Department of the Treasury

200044041

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

T:EP:RA:T:2/5002313

Date:

AUG 7 2000

Attn:

Legend:
Church C =
Order A =
Religious Organization D =
Individual A =
House M =
Entity F =
Committee D =
Directory B =
Plan X =

State A =
City E =
City F =
City G =
Religious Organization M =
Country A =

Dear

This letter is in response to a ruling request dated November 5, 1999, as supplemented by correspondence dated March 2, April 10, and May 25, 2000, 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:

Order A was established in 1851, by Individual A in City E, to provide care for the elderly and small children who were living in the streets of City E. The mission of Order A is to bring the needy into their homes and care for them as if they were Christ. Order A believes that life at every phase has dignity and aspire by the care they

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provide to live this belief out. Through the years, the work of Order A has spread to many parts of the world.

Order A controls various congregations, including Religious Organization M. Religious Organization M is a nonprofit corporation which controls various entities located in Country A. One of these entities which Religious Organization M controls is Religious Organization D.

In 1949, Order A came to City F in State A at the request of the Bishop to meet the needs of the elderly in that region. Order A spent the following two years raising funds to build Entity F, the home that now houses 112 seniors (Independent, Assisted care and Skilled Nursing care). Entity F opened its doors in 1951. Since that time, over 1000 frail and elderly seniors have been cared for at Entity F. Caring for the dying is a very important part of life at Entity F. No one is refused care because of their inability to pay. In addition to the 112 seniors, it has a staff of 95, including six members of Order A.

Entity F is owned and operated by Religious Organization D, a non-profit corporation which is controlled by Religious Organization M. It is one of sixty Entity F-type entities throughout the world. All Entity F-type entities are under the care and control of their House M and the Superior General, based in City E. Entity F is a Church C community that follows the teachings of Church C.

Entity F is governed by the Superior General of Order A and by their delegated Regional and Local Superiors in Country A. The Board of Directors of Entity F is comprised of members from Religious Organization M from various locations. It consists of the following: President: Superior General of Religious Organization M in City E; Vice-President: Regional Superior in City G; Secretary: Local Superior and Administrator of Entity F; Treasurer: Local Councillor and assistant Administrator of Entity F; Trustee: Member of the Religious Community in City F; Trustee: Member of the Religious Community in City F.

Religious Organization D and Entity F are listed in Directory B for 1999 as religious institutions that are operated, supervised, or controlled by or in connection with Church C and are thereby deemed to be exempt from federal taxation under section 501(a) of the Code.

Plan X, which was established March 29, 1993, is sponsored by Religious Organization D for the benefit of its employees. Plan X is intended to meet the requirements set forth under section 403(b) of the Code for a tax-sheltered annuity plan. Committee D was established April 1, 1999, to administer Plan X. Prior to the establishment of Committee D, Plan X was administered by Religious Organization D,

acting through its officers and delegates. Section 12.01(a) of Plan X provides that each and every member of Committee D must share common religious bonds and convictions with Church C. It states further that members of Committee D serve at the pleasure of Religious Organization D. Any member of Committee D may resign by delivering a written instrument addressed to Religious Organization D and may be removed by Religious Organization D with or without cause. While a vacancy exists, the remaining members of Committee D may perform any act which Committee D is authorized to perform. Committee D shall consist of not less than three persons, at least one of whom shall be an officer or involved in management of Religious Organization D; provided, further, that Committee D may be comprised of members of the Board of Directors of Religious Organization D. The sole purpose of Committee D is to supervise and administer Plan X.

Based on the foregoing facts and representations, you request a ruling that Plan X is a church plan within the meaning of section 414(e) of the Code, that is 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, effective as of the date Plan X was established, March 29, 1993.

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) of the Code 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 of this subsection 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.

Religious Organization D is associated with Church C by reason of sharing common religious bonds and convictions as evidenced by its listing in Directory B. The Internal Revenue Service has determined that any organization listed in Directory B is an organization described in section 501(c)(3) of the Code, that is exempt from tax under section 501(a). Also, any organization that is listed in Directory B shares common religious bonds and convictions with Church C and is deemed associated with Church C within the meaning of section 414(e)(3)(D) of the Code.

If an organization is associated with Church C by virtue of sharing 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 Religious Organization D and Religious Organization D's inclusion in Directory B, the employees of Religious Organization D 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 Religious Organization D 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 Religious Organization D 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.

In this regard, it has been submitted that Plan X has been administered by Committee D since April 1, 1999. Religious Organization D's Board of Directors controls Committee D through its power to appoint and remove the members of Committee D with or without cause. Because Committee D is controlled by Religious Organization D, which is associated with Church C by virtue of sharing common religious bonds and convictions, it too, is indirectly associated with Church C. The sole purpose of Committee D is the administration of Plan X. Accordingly, Committee D is considered 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 for the provision of retirement benefits for employees of Religious Organization D. Therefore, Committee D qualifies as an organization described in section 414(e)(3)(A) of the Code.

Prior to April 1, 1999, Plan X was administered by Religious Organization D, which was not an organization whose principal purpose was the administration of a plan of an organization 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 effective April 1, 1999, 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 March 29, 1993, the date Plan X was established.

Based on the foregoing facts and representations, we conclude that Plan X is a church plan within the meaning of section 414(e) of the Code, that is 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, effective as of the date Plan X was established, March 29, 1993..

This letter expresses no opinion whether Plan X satisfies the requirements for qualification under section 403(b) of the Code.

This ruling is directed only to the taxpayer who requested it. Section 6110(k)(3) of the Code provides that it may not be used or cited by others as precedent.

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

Sincerely yours,

(signed) JOYCE E. FLOYD

Joyce E. Floyd, Manager
Employee Plans, Technical Group 2
Tax Exempt and Government Entities Division

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