Uniform Issues List No: 414.08-00

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

NOV 05 2002

T:EP:RA:T1

Legend:
Church A
Organization C

Congregation D

System I
Party L
Subsidiary S1

Subsidiary S2

Subsidiary S3
Subsidiary S4
Subsidiary S5
Subsidiary S6
Church B
Congregation E

System J
Party K
Subsidiary S7
Subsidiary S8
Subsidiary S9
Subsidiary S10
Subsidiary S11
Subsidiary S12
Subsidiary S13
Subsidiary S14

Subsidiary S15
Subsidiary S16

Subsidiary S17

Corporation H

Subsidiary S18
Subsidiary S19

Region F
Plan M
Committee
State N
State O
State P
State Q
City R
Yearbook T

Ladies and Gentlemen:

This is in response to a letter dated August 16, 2001, as supplemented by correspondence dated February 14, 2002, April 23, 2002, May 17, 2002, June 5, 2002, and September 18, 2002, submitted on your behalf by your authorized representative, in which you request a private letter ruling that Plan M is a church plan within the meaning of §414(e) of the Internal Revenue Code (the Code).

In furtherance of your ruling request, you have submitted the following facts and representations:

Corporation H is a nonprofit corporation with tax exempt status under §§501(c)(3) and 501(a) of the Code. It operates as a "joint venture" of two nonprofit health systems, namely Systems I and J. System I is affiliated with Church A through Organization C, and Congregation D. Organization C is a cooperative health-care venture of 12 religious congregations established by, and operating under the auspices of, Church A. System J is affiliated with Church B through Congregation E. The two systems began functioning as a "joint venture" under a Joint Operating Agreement (JOA), effective January 1, 1996.

The parties to the Joint Operating Agreement are Corporation H, Systems I and J, Parties K and L, and Organization C. All of the parties to the JOA are tax exempt nonprofit §501(c)(3) organizations. Corporation H has a §501(c)(3) ruling dated February 19, 1993. System J and Party K are tax exempt by means of a ruling dated May 31, 1990. Organization C, Party L and System I are listed in the Official Directory of Church A. The Internal Revenue Service (IRS) has determined that any organization listed or appearing in the Church A's official directory is an organization described in §501(c)(3) of the Code, that is exempt from tax under §501(a).

The mission of Corporation H is stated in the JOA, and provides that the philosophy, mission, role and goals of the participants in Corporation H shall be consistent with those of Systems I and J, and with the following mission statement:

1. Founded in the healing ministry of Jesus Christ, Corporation H is guided at all times by the values of compassion, mercy, and respect for the dignity of every person. Corporation H's mission is to serve the people of the Region F by providing high quality, cost effective health services to meet the needs of the population and care for the mind, body and spirit of each person served. Corporation H will accomplish this mission through--

    - a special emphasis on the care of the needy and disadvantaged,
    - cooperation and collaboration with others,
    - responsible stewardship of human, material and financial resources, and
    - innovative, values-based leadership.

2. Corporation H, and Systems I and J are committed to developing and maintaining a values based corporate climate and culture with regard to the operations of the participants.

3. The parties acknowledge and agree that it is their intention to operate in a unified manner to achieve the goals described in this JOA, provided that the parties acknowledge and agree that the JOA does not constitute a merger. In furtherance of the foregoing, the parties agree that the members of the Boards of Directors of Corporation H, and Parties K and L shall owe a fiduciary duty to the entity of which they are directors to ensure that the purposes and goals set forth in the JOA are carried out for the benefit of all the participants.

Corporation H carries out its mission by owning and operating several acute care hospitals in the eastern portion of State N and the western portion of State O, as well as a number of medical clinics and related health care activities. Corporation H is a joint ministry of Congregations D and E.

The JOA further provides that the parties shall not carry on any activity that would jeopardize the tax-exempt §501(c)(3) status of any of the participating organizations. Pursuant to the JOA, all parties delegated all governance authority of Corporation H, System J and Party L to the Board of Directors of Corporation H except for certain reserved approval powers. The Boards of Directors of Corporation H, System J and

Party L consist of the same persons. The JOA also provides that the System I entities will be at all times operated in accordance with the Ethical and Religious Directives for Church A's Health Care Services, in accordance with the teachings of Church A. The JOA further provides that System J entities will be operated in a manner consistent with the religious and social teachings of Congregation E. All services provided through Corporation H entities are to be consistent with both of the above religious policies. System I entities are to retain the identity of Church A, and System J entities are to retain the identity of Church B.

As set forth in the JOA and its articles of incorporation and by-laws, Corporation H has two members; System J and Organization C. System J and Organization C each select six of the twelve voting members of the Board of Corporation H. In addition, System J must approve the 6 voting board members selected by Organization C, and Organization C must approve the 6 voting board members selected by System J.

Church A's member of Corporation H is Organization C; it was formed under the laws of State P to nurture the healing ministry of Church A. Its members are selected in accordance with its by-laws and a board of trustees manages its affairs. Each member of Organization C is also a member of a "Sponsoring Congregation"; i.e., one of the twelve Congregations organized under the auspices of Church A, that participates in Organization C's cooperative health-care venture.

Organization C's Board of Directors consists of twelve voting members and one *ex officio* Trustee who is the chief executive officer of Organization C. One half of the twelve trustees must be members of religious institutes and one half must be lay persons. One half of the Trustees who are members of religious institutes must be religious members of one of the Sponsoring Congregations. The Trustees are first elected by the trustees from names submitted by a nominating committee and then must be approved by a majority of the Members. Thus, the Trustees of Organization C are effectively appointed by majority vote of the members that make up the Sponsoring Congregations.

Church B's member of Corporation H is System J. System J's tax-exempt purposes are to operate health facilities, provide counseling and care, educate the sick, aged, disabled, and infirm, and to promote general community health. Should it dissolve, System J's assets are distributed to Congregation E (a regional subdivision of Church B). Any amendment of System J's Articles of Incorporation or Bylaws must be approved by Congregation E. System J has no members and is governed by a board of directors. The Bylaws require that a majority of System J's directors must be members of Congregation E. The Bishop of Congregation E is an *ex officio* director. One third of the directors are elected by Congregation E and the remaining directors are elected by the board of the corporation, but cannot take office until their election has been confirmed by Congregation E. The president of System J must report annually to Congregation E.

Congregation E is a State Q non-profit Corporation authorized to do business in State N. It was organized for religious purposes as specified by the Constitution and by-laws of Church B. The Bishop is the chief executive officer of Congregation E. Congregation

E is governed by an Assembly that consists of all ordained ministers in the territory plus lay persons elected by the various Church B Congregations within the territory. Congregation E and Church B constitute a church for purposes of §414 of the Code.

Corporation H and Systems I and J all have several subsidiaries. The System J subsidiaries consist of subsidiaries S7 through S17. The System I subsidiaries consist of subsidiaries S1 through S6, and the Corporation H subsidiaries consist of subsidiaries S18 and S19.

Subsidiaries 8 and 9 of Corporation H are for-profit corporations. Less than 10 employees perform services in connection with Subsidiary 8. Subsidiary 9 has no employees and is currently inactive. None of the other employees of Corporation H participating in Plan M provides services of a significant nature in connection with the for-profit entities, and none of the other subsidiaries have separate payrolls or dedicated employees. The ten or fewer employees represent less than one percent of Plan participants.

Plan M was established effective January 1, 1998 to provide retirement benefits for employees of Corporation H. Plan M received its determination letter from the Internal Revenue Service (IRS) dated May 7, 1999 and has, at all times, been operated as a qualified plan under §401(a) of the Code and its related provisions.

Plan M provides in Section 13.1 that the Plan Administrator is the Committee. Committee Members are appointed by the Board of Directors of Corporation H, and serve without compensation. This Committee has no activities other than the administration of Plan M, and meets quarterly or as often as necessary to administer the Plan and address issues. The committee has the authority of the "administrator" of a plan under applicable law including authority to interpret plan provisions and to determine questions of disputed benefits.

Section 14.1 of the Plan provides for a Plan Investment Committee to manage Plan assets and select funding options. This Committee is selected by the Board of Directors of Corporation H and is presently one and the same as the Committee.

Based on the foregoing, you are requesting a ruling that Plan M is a church plan within the meaning of Code §414(e).

To qualify under §401(a) of the Code, an employee's plan generally must, among other requirements, meet the minimum participation standards of §410 and the minimum vesting standards of §411. Qualified pension plans also must meet the minimum funding standards of §412. Each of these sections, however, contains an exception for a "church plan" as defined in §414(e), unless an election has been made in accordance with §410(d). See, §§410(c)(1)(B), 411(e)(1)(B) and 412(h)(4).

Further, only the employer or administrator of a plan subject to ERISA is required to file Form 5500 or Form 5500C (Annual Return/Report of Employee Benefit Plan). Church pension benefit plans, and various welfare benefit plans that are church plans are excused from the filing. See Announcement 82-146,1982-47 I.R.B. 53, and sections 1 and 2 of the instructions to Form 5500.

Section 414(e)(1) of the Code generally 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 §501.

Section 414(e)(2) of the Code provides, in pertinent part, that the term "church plan" does not include a plan if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) or section 414(e)(3)(B), or their beneficiaries.

Section 414(e)(3)(A) of the Code provides that a plan will be treated 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 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 of the Code, 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 §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 that is not itself a church or convention or association of churches to have a church plan under §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 §414(e)(3)(B). Employees of any organization maintaining a plan are considered to be church employees if the organization: (1) is exempt from tax under §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 §414(e)(3)(A) of the Code.

In this case Organization C and its 12 constituent Congregations, Congregation D, System I and Party L are entities organized under the auspices of Church A. In furtherance of Church A's teachings and tenets, they have a history of involvement in caring for the health needs of the sick and poor. In fulfilling the Congregations' health care missions within the Church, Corporation H oversees System I and Party L. As such, Corporation H is committed to involvement in health care as a extension of the Church's healing ministry, and represents a decision by the Congregations to foster collaborative efforts, within their sponsorship of health care institutions, that are grounded in the traditions and values of Church A.

In addition, Organization C, System I and Party L are all organizations listed in the official directory of Church A in the United States. The IRS has determined that any organization listed or appearing in the Church A's official directory is an organization described in §501(c)(3) of the Code, that is exempt from tax under §501(a). Organizations which collaborate in furthering the Church A's teachings and tenets, and which are listed in the Church's official directory also are considered to be associated with, and share common religious bonds with Church A. Under the principles of §414(e)(3)(B) of the Code, the employees of Corporation H, the hospitals and medical clinics are considered employees of organizations which are exempt from tax under §501 and which are associated with a church or convention or association of churches.

Therefore, in view of the stated purposes of Organization C, System I and Party L, their actual activities, and their recognized status within the Church as evidenced by listing in the Church A's official directory, it is concluded that the employees of Corporation H, System I, Party L and the hospitals and medical clinics of subsidiaries S-1, S-2, S-3, S-4, S-5 and S-6 are deemed employees of Church A under §414(e)(3)(B) of the Code and for purposes of the church plan rules. Additionally, under the principles of §414(e)(3)(c) of the Code, the Church is deemed the employer of substantially all of the employees of the Corporation H, the hospitals and medical clinics, and therefore is treated as the employer of those organizations' employees for purposes of the church plan rules of §414(e) of the code.

System J and Party K are organizations described in §501(c)(3) of the Code that are exempt from tax under §501(a). System J and Party K are associated with Church B by virtue of sharing common religious bonds and convictions as evidenced that they are listed in Yearbook T. Their bylaws provide that they are required to operate in a manner consistent with the religious and social teachings and practices of Church B. System J and Party K's board members must be members in good standing with Church B, and a majority must be members of specific denominational constituencies, boards or executive committees or organizations that are listed in Yearbook T, and therefore recognized by Church B as related organizations.

Accordingly, pursuant to §§414(e)(3)(B) and (C) of the Code, the employees of Corporation H, the hospitals and medical clinics of System J, Party K, and Subsidiaries S-7 thru S-17 are deemed to be employees of Church B, and Church B is deemed to be

the employer of such employees for purposes of the church plan rules. We further conclude that under the facts as presented, substantially all employees are employed by an organization that is described in §414(e)(3)(b) of the Code, and exempt from tax under §501(a).

Because less than one percent of all Corporation H employees are employed by Corporation H's for profit subsidiaries it is concluded that substantially all of the employees participating in Plan M are deemed to be church employees for purposes of the church plan rules.

Having established that the employees of the Corporation H, the hospitals and medical clinics are deemed to be Church employees, the remaining issue is whether the Committee of Plan M is an organization controlled by or associated with a church or convention or association of churches, the principal purpose or function of which is the administration or funding of a plan within the meaning of §414(e)(3)(A) of the code.

Plan M is administered by the Committee which is appointed by the Board of Directors of Corporation H and serves at the pleasure of that Board. Thus, the Committee is controlled by Corporation H. Since Committee C is controlled by Corporation H, it is indirectly associated with Churches A and B. Further, since, as represented above, the sole purpose of the Committee is the administration of Plan M, the Committee constitutes an organization, the principal purpose of which is the administration or funding of a Plan for the provision or retirement benefits for Church employees as described in §414(e)(3)(A) of the Code.

Based upon the foregoing, it is ruled that Plan M is a church plan within the meaning of §414(e) of the Code.

No opinion is expressed as to the federal tax consequences of the transactions described above under any other provisions of the Code.

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

This letter expresses no opinion as to whether Plan M continues to be a qualified plan under §401(a) of the Code. The determination as to whether a plan remains qualified under §401(a) is within the jurisdiction of the Employee Plans Determinations Office in

A copy of this ruling is being sent to your authorized representative pursuant to a power of attorney on file in this office. Should you have any questions pertaining to this ruling, you may contact of this office at .

Sincerely yours,

(Signed)

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1