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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

MAR 13 2003

T:EP:RA:T:3

Legend:

Church C =

Order A =

St. M =

Medical Center A =

Plan M =

Directory M =

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This is in response to a ruling request dated October 1, 2002, as supplemented by additional correspondence dated December 20, 2002, and January 17, 2003, in which your authorized representatives request rulings on your behalf concerning whether Plan M is a church plan described in section 414(e) of the Internal Revenue Code and whether Plan M was so described as of January 1, 1974 and thereafter.

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

Medical Center A is a not-for-profit corporation which provides hospital services and home care services. Medical Center A's articles of incorporation provide that the sole corporate member of Medical Center A is the Superior General and Councillors of Order A. Order A is a religious order of adherents of Church C with a mission of taking care and nursing of the sick, establishment and maintenance of hospitals and education of younger sisters of the Order. Order A is listed in Directory M which lists the names of agencies, instrumentalities and institutions operated, supervised or controlled by or in connection with Church C in the United States, its territories and possessions.

The business of Medical Center A is managed by its board of trustees. Medical Center A's by-laws provide that members of the board of trustees are chosen at the annual meeting of its sole member (Order A). Under Medical Center A's certificate of incorporation, as amended, Order A approves the election of the members of the board of trustees, may remove any member with or without cause, elects or removes corporate officers and establishes the mission and philosophy of Medical Center A. The by-laws of Medical Center A provide that any member of the board of trustees may be removed with or without cause by Order A. Medical Center A is listed in Directory M, the official directory of Church C, and has been continuously so listed since at least 1970.

Medical Center A's by-laws provide that Medical Center A is a Church C institution. Medical Center A's Mission Statement provides that the Medical Center A community, inspired by St. M and faithful to the teachings of Church C, is committed to excellence in health care and education. It is represented that Medical Center A operates by the Ethical and Religious Directives for Church C Health Care Services (National Conference of Church C Bishops) in delivery of care, education of physicians, practitioners and employees. It is further represented that Medical Center A provides pastoral care staff and other clergy for patients, employees and visitors and has a daily morning recitation of a selected religious reading and displays a crucifix in each patient room.

Medical Center A currently maintains Plan M, a defined benefit plan established for Medical Center A employees on January 1, 1967. Plan M is qualified under section 401(a) of the Code.

There are a total of 1,078 active participants in Plan M. All Plan participants are on the Medical Center A payroll but 38 participants are assigned to work for other related and affiliated entities. All of these related and affiliated entities are described in section 501(c)(3) of the Code and are exempt from tax under section 501(a).

Plan M was amended effective September 11, 2002, to provide for a pension committee which is now the administrator of Plan M. The board of trustees established the pension committee pursuant to a resolution dated September 11, 2002. The pension committee's sole purpose and function is to administer Plan M. There are five members of the pension committee. The President and Chief Executive Officer of Medical Center A and the Chief Operating Officer and Senior Vice President of Medical Center A are members of the pension committee. The three remaining members are appointed by the President and Chief Executive Officer of Medical Center A with the consent of the board of trustees.

Based on the above facts and representations, rulings are requested that:

(1) Plan M is qualified as a church plan within the meaning of section 414(e) of the Code.

(2) Plan M is deemed to have qualified as a church plan within the meaning of section 414(e) of the Code on January 1, 1974 and thereafter.

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

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

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 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, 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 provides 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 subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) provides, in pertinent part, that the term "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 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).

It is represented that Medical Center A is listed in Directory M, which is the official directory of Church C, and has been continuously so listed since at least 1970. The Internal Revenue Service has determined that any organization listed in Directory M 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 M 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.

Accordingly, Medical Center A was and is exempt from taxation under section 501(a) and was and is also associated with Church C. Therefore, pursuant to section 414(e)(3)(B) and (C) of the Code, its employees 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. With respect to section 414(e)(2) of the Code, the 38 employees assigned to related and affiliated entities amounted to only 3.5 percent of participants in Plan M. Therefore, in this case, the employees assigned to related and affiliated entities constitute an insubstantial percent of the participants in Plan M.

However, an organization must also establish that its plan is established and maintained by a church or a convention or association of churches 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 a convention or association of churches.

Since September 11, 2002, Plan M has been administered by a committee consisting of two officers of Medical Center A and three additional members appointed by the President and Chief Executive Officer with the consent of the board of trustees. Thus, the committee has been under the control of Medical Center A since September 11, 2002. Since the committee is controlled by Medical Center A, it is indirectly associated with Church C. This is so because Medical Center A is associated with Church C. Further, since as represented above, the sole purpose of the committee is the administration of the Plan M, the committee constitutes an organization, the principal purpose or function of which is the administration of plans or programs for the provision of retirement benefits or welfare benefits, or both, for the employees of Medical Center A. Therefore, the committee would qualify as an organization described in section 414(e)(3)(A) of the Code for the period since September 11, 2002. For the period from January 1, 1974, to September 11, 2002, 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 that 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. Thus, the defect has been corrected as provided under section 414(e)(4)(A) of the Code.

Accordingly, in regard to your ruling request, we conclude that:

(1) Plan M is qualified as a church plan within the meaning of section 414(e) of the Code.

(2) Plan M is deemed to have qualified as a church plan within the meaning of section 414(e) of the Code on January 1, 1974 and thereafter.

This letter expresses no opinion as to whether Plan M satisfies 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 office of the Internal Revenue Service.

This letter 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 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.

This letter was prepared by who may be reached at .

Sincerely yours,

/s/ Frances V. Sloan

Frances V. Sloan, Manager
Employee Plans Technical Group 3

Enclosures:
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