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

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TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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ATTN: **********
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Legend:

Church A = **********
Church B = **********
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Employer = **********
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State D = **********
City E = **********
Plan = **********
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This is in response to a letter dated September 18, 2000, as supplemented by additional correspondence dated August 2, 2001, in which your authorized representative requested a ruling on your behalf under section 414(e) of the Internal Revenue Code ("Code").

In support of your ruling request you have submitted the following representations and information:

The Employer is a not-for-profit corporation chartered in **** under the laws of State D. Under its Articles of Incorporation, Church A and Church B are the Employer's two members, with each member electing one-half of the Employer's Board of Trustees.

The Employer's purpose, as stated in its Articles of Incorporation is establishing, maintaining, operating, managing, controlling, and regulating a residential home or homes for aging persons and providing related services. The Employer was organized to create, maintain, and operate retirement health care facilities in a manner designed to satisfy the primary needs for elderly persons, including the need for housing, the need for health care, and the need for financial security and to provide residential facilities specifically designed to meet the physical, emotional, recreational, and social needs of the elderly. The Employer began operations in City E of State D in **** and has been in continuous operation since that date.

The Employer's mission statement elaborates on the purposes set forth in its Articles of Incorporation, emphasizing that Church A and Church B were motivated to create the Employer out of their concern for the spiritual, emotional and physical well-being of older persons, in particular those who are, or have been, members of Church A or Church B. The two churches bring to their endeavor a spirit of love and caring, based on their mutual religious principles, which enables the Employer to operate without a design for profit but with concern for residents' well-being as a primary focus. The Employer provides a spectrum of living arrangements and services for what is generally denominated a "life-care" community, including independent living, nursing care, clinical services, meals, spiritual, social and cultural activities, housekeeping and other services for persons who feel comfortable living in a community sponsored by religious organizations. All of these services are provided in a caring, supportive environment by staff members of the Employer who have respect and empathy for the individuality, integrity, and independence of all residents. The Employer seeks to encourage each resident to maximize his or her independence by providing an atmosphere where participation in educational, cultural, community, and spiritual programs is encouraged.

The Employer's two members are conventions or associations of churches located in the eastern part of State D. Each corporate member qualifies as an organization described in Code § 501(c)(3), that is exempt from tax under Code § 501(a). Because each member of the Employer is a convention or association of churches organized and operated exclusively for religious purposes, each is exempt from the requirement, under Code § 508, of giving notice to the Secretary of the Treasury of application for recognition of exemption under section 501(c)(3). Each member of the Employer elects one-half of the Employer's Board of Trustees, assuring that representation of Church A and Church B on the Board is always equal. Amendment of the Employer's Articles of Incorporation, or any plan of merger or consolidation involving the Employer, requires the approval of each corporate member.

The Chairman of the Employer's Board of Trustees is elected by the Board from among its own membership. Under Article III of the Employer's Amended Bylaws, the heads of Church A and Church B serve as *ex-officio* members of the Board of Trustees with all the rights of a Trustee. At all times, at least six Board members must be members in good standing of Church A, and another six Board members must be members of good standing in Church B. In addition to the heads of Church A and Church B, the Employer's Board of Trustees currently includes two individuals who are members of the clergy--one from each corporate member. A Church B minister currently serves as the Vice Chairman of the Board of Trustees. The Employer's staff includes a chaplain who acts as the staff representative to the Board of Trustees in religious matters.

In the event of dissolution of the Employer, the Employer's Articles of Incorporation provide generally that all remaining assets of the Employer shall be distributed first to Churches A and B in equal shares, provided such organizations then qualify as exempt organization(s)under Code § 501(c)(3), and secondly to such other organization(s) exempt under section 501(c)(3) as the Employer's Board of Trustees so determines.

Each year, as part of the proceedings of its annual convention, Church A publishes a directory of institutions and organizations affiliated with Church A. The Employer is listed in that directory.

In **** the Internal Revenue Service determined that the Employer is an organization described in Code § 501(c)(3) and exempt from tax under § 501(a).

In 1983, in furtherance of its goals and mission of establishing and operating a life-care community for the elderly, the Employer established, and currently continues to maintain, the Plan for the benefit of its employees and their beneficiaries. You represent that the Plan is an arrangement intended to be a tax-sheltered annuity program under section 403(b) of the Code. The Employer has never received notice of default from the Secretary of the Treasury with respect to the Plan's failure to meet any of the requirements for church plan status under Code § 414(e).

Until **********, the Plan provided that it would be administered by such person or persons as the Employer appointed. In the absence of an appointment, the Employer served as the Plan Administrator. However, as of **********, the Plan was amended to provide that it would be administered by such person (administrator) or persons (administrative committee) as are appointed by the Chairman of the Board of Trustees. Since **********, the Plan has been administered by an administrative committee("Committee"). The Committee currently is composed of three of the Employer's employees, appointed by the Chairman of the Board of Trustees who serve at the

pleasure of the Employer. The Committee's principal purpose is the administration or funding of the Plan, and it will continue to administer the Plan pursuant to the governing Plan document.

Based on the statements and representations provided above, you seek a private letter ruling that the Plan is a church plan under the provisions of section 414(e) of the Code.

A tax-sheltered annuity program under Code § 403(b) that includes employer contributions generally must meet the minimum participation requirements of section 410. However, section 410 contains an exception for a "church plan" as defined in Code § 414(e), unless an election has been made to be governed by the Employee Retirement Income Security Act of 1974 ("ERISA") in accordance with section 410(d). Further, only the employer or administrator of a plan or program subject to ERISA is required to file Form 5500 or Form 5500C (Annual Return/ Report of Employee Benefit Plan); 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 1A and 2B 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 section 501.

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.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or convention or association of churches shall include 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 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 convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

Section 414(e)(4) 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 section 414(e) 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 "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). 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 the Employer is a not-for-profit corporation organized under the laws of State D. The Employer is chartered for the purpose of establishing maintaining, operating, managing, controlling, and regulating a residential home or homes for aging persons and providing related services in City E of State D. The Employer was organized, pursuant to the teachings and tenets of its member religious organizations, to create, maintain, and operate retirement health care facilities in a manner designed to satisfy the primary needs of elderly persons. These needs include housing, health care, and financial security. The Employer provides residential facilities specifically designed to meet the physical, emotional, recreational, and social needs of the elderly. Although residents in the Employer's facilities are accepted on a nonsectarian basis, it is expected that such residents will feel comfortable in a community sponsored and operated by religious organizations.

Church A and Church B are the Employer's two corporate members and each is represented to be a convention or association of churches established exclusively for religious purposes. Each member elects one-half of the Employer's Board of Trustees. The Employer's Bylaws provide that the heads of Churches A and B serve *ex officio* on the Employer's Board of Trustees. Currently, two other members of the clergy--one from Church A and another from Church B--also serve on the Board. At least six members of the Board of Trustees must also be adherents, and active members, of Church A; and six Board members must be adherents, and active members, of Church B. Amendment of the Employer's charter requires the approval of each corporate member and, in the event of the Employer's dissolution, the Employer's assets are distributed to Churches A and B in equal shares, provided they remain tax-exempt under Code § 501(c)(3). The Chairman of the Employer's Board of Trustees is elected by the Board from among its own membership. Both Church A and Church B are represented to be conventions or associations of churches located in the eastern part of State D, and they bring to their endeavors on behalf of the elderly a spirit of love and caring which enables the Employer to operate without a design for profit but with concern for residents' well being as a primary focus.

In conjunction with its annual meeting, Church A publishes a directory of affiliated organizations. The Employer is included in the Church A Directory as an organization affiliated with Church A.

The Internal Revenue Service has determined that the Employer is an organization described in Code § 501(c)(3) that is exempt from tax under § 501(a).

Based on the foregoing, it is concluded that the Employer is an organization that shares common religious bonds and convictions with both Church A and Church B. The Employer is, therefore, an organization that is associated with a church or convention or association of churches within the meaning of Code § 414(e)(3)(D), for purposes of the church plan rules. It is further concluded, therefore, that the Employer's employees are deemed to be employees of a church or convention or association of churches under the rules of Code § 414(e)(3)(B), and conversely, that either Church A or Church B may be considered the employer of these employees under the rules of Code § 414(e)(3)(C).

Having established that the Employer's employees are considered to be employees of a church or convention or association of churches, the remaining question is whether the Committee is an organization, controlled by or associated with a church or convention or association of churches, that has as its principal purpose or function the administration or funding of a plan or plans for the provision of retirement benefits or welfare benefits, or both, within the meaning of section 414(e)(3)(A) of the Code.

Until **********, the Plan provided that it would be administered by such person or persons as the Employer appointed. In the absence of an appointment, the Employer served as the Plan Administrator. However, as of **********, the Plan was amended to provide that it would be administered by such person (administrator) or persons (administrative committee)as are appointed by the Chairman of the Employer's Board of Trustees. Since **********, the Plan has been administered by the Committee, which is composed of three of the Employer's employees. The Committee's principal purpose is the administration or funding of the Plan, and it will continue to administer the Plan pursuant to the governing Plan document.

As constituted prior to **********, the Plan Administrator was not an organization that met all the requirements of Code § 414(e)(3)(A), because the Employer itself could serve as Plan Administrator. However, the Plan amendment of ********** removed this defect from the Plan. As of **********, therefore, the Committee became an organization, controlled by or associated with Churches A and B, 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 individuals deemed to be employees of those churches. Therefore, it is concluded in this case that the Committee is now, and continues to be, an organization that meets the requirements of Code § 414(e)(3)(A) for purposes of the church plan rules.

Accordingly, the Service rules that the Plan is a church plan within the meaning of section 414(e) of the Code.

Further, under the rule of Code § 414(e)(4), any plan that fails to meet the church plan requirements of Code § 414(e), and corrects its defects within the correction period, is considered to be a church plan in the year in which the correction occurs and in all prior years. Therefore, in this case, the Plan, amended as described above, is deemed to be a church plan for the year in which it was amended, and in all prior years.

This letter expresses no opinion as to whether the Plan satisfies the requirements for a qualified tax sheltered annuity program under Code § 403(b). The determination as to whether the Plan is a qualified program under section 403(b) requires the issuance of a separate private letter ruling by the Employee Plans Technical Office of Rulings and Agreements, Washington, D. C. See Revenue Procedure 2001-4, 2001-1 I.R.B. 121 (January 2, 2001).

While not crucial to our holding above, we note that, under Code § 403(b)(1)(D), an arrangement intended to qualify under section 403(b) must satisfy the nondiscrimination requirements of section 403(b)(12). These rules do not, however, apply to plans maintained by "churches" or "qualified church-controlled organizations" as defined

in section 3121(w)(3)(A) and (B) of the Code. This ruling expresses no opinion as to whether the Employer is a "church" or "qualified church-controlled organization" within the meaning of section 3121(w).

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.

Should you have any questions regarding any aspect of this private letter ruling, please contact ********** ********** ********** can be reached at ********** (telephone), or ********** (FAX).

Sincerely,

John Swieca

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government
Entities Division

Enclosures:

- Deleted Copy of this Letter
- Notice of Intention to Disclose, Notice 437
- Copy of Notification Letter (Form 1155) to Authorized Representative