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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

JAN 02 2003

T:EP:RA:UK

Uniform Issue List: 414.08-00

Attn:

Church K.....

Church L.....

Corporation A.....

Corporation B .....

Corporation C.....

Health System D.....

Health System E.....

Health System F.....

Health System G .....

State M.....

Region N.....

Region O.....

Plan X.....

Plan Y.....

Plan Z.....

Dear :

This is in response to a letter dated July 20, 2001, as supplemented by correspondence dated June 13, 2002, and October 17, 2002, in which your authorized representative requested a ruling on your behalf under section 414(e) of the Internal Revenue Code

(the "Code"). You submitted the following facts and representations in support of your request.

Corporation B is a nonprofit public benefit corporation organized under the laws of State M and is an organization described in Code section 501(c)(3) and exempt from tax under section 501(a) (a "501(c)(3) organization"). Corporation B was established in and incorporated in by members of Church K pursuant to a State M law which provided for the incorporation of religious and educational associations. In , Corporation B's Articles of Incorporation were amended to reflect the addition of Church L as a sponsor. In , Corporation A was incorporated as a State M nonprofit corporation, which became the sole member of Corporation B. Corporation A is also a 501(c)(3) organization.

Article 9 of both Corporation A's and Corporation B's current Articles of Incorporation provide that each corporation shall be conducted under the auspices of Region N and Region O of Church K and Church L, respectively. Corporation A has no members, and Corporation B's sole member is Corporation A; however, Corporation A does not have any voting rights with respect to electing members to Corporation B's Board of Directors, or amending Corporation B's Articles of Incorporation or Bylaws. Corporation B's Articles of Incorporation provide that on dissolution, the assets shall be distributed to Corporation A.

Article III of Corporation B's Bylaws provides that the number and composition of Corporation B 's Board of Directors are set forth in Corporation B's Articles of Incorporation. Under Articles 5 and 10 of the Articles of Incorporation, Corporation B's Board of Directors consists of 20 members including two Church K and two Church L representatives ("Church Appointed Directors"). The remaining 16 directors ("Elected Directors") are selected from nominees approved by a nominating committee ("Nominating Committee"). The Nominating Committee consists of eight members, four Church Appointed Directors and four Elected Directors selected by the Chairman of the Board of Directors; however, a candidate is only approved as a director if all four Church Appointed directors and two other members of the Nominating Committee vote in favor of the candidate. The Board of Directors may reject the Nominating Committee's slate of Elected Directors by a two-thirds vote in which case the Nominating Committee will present another slate. Article Eleven of Corporation A's Articles of Incorporation also provides that the Board of Directors may recommend their amendment by a two-thirds vote, and any amendment must be approved by Church K and Church L. These provisions are mirrored in Corporation A's Bylaws and Articles of Incorporation.

Corporation B's Bylaws provide for a committee that is comprised of seven members, two of whom are Church Appointed. The committee's purpose is (i) to ensure that the Church K and Church L character and values of Corporation B remain intact, (ii) to ensure that Corporation B's pastoral and chaplaincy programs are maintained, and (iii) to monitor the adherence of Corporation B to the ethical and religious directives of Church K and Church L.

In , Corporation B, Health System D and Health System E formed Health System G. Health System G was an affiliate of Health System F. After the formation of Health System G, Corporation A and Health System G were both members of Corporation B. The employees of Health System G and its member hospitals participated in three retirement plans maintained by Health System F.

Effective , Corporation B separated from Health System G, and that portion of each plan attributable to the employees of Corporation B was spun off as three separate plans, Plans X, Y, and Z. Prior to the separation, all three plans were church plans as described under Code section 414(e). After the separation, Corporation A became the sole member of Corporation B, and Corporation B and Health System D are co-equal members of Corporation C. Corporation C is a nonprofit, 501(c)(3) organization incorporated under the laws of State M.

Prior to the separation, Corporation C's employees participated in the three plans of Health System F. All eligible employees of Corporation B and Corporation C now participate in Plans X and Y. Corporation C's employees represent 2.2 percent of all employees participating in Plan X, and 2.8 percent of the employees participating in Plan Y. The eligible employees of Corporation B also participate in Plan Z. The employees of Corporation C do not participate in Plan Z. We assume for purposes of this ruling request that Corporation C's employees are not church employees.

Plan X is intended to be a qualified plan under section 401(a), and Plan Y is intended to be a qualified plan under section 401(a) by virtue of section 401(k). Plan Z is intended to be a tax sheltered annuity plan described under section 403(b). Plans X, Y and Z are administered by the same administrative committee (the "Committee"). Corporation B appoints the members of the Committee, and the Committee's principal function or purpose is the administration of the Plans.

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

(1) Plans X, Y and Z are church plans within the meaning of Code section 414(e) and have been so since their inception;

(2) the participation of Corporation C's employees does not prevent Plans X and Y from qualifying as church plans under section 414(e); and

(3) Plans X, Y and Z are exempt from the minimum funding requirements under section 412(h)(4), notwithstanding the participation of Corporation C's employees.

To qualify under Code section 401(a), an employees' plan must meet certain requirements, including the minimum participation rules under section 410 and the minimum vesting requirements under section 411. A qualified plan may be subject to an excise tax under section 4971 if it does not comply with minimum funding standards under section 412. A church plan described in section 414(e), however, is excepted

to have such requirements apply. Where no election is made under section 410(d), a church plan described in section 414(e) shall be treated as a qualified plan for purposes of section 401(a) if such plan meets the participation, vesting and funding requirements of the Code as in effect on September 1, 1974. Under section 412(h)(4), non-electing church plans are not required to satisfy the minimum funding requirements imposed by section 412. Section 412 also does not apply to 403(b) plans or profit-sharing plans.

Code section 414(e)(1) generally defines a church plan as a plan established and maintained, to the extent provided in paragraph (2)(B), 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.

Code section 414(e)(2)(B) provides that the term "church plan" does not include a plan if less than substantially all of the individuals included in the plan are individuals who are either church or deemed church employees.

Code section 414(e)(3)(A) 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.

Code section 414(e)(3)(B) 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, and which is controlled by or associated with a church or a convention or association of churches.

Code section 414(e)(3)(C) 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).

Code section 414(e)(3)(D) 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.

For an organization that is not itself a church or convention or association of churches to have a church plan under Code section 414(e), that organization must establish that its employees are employees or deemed employees of a church or convention or association of churches under section 414(e)(3)(B). Employees of such an organization maintaining a plan are considered to be a church employee if the organization: (1) is exempt from tax under section 501; (2) is controlled by or associated with a church or convention or association of churches; and (3) provides for administration or funding of the plan by an organization described in section 414(e)(3)(A).

In this case, Corporation B is a 501(c)(3) organization and is governed by its Board of Directors. Corporation B's Board of Directors is comprised of four Church Appointed Directors, and 16 Elected Directors who are appointed by a Nominating Committee which includes the Church Appointed Directors. In order to become a Board candidate, all four Church Appointed Directors on the Nominating Committee must approve the candidate and vote in favor of the nomination. Corporation B's Articles of Incorporation provide that the corporation shall be conducted under the auspices of Regions N and O of Church K and Church L, respectively. Corporation B has one member, Corporation A. Corporation A is also a 501(c)(3) organization and is governed by its Board of Directors. The provisions of Corporation A's Articles of Incorporation that relate to its Board of Directors and Nominating Committee mirror those of Corporation B.

Corporation B's Bylaws provide for adherence to the religious directives and faith of Churches K and L. Thus, Corporation B shares common religious bonds and connections with Churches K and L and is associated with Churches K and L under the church plan rules. Accordingly, because the employees of Corporation B are employed by an organization that is exempt from tax under Code section 501(a) and associated with or controlled by a church or convention or association of churches (i.e., Churches K and L), these employees are deemed to be Church K, and Church L employees under section 414(e)(3)(B). Conversely, Churches K and L are considered to be the employer of the employees of Corporation B under section 414(e)(3)(C). Because Corporation B's employees and their beneficiaries are "substantially all" of Plan X's and Plan Y's participants, the participation of Corporation C's employees does not adversely affect Plan X's or Plan Y's status as a church plan.

In addition, Plans X, Y, and Z are administered by a Committee designated by Corporation B, the plan sponsor. The principal purpose or function of the Committee is the administration or funding of Plans X, Y, and Z. Thus, the Committee is associated with or controlled by a church or a convention or association of churches. Accordingly, we rule that, with respect to ruling request number (1), Plan X, Plan Y, and Plan Z constitute church plans described under Code section 414(e) and have been so since their inception on March 31, 2001. We also conclude that, with respect to ruling request number (2), the participation of Corporation C's employees does not prevent Plans X and Y from qualifying as church plans under section 414(e). We conclude with respect to ruling request number (3) that Plans X, Y and Z are exempt from the minimum funding requirements under section 412, notwithstanding the participation of Corporation C's employees in Plans X and Y.

This letter expresses no opinion as to whether Plans X and Y satisfy the requirements for qualification under Code section 401(a) or whether Plan Z satisfies the requirements under section 403(b). The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the Employee Plans Area Manager, Central Mountain Area.

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

A copy of this letter has been sent to your authorized representative pursuant to a power of attorney on file with this office. Should you have any questions or concerns, please contact .

Sincerely yours,

Andrew E. Zuckerman, Manager
Employee Plans Technical Group 1

Enclosures:
Copy of deleted letter
Notice 437

cc: