200338021

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

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

S.I.N 414.08-00

JUN 26 2003

T:EP:RA:T3

Legend:

Church C =

Church Official B =

Order =

Medical Center A =

Region X =

Subsidiary A =

Subsidiary B =

Subsidiary C =

Subsidiary D =

Subsidiary E =

Subsidiary F =

Directory M =

Plan X =

This is in response to a ruling request dated July 25, 2002, as revised by letter of September 5, 2002 and supplemented by additional correspondence dated September 30,

2002, April 14 and 15, 2003, and May 20, 2003, in which your authorized representatives request rulings on your behalf concerning whether Plan X is a church plan described in section 414(e) of the Internal Revenue Code and has continued to meet the requirements of section 414(e) since its inception and certain related questions.

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

Effective January 1, 2001, Medical Center A adopted Plan X, a plan intended to meet the requirements of sections 401(a) and 401(k) of the Code. Elective deferrals and employer matching contributions to Plan X commenced on July 1, 2001. Plan X is maintained for the benefit of the employees of Medical Center A and the employees of its Subsidiaries A through F, the other participating employers who are members of its controlled group of corporations. Medical Center A and each of its Subsidiaries except Subsidiary A are described in section 501(c)(3) of the Code and exempt under section 501(a). Medical Center A is jointly sponsored by the Order and Church Official B. The Order is an apostolic congregation of religious women of Church C. Medical Center A, and Subsidiaries B, C and D are listed in Directory M, the official directory of Church C. Medical Center A is the sole member of Subsidiaries E and F and has had the power to appoint and remove their respective boards of directors since January 1, 2001. Subsidiaries E and F are controlled by their respective boards of directors.

Subsidiary A is a for-profit corporation. Medical Center A is its sole shareholder and its board of directors is appointed by Medical Center A. Subsidiary A's principal function is to provide professional billing services to physicians who have admitting privileges at hospitals owned by Medical Center A. The number of Subsidiary A employees who are eligible to participate in Plan X is 30. The total number of employees eligible to participate in Plan X is 2806. Thus, Subsidiary A's employees constitute just over one percent of the total number of employees eligible to participate in Plan X.

Pursuant to the terms of Plan X, the Retirement Plan Committee was appointed by the board of directors of Medical Center A on December 18, 2001, with a principal purpose and function of administering Plan X. The Committee is comprised of the following officers of Medical Center A: the senior vice president, the chief human resources officer, the president of Region X, the chief administrative officer and such other members as the senior vice president may appoint from time to time. The Committee began administering Plan X as a principal purpose on December 18, 2001, and continues to do so at the present time. Under the terms of Plan X, the board of directors of Medical Center A has had the power to appoint and remove the members of the Committee since the effective date of Plan X, January 1, 2001, and retains such power at present.

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

(1) Plan X constitutes a church plan as described in section 414(e) of the Code and has been such a church plan since its inception; and

(2) For purposes of section 414(e)(2)(B) of the Code, substantially all of the participants in Plan X are church employees within the meaning of Code sections 414(e)(1) or 414(e)(3)(B), notwithstanding the fact that the employees of Subsidiary A, who are not church employees within the meaning of Code sections 414(e)(1) or 414(e)(3)(B), are entitled to participate in Plan X.

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 and Subsidiaries B, C and D are listed in Directory M, which is the official directory of Church C, and have been so listed since on or before January 1, 2001, the effective date of Plan X. 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 and Subsidiaries B, C and D were and are exempt from taxation under section 501(a) and were and are also associated with Church C. It is represented that Subsidiaries E and F are described in section 501(c)(3) of the Code and exempt under section 501(a). Since January 1, 2001, Medical Center A has been the sole member of Subsidiaries E and F and has appointed and removed their respective boards of directors. Since January 1, 2001, Subsidiaries E and F have been controlled by their respective boards of directors. Therefore, Subsidiaries E and F are and have been controlled by Medical Center A. Since Subsidiaries E and F are and have been controlled by Medical Center A and Medical Center A is associated with Church C, Subsidiaries E and F are indirectly associated with Church C.

Therefore, pursuant to section 414(e)(3)(B) and (C) of the Code, the employees of Medical Center A and the employees of Subsidiaries B through F 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, Subsidiary A's employees constitute just over one percent of the total employees eligible to participate in Plan X. Therefore, in this case, the employees of the for-profit subsidiary constitute an insubstantial percent of the participants in Plan X.

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.

Plan X has been administered by the Retirement Plan Committee since December 18, 2001. The principal purpose of the Committee is the administration of Plan X. The Committee is composed of officers of Medical Center A who were appointed to the Committee by the board of directors of Medical Center A. Under the terms of Plan X, the board of directors of Medical Center A has had the power to appoint and remove the members of the Committee since the effective date of Plan X, January 1, 2001, and retains such power at present. Thus, the Committee is controlled by Medical Center A, which is associated with Church C. Accordingly, since the Committee is controlled by Medical Center A, it is deemed indirectly associated with Church C. Further, since as represented above, the primary purpose of the Committee is the administration of Plan X, 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 and its named Subsidiaries. Therefore, the Committee would qualify as an organization described in section

414(e)(3)(A) of the Code for the period since December 18, 2001. With respect to the period between January 1, 2001 and December 18, 2001, 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. In the instant case, there was no committee for the period January 1, 2001, until December 18, 2001. However, the Committee was appointed December 18, 2001. The principal purpose of the Committee is the administration of Plan X. Thus, the defect was corrected as provided under section 414(e)(4)(A) of the Code.

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

(1) Plan X constitutes a church plan as described in section 414(e) of the Code and has been since its inception; and

(2) For purposes of section 414(e)(2)(B), substantially all of the participants in Plan X are church employees within the meaning of Code sections 414(e)(1) or 414(e)(3)(B), notwithstanding the fact that the employees of Subsidiary A, who are not church employees within the meaning of Code sections 414(e)(1) or 414(e)(3)(B), are entitled to participate in Plan X.

This letter expresses no opinion as to whether Plan X 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, the original of this ruling is being sent to one of your representatives and a copy is being sent to you and a second 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
Tax Exempt and Government
Entities Division

Enclosures:
Copy of ruling
Deleted copy of ruling
Notice 437