199923055

Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List 414.08-00

Contact Person:

Telephone Number:

In Reference to:

Date: OP:E:EP:T:3,

16 [illegible]

Attention:

Legend:

Church A =

Organization B =

Community C =

Community D =

Diocese E =

Program F =

Entity G =

Profit-Sharing Plan H =

Group Life Insurance Plan I =

Health Care Plan J =

Group Disability Plan K =

Tax-Deferred Annuity Plan L =

Cafeteria Plan M =

Committee N =

State X =

-795

Dear

This letter is in response to a ruling request dated June 22, 1998, as supplemented by correspondence dated September 14, 1998, November 2, 1998, and February 3, 1999, submitted on your behalf by your authorized representative, concerning whether certain employee benefit plans maintained by Organization B qualify as church plans under section 414(e) of the Internal Revenue Code ("Code"). In support of your ruling request, you have submitted the following statements and representations:

Organization B is a nonstock, nonprofit corporation organized under the laws of State X to provide housing and care for the elderly. Organization B was incorporated in 1955 by resolution of Diocese E. Organization B was founded to purchase and operate a home for adults, and its first home was opened on March 15, 1957, to provide residential care for 30 resident women, men, and couples. In March 1965, its name was changed to Entity G, and then again in March 1982, Organization B's name was changed to its present name, but it retained the same corporate charter. (Entity G continues under a different corporate charter.) Organization B owns and operates Communities C and D which provide continuing care services in two locations within State X. Community C currently has 184 independent living units, 40 assisted living units, and 96 nursing care beds. Community D has 257 independent living units, 51 assisted living units, and 73 nursing care beds.

Organization B is an organization described in section 501(c)(3) of the Code which is exempt from income taxation under section 501(a) of the Code. Its statement of corporate purposes per the Restated Articles of Incorporation, is to maintain, operate, manage, control and regulate a residential home or homes for the aged in State X under the supervision and direction of Church A in Diocese E.

Organization B was founded at the Annual Council of Diocese E. Since its inception, Organization B has maintained close ties to Church A. Today, according to its mission statement, Organization B's goal is to provide the highest quality retirement housing with continuing care services, while promoting each resident's dignity, privacy, and individuality, consistent with the Christian principles upon which it was founded. In addition, according to its vision statement, Organization B seeks to maintain close ties to Diocese E in its parishes.

Membership and residency at the Communities are open to all otherwise eligible applicants regardless of religious faith. Forty percent of Organization B's residents are

members of Church A, and members of Church A in Diocese E have the highest priority for financial assistance. In furtherance of its mission to provide housing and care in a Christian atmosphere, Organization B maintains a chapel reserved for worship at each of the Communities, has two Church A ministers on its staff, and sponsors seminarian students from a seminary related to Diocese E. In addition, Organization B provides willing employees with the ability and resources necessary to further Church A's involvement, participation, and oversight of the facilities.

Both Communities sponsor many religious and spiritual activities for their residents. Many of these activities are coordinated by volunteers from local Church A churches and other churches. Some of Organization B's volunteers are clergy in Diocese E.

As an extension of its mission, Organization B has established Program F to formalize and energize the relationships between Church A and the Communities. Program F provides a liaison with local parishes, serves as a resource for programs and services to older people, and provides an ongoing awareness of Organization B's mission. Program F representatives, who are the primary contact between the Communities and their parishes, are appointed by their clergy and are selected for their strong commitment to both parish and community and for their interest in ministries to the elderly. This program builds and strengthens connections within the larger Church A community.

All members of Organization B's Board of Trustees are elected by the Board of Trustees of Entity G, who in turn are elected by Diocese E. Board members are elected to three year terms of office and have a right to serve two terms. There may be no less than 18 and no more than 21 Board members. Up to three of these Board members may be elected from among the Board of Directors of a separate charitable entity formed to hold and receive charitable contributions and bequests for Organization B. According to Organization B's Bylaws, all Board members must be communicants in good standing of Church A.

Organization B is self-supporting and is not directly in the budget of Diocese E. However, the Bishop of Diocese E provides guidance and direction to Organization B, and he assists with fundraising and public relations. Approximately 30 churches of Church A support Organization B either directly or through the Church A women. Entity G also provides support to Organization B. In addition, a majority of the charitable gifts to Organization B are from members of Church A.

Organization B maintains the following employee benefit plans: Profit-Sharing Plan H, Group Life Insurance Plan I, Health Care Plan J, Group Disability Plan K, Tax-Deferred Annuity Plan L, and Cafeteria Plan M. All of the aforementioned plans are hereinafter referred to as the Plans.

Only employees of Organization B are eligible to participate in the Plans. None of the participants in the Plans are employees of for-profit entities and at no time have any of the participants been employed by for-profit organizations or worked in unrelated trades or businesses.

The Plans are administered on behalf of Organization B's employees by Committee N, whose sole purpose is to administer the Plans. Committee N also oversees and supervises the Plans' activities in a fiduciary capacity. The president of Organization B appoints the members of Committee N. Committee N, established in 1982, consists of various department managers, vice presidents, and the executive directors of Community C and Community D, respectively. Committee N reports directly to the president of Organization B, who serves on and reports to Organization B's Board of Trustees.

Based on the foregoing facts and representations, a ruling is requested that each of the Plans is a church plan within the meaning of section 414(e) of the Code as of January 1, 1974, or the Plan's inception date, whichever is later.

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)(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.

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 secton 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 (MPPAA), Pub. L. 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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).

Organization B is an organization described in section 501(c)(3) of the Code which is exempt from federal income tax under section 501(a). By its statement of corporate purpose, Organization B operates Communities C and D under the supervision and direction of Church A in Diocese E.

Organization B's close affiliation with Church A is illustrated by the continued strong representation of Church A among Organization B's management and members of its Board of Trustees; by the financial support that Organization B receives from the churches and members of Church A; by the presence of a chapel in Communities C and D, as well as two ministers on its staff; and by Organization B's commitment since its founding to further the principles and ideas of Church A. In addition, Organization B's Board of Trustees are elected by Entity G's Board of Trustees, who in turn are elected by Diocese E.

Thus, Organization B is both associated with Church A and indirectly controlled by it. Therefore, pursuant to section 414(e)(3)(B) and (C) of the Code, employees of Organization B are deemed to be employees of Church A, and Church A is deemed to be the employer of such employees for purposes of the church plan rules.

However, an organization must also establish that its plans are 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 plans and must also be controlled by or associated with a church or a convention or association of churches.

Committee N's sole purpose is the administration of the Plans. Committee N is controlled by Church A indirectly. Committee N reports to Organization B's President, who serves on the Board of Trustees. Organization B's Bylaws require that all Trustees be communicants in good standing of Church A in Diocese E. Organization B's Board of Trustees are elected by the Board of Trustees of Entity G, who in turn are elected by Diocese E. Therefore, Committee N qualifies as an organization described in section 414(e)(3)(A) of the Code.

Also, as provided under section 414(e)(4) 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 1982, Committee N was established to administer the Plans.

Organization B is a Code section 501(c)(3) organization that is controlled by and shares common religious bonds and convictions with Church A. Its Plans are maintained by an organization, the sole purpose of which is the administration of the Plans. Committee N is controlled by or associated with Church A through Diocese E. Accordingly, in regard to your

ruling request, we conclude that each of the Plans is a church plan within the meaning of section 414(e) of the Code as of January 1, 1974, or the Plan's inception date, whichever is later.

We are not ruling, directly or indirectly, on whether Cafeteria Plan M constitutes a cafeteria plan within the meaning of section 125 of the Code, or on whether amounts allocable to the benefits under Profit-Sharing Plan H, Group Life Insurance Plan I, Health Care Plan J, Group Disability Plan K, or Tax-Deferred Annuity Plan L are constructively received or nontaxable. Therefore, this ruling shall not be construed as approving any of the Plans referred to herein under section 125 or any other provision of the Code except section 414(e).

This letter expresses no opinion on the status of Tax-Deferred Annuity Plan L under section 403(b) of the Code. This letter expresses no opinion as to whether Profit-Sharing Plan H 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 Key District Director's office of the Internal Revenue Service.

A copy of this letter has been sent to your authorized representative in accordance with the power of attorney submitted with the ruling request.

Sincerely yours,

Frances V. Sloan

Frances V. Sloan
Chief, Employee Plans
Technical Branch 3

Enclosures:
Deleted copy of letter
Notice 437

cc: