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IRS: Religious Organization's Benefits Plans Are Church Plans.

The IRS ruled that a tax-exempt religious organization's defined benefit pension plans are church plans within the meaning of section 414(e), retroactive to specified dates.

Date: February 6, 2013

Dear * * *

This letter is in response to your request dated May 13, 2005, as supplemented by correspondence dated March 5, 2012, submitted on your behalf by your authorized representative regarding the church plan status of Plan X, Plan Y and Plan Z within the meaning of section 414(e) of the Internal Revenue Code (Code).

The following facts and representations have been submitted under penalties of perjury on your behalf:

Taxpayer A was established in 19* * * by Order B, a Church C religious order based in Country G, which operates hospitals and health care facilities in three locations in the United States. Taxpayer A is a not-for-profit corporation organized under the laws of State E. Taxpayer A is listed in Directory S, and accordingly, is exempt from Federal income tax under section 501(c) of the Code. Order B is listed in Directory S as being represented in Entity I by virtue of its presence at Taxpayer A. The current president and chief executive officer of Taxpayer A is a member of Order B.

Taxpayer A's by-laws contain the stated purpose to establish and operate a Church C hospital for the purposes of providing hospitalization and care of the sick and injured, necessary facilities for the treatment of disease, and for scientific purposes; and to establish and operate schools and educational institutions in the hospital, nursing and related fields. Any applicant for appointment to Taxpayer A's medical staff must, as part of the application, agree to be bound by the Ethical and Religious Directives of Church C Healthcare Services as promulgated by Entity J.

Under Article III of Taxpayer's by-laws, the sole member of Taxpayer A's corporation is Network D. Also under the by-laws, Network D has the right to ensure that Taxpayer A is conducting its business and affairs consistently with and in furtherance of the objectives and philosophy of Order B.

Network D is a corporation organized under the Statute N. Among its corporate purposes is to conduct the business affairs of the corporation in a manner consistent with the objectives and philosophy of Order B. Prior to September * * *, 20* * *, members of Network D were from the Provincial Council of Order B, and those members of Entity F Executive were appointed by the Provincial Council. The Provincial Council of Order B is comprised of the local Provincial Superior of Order B and the local Provincial Superior of Order B's councilors. The Entity F Executive is comprised of Order B members who have been appointed by the Provincial Council to serve on the Entity F Executive.

Effective September * * *, 20* * *, Network D's by-laws were amended to provide that Network D's members shall be comprised of seven members appointed by the General Council of Order B, at least four of whom must at all times be members of Order B. As a result, you represent that Taxpayer A is under the control of Network D, a majority of whose members must be members of Order B. If at any time Network D ceases to exist, Taxpayer A's by-laws provide that the Provincial Council may elect a new corporate member.

Prior to the adoption of Taxpayer A's current by-laws on October * * *, 20* * *, Taxpayer A's members were members of Order B's Provincial Council and members of the Entity F Executive. Since its founding in 19* * *, Taxpayer A has been controlled either directly, or through Network D, by Order B.

Taxpayer A's board of trustees is responsible for the oversight of Taxpayer A, the appointment of its officers and medical staff, the assessment of its programs, the preparation and recommendation to Network D of Taxpayer A's capital and operating budget, and certain additional oversight responsibilities set forth in Taxpayer A's by-laws. The board of trustees is comprised of not less than 12, nor more than 18 members, including three members of Order B or their representatives, appointed by Entity F, at least five members appointed by Network D, two members of Taxpayer A's medical staff, and any additional trustees (up to 18) appointed by Network D.

Entity F is a corporation which is incorporated under the laws of Country G. Under its by-laws, its membership is limited to members of Order B. The members of Entity F consist of the members of the Provincial Council of Order B and selected members of the Entity F Executive. Any member of the board of trustees of Taxpayer A may be removed by Network D with or without cause. As a result, through its power to appoint Taxpayer A's trustees, either through Entity F or through Network D, and its power through Network D to remove the trustees with or without cause, you represent that Order B controls the board of trustees..

In 19* * *, Taxpayer A adopted Plan X for the benefit of the employees of Taxpayer A. Plan X is a defined benefit pension plan. Plan X is a new plan, not a successor plan, and meets the requirements of section 401(a) of the Code. Effective September * * *, 19* * *, Plan X's benefit formula was incorporated into the plan document for Plan Y. Accruals under Plan X were frozen by an amendment to Plan X effective November * * *, 19* * *, which is incorporated into the current plan by an individually designed amendment.

Plan Y is a defined contribution money purchase pension plan adopted by Taxpayer A on September * * *, 19* * *, solely for the benefit of its employees. Plan Y is intended to be qualified under section 401(a) of the Code.

The combined plan document for Plan X and Plan Y was amended and restated periodically, and the most recent favorable determination letter for the combined plan document is dated April * * *, 20* * *. Participation in Plan X and Plan Y has been limited to employees of Taxpayer A at all times.

Plan Z was originally adopted by Taxpayer A effective January * * *, 19* * *, solely for the benefit of its employees. Plan Z is intended by Taxpayer A to be a tax deferred annuity arrangement under section 403(b) of the Code. Participation in Plan Z has been limited to employees of Taxpayer A at all times.

None of the eligible participants in Plan X, Plan Y or Plan Z are, were, or can be considered to be employed in connection with one or more unrelated trades or businesses within the meaning of section 513 of the Code. The plans do not include as participants employees of for-profit entities.

By resolutions dated December * * *, 20* * *, Taxpayer A established Committee H. Committee H's sole purpose and function is to administer Plan X, Plan Y and Plan Z. Under the resolutions, the initial members of Committee H were the president and chief executive officer of Taxpayer A, and the executive vice president of Taxpayer A. If Taxpayer A's president is a member of Order B, the president is an ex officio member of Committee H and has the authority to appoint and discharge up to six Committee H members at any time. Under Taxpayer A's by-laws, the President of Taxpayer A is appointed (and can be removed) by Network D.

You represent that the establishing resolutions for Committee H provide that if the president is not or ceases to be a member of Order B, Network D shall assume the authority to appoint and discharge up to seven Committee H members, so that Committee H continues to constitute an organization that is controlled by or associated with Order B. As established by Taxpayer A, Committee H has all such powers as may be necessary or helpful to discharge its duties as administrator of the plans.

By resolutions dated December * * *, 20* * *, Taxpayer A amended Plan X, Plan Y and Plan Z to name Committee H as the administrator under each of the Plans.

Taxpayer A has not made the election under section 410(d) of the Code with respect to Plan X, Plan Y, or Plan Z. However, it has in the past voluntarily operated Plan Y in compliance with the standards of the Employee Retirement Security Act of 1974 (ERISA) to include filing Form 5500, and paying premiums to the Pension Benefit Guaranty Corporation.

In accordance with Revenue Procedure 2011-44, Notice to Employees with reference to Plan X was provided on March * * *, 20* * *. This notice explained to participants of Plan X, Plan Y and Plan Z the consequences of church plan status.

Based on the foregoing, you request a ruling that Plan X and Plan Y are church plans within the meaning of section 414(e) of the Code effective as of January 1, 1974; and that Plan Z is a church plan within the meaning of section 414(e) of the Code effective as of January 1, 1987.

Section 414(e) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) of the Code applied as of the date of ERISA's enactment. However, section 414(e) of the Code was subsequently amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Pub. Law 96-364, to provide that section 414(e) of the Code was effective as of January 1, 1974.

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 a convention or association of churches which is exempt from taxation under section 501 of the Code.

Section 414(e)(2) of the Code provides, in part, that the term "church plan" does not include a plan that is established and maintained primarily for the benefit of employees (or their beneficiaries) of such church or convention or association of churches who are employed in connection with one or more unrelated trades or businesses (within the meaning of section 513 of the Code); or if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) of the Code or section 414(e)(3)(B) of the Code (or their beneficiaries).

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" of a church or a convention or association of churches 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 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 of the Code 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 the organization 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) of the Code 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.

Revenue Procedure 2011-44, 2011-39 I.R.B. 446, supplements the procedures for requesting a letter ruling under section 414(e) of the Code relating to church plans. The revenue procedure: (1) requires that plan participants and other interested persons receive a notice in connection with a letter ruling request under section 414(e) of the Code for a qualified plan; (2) requires that a copy of the notice be submitted to the Internal Revenue Service (IRS) as part of the ruling request; and (3) provides procedures for the IRS to receive and consider comments relating to the ruling request from interested persons.

In order for an organization that is not itself a church or convention or association of churches to have a qualified church plan, it 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) of the Code by virtue of the organization's control by or affiliation with a church or convention or association of churches. 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; and, 2) is controlled by or associated with a church or convention or association of churches. In addition, in order to be a church plan, the plan must be administered or funded (or both) 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 or funding of the plan and must also be controlled by or associated with a church or convention or association of churches.

In this case, Taxpayer A is a not-for-profit corporation which is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3) of the Code. In view of the common religious bonds between Church C and Taxpayer A, the inclusion of Order B in Directory S, and the indirect control of Taxpayer A by Church C through Order B, we conclude that

Taxpayer A is associated with a church or a convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of Taxpayer A meet the definition of employee under section 414(e)(3)(B) of the Code and that they are deemed to be employees of a church or a convention or association of churches by virtue of being employees of an organization 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.

Effective December * * *, 20* * *, with Taxpayer A's establishment of Committee H and Committee H becoming administrator of Plan X, Plan Y and Plan Z, the plans are each maintained by an organization whose sole purpose and function is the administration of the plans. Under the establishing resolutions for Committee H, if Taxpayer A's president is a member of Order B, the president is an ex officio member of Committee H, and has the authority to appoint and discharge up to seven additional Committee H members. The establishing resolutions for Committee H provide that if the president is not or ceases to be a member of Order B, Network D has the authority to appoint and discharge Committee H members. Accordingly, Committee H is an organization that is controlled by or associated with Order B which is a Church C religious order. As a result, the plans are administered by an organization that is controlled by or associated with a church or an association of churches within the meaning of section 414(e)(3)(A) of the Code.

Also, 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. Committee H was established to administer Plan X, Plan Y and Plan Z on December 1* * *, 20* * *, which is within the correction period for Plan X, Plan Y and Plan Z.

Based on the foregoing facts and representations, we conclude that Plan X and Plan Y are church plans within the meaning of section 414(e) of the Code, and have been church plans within the meaning of section 414(e) of the Code retroactive to January * * *, 19* * *. We conclude that Plan Z is a church plan within the meaning of section 414(e) of the Code, and has been a church plan within the meaning of section 414(e) of the Code retroactive to January * * *, 19* * *.

This letter expresses no opinion as to whether Plan X and Plan Y satisfy the requirements for qualification under section 401(a) or whether Plan Z satisfies the requirements of section 403(b) of the Code.

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.

A copy of this letter is being sent to your authorized representative pursuant to a Power of Attorney on file in this office.

If you have any questions regarding this letter, please contact * * * at * * *. Please refer all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager

Employee Plans Technical Group 3

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