

# **Bond Case Briefs**

*Municipal Finance Law Since 1971*

---

## **IRS LTR: IRS Rules on Status of Church Plan, Grantor Trust.**

Citations: LTR 201323043

The IRS determined that a plan providing employees and former employees health and life insurance benefits is a church plan, that the trust funding the insurance premium payments is a grantor trust and is not a welfare benefit fund, and that contributions to or premiums paid by the trust are not includable in participants' gross income.

U.I.L: 414.08-00

Date: March 15, 2013

Refer Reply To: T:EP:RA:T2

LEGEND:

Convention B = \* \* \*

Association C = \* \* \*

State A = \* \* \*

Board R = \* \* \*

Denomination D = \* \* \*

Local Denomination D Associations = \* \* \*

Denomination D Associations = \* \* \*

Union W = \* \* \*

Brotherhood P = \* \* \*

Policy J = \* \* \*

Convention G = \* \* \*

Committee O = \* \* \*

Committee N = \* \* \*

Board D = \* \* \*

Plan X = \* \* \*

Resolution H = \* \* \*

Committee U = \* \* \*

Trust T = \* \* \*

Foundation F = \* \* \*

Dear \* \* \*:

This letter is in response to your letter dated December 11, 2003, as supplemented by correspondence dated December 13, 2004, July 8, 2005, August 2, 2005, September 27, 2005, December 1, 2005, November 29, 2006, December 18, 2006, March 1, 2007, and February 23, 2012, submitted on your behalf by your authorized representative regarding the church plan status of Plan X within the meaning of section 414(e) of the Internal Revenue Code (Code). In addition, you have requested rulings under sections 79, 83, 106, 402(b), 419, and 671 of the Code and section 301.7701-4(a) of the Procedure and Administration Regulations (P&A Regulations).

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

Convention B was originally incorporated pursuant to State A statutes under the name of Association C in 1852. Association C's name was changed to Convention B on December 20, 19\* \* \* Article I of Convention B's Amended and Restated Articles of Incorporation provides that Convention B constitutes a body corporate and shall have the full power to institute, pursue, adopt, and carry into effect such measures as to them may be thought best for the promotion of morality, benevolence, and religion, not inconsistent with the laws of State A. Convention B is comprised of and offers services to Denomination D churches across State A. The Local Denomination D Associations are comprised of and offer services to most of the same Denomination D churches but in a regional area of State A. Denomination D member churches of Convention B are also typically members of their Local Denomination D Associations.

Both Convention B and the Local Denomination D Associations have the general purpose of assisting Denomination D member churches in carrying out their mission of evangelism, missions, and ministries and work closely together to promote those ends. The Local Denomination D Associations receive grants and missionary assistance funding from Convention B. Convention B and the Local Denomination D Associations maintain collaborative efforts in training and participation in evangelism/missions and ministries/church development and leadership development and the promotion of the unity and fellowship among and between Denomination D member churches.

Convention B staff often serves as consultants with the local Denomination D associations in helping them with their needs and to develop strategies to meet their perceived needs. As a result of such planning, specific training events are planned and implemented locally, regionally and statewide in which the staff of Convention B and Local Denomination D Associations participate. The consulting work is done on-site, per e-mail, letters or phone calls as needed. The Local Denomination D Association leadership in collaboration with the staff of Convention B negotiate dates, resources, personalities, locations, funding, promotion and other logistics, needed to make such training effective and efficient for mutually desired outcomes in evangelism, missions, ministries and church and leadership development.

Article II of Convention B's Amended and Restated Articles of Incorporation provide that it shall be a medium through which the Denomination D churches, in their sovereign capacity, can work together in promoting all denominational enterprises which they deem necessary in carrying out the Great

Commission. Article II further provides that Convention B shall not carry on any activities not permitted to be carried on by a corporation exempt from federal income tax under section 501(c)(3) of the Code.

Convention B receives its funding from the various Denomination D churches throughout State A which are affiliated with and/or working in cooperation with Convention B. It is represented that Denomination D churches that comprise the membership of Convention B are churches as defined in section 414(e)(1) of the Code and are treated as organizations described in section 501(c)(3) of the Code. It is also represented that the Local Denomination D Associations are organizations described in section 501(c)(3) of the Code.

Article III of Convention B's Amended and Restated Articles of Incorporation provides, in general, that Convention B shall have full power to admit, elect, or appoint its members and officers, to select such times and places for its meetings, and the transaction of its business, and to make such bylaws, rules, and ordinances for its own government. Article III further provides that Convention B shall elect a board of directors to be known as the Executive Board (now called Board R), which shall have charge of the work of Convention B between the meetings, and which shall appoint all officers and agencies that may be required in its work.

Article IV of Convention B's Amended and Restated Articles of Incorporation provides that upon dissolution of Convention B, Board R shall, after paying or making provision for the payment of all liabilities of Convention B, dispose of all of the assets of Convention B exclusively for one or more exempt purposes consistent with the purposes of Convention B.

Convention B's Constitution provides that the membership of Convention B shall consist of messengers from cooperating affiliated Denomination D churches.

Article IV of Convention B's Constitution provides that on the occasion of the annual meeting, the messengers of cooperating Denomination D churches of Convention B shall elect by ballot, a president, a first and second vice president, a secretary and one assistant secretary. The President and the Vice President and Secretaries of Convention B shall be the officers of Board R. Board R members must be members of a Denomination D church for at least one year prior to nomination or appointment.

Article VII of Convention B's Constitution provides, in general, that Board R shall consist of members from each cooperating Denomination D District Association, plus eight at-large members from the geographical regions of State A.

The eight at-large members shall be elected from any cooperating affiliated Denomination D church. These members shall be nominated by Committee O of Convention B. Committee O is one of the governing committees of Convention B.

Members of Board R are elected by Convention B. Any vacancies on Board R not filled at the annual meeting of Convention B or which occur during the year shall be filled by Board R upon recommendation of Committee O. The retiring President of Convention B shall be an at-large member of Board R for one year immediately following his term of office. The president of Union W and the president of Brotherhood P shall serve as ex-officio members of Board R.

Article VIII of Convention B's Constitution provides that Board R shall have charge of the work of Convention B between its sessions, and shall appoint all officers and agencies that may be required in its work.

Article IX provides, in part, that no person shall be eligible for election or appointment until he has been a member of a State A Denomination D church for at least one year prior to nomination or appointment.

The messengers from the cooperating Denomination D churches approve the membership on the various governing committees of Convention B.

On May 6, 20\*\* Board R approved an employment policy, Policy J, which sets forth a preferential hiring policy for hiring members of Denomination D churches. Policy J provides that it is the policy and intent of Convention B from the effective date of this policy to hire and retain for all full-time and professional contract positions, where possible, persons who are members in good standing of Denomination D churches which are affiliated with and/or working in cooperation with Convention B and Convention G. Convention G is described as a cooperative ministry agency serving Denomination D churches on a world-wide basis. Policy J also states that it is the policy of Convention B to expect all of its employees to conduct themselves in a Christ-like manner both on and off the job so that their lives reflect Christian values, and to assist Denomination D members and State A Denomination D churches in their ministry. Policy J further provides that failure to adhere to this conduct standard may result in disciplinary action up to and including termination of employment.

Plan X was established in 19\*\* by Board R to provide health and life insurance coverage to Convention B's retired employees and has always been maintained by Convention B for such employees. All former employees (i.e., retirees) who meet the applicable eligibility criteria established by Convention B can participate in Plan X and are eligible to receive benefits under Plan X. Currently, as premiums become due, Convention B pays all applicable health and life insurance premiums to Board D of Convention G for retirees (including the missionary/pastor employees whose employment was transferred to the Local Denomination D Associations) from its general assets. Retirees may be required to pay a portion of premiums in the future. Convention G is a vehicle through which its affiliated member conventions can purchase insurance coverage such as the coverage provide for under Plan X.

With respect to Plan X membership, it is represented that the majority of the participants are either employees or former employees (i.e., retirees) of Convention B. It is further represented that there is a group of missionary/pastor employees most of whom, if not all, were employed by Convention B in the 19\*\*s. In 19\*\* the employment of these missionary/pastor employees was transferred to various Local Denomination D Associations in State A, which share common religious bonds and convictions with Convention B. You state that this group of employees has been grandfathered into Plan X and is a finite group that has not and will not increase in size. There are no other participants in Plan X other than the above described two groups.

You also represent that none of the Plan X participants engage in unrelated trades or businesses within the meaning of section 513 of the Code.

Plan X provides retiree health and life insurance coverage for employees who retire after meeting certain age and service conditions.

Plan X has been historically administered by an informal committee of several employees and officers of Convention B. However, on December \*\* 20\*\* Board R approved Resolution H that provides that Convention B resolved to amend Plan X to provide that a benefits committee, Committee U shall act as the administrator to maintain and administer Plan X. Committee U shall have the authority to address all administrative issues relating to Plan X including interpreting Plan X provisions. Committee U is comprised of four members who are appointed by Board R and such

members may be removed and new members added at any time in the discretion of Board R. All members of Committee U shall share common religious bonds and convictions with Convention B and its related churches. Committee U shall have no activities other than the administration of Plan X and shall meet as often as necessary to administer Plan X.

In connection with Plan X, Convention B has been authorized to establish and fund Trust T. Convention B intends to make a substantial contribution to Trust T to fund future retiree health and life insurance premium payments pursuant to Plan X. Convention B may make future contributions, from time to time, to fund premium costs of Plan X. Convention B, a tax-exempt entity, will not take a deduction for contributions to Trust T. No employee contributions, if made under Plan X, will be held in Trust T. As retiree health and life insurance premiums become due on a monthly basis, Convention B intends to direct the trustee of Trust T to pay the applicable health and life insurance premiums directly to Board D.

Trust T is intended to be a grantor Trust under section 671 of the Code. Trust T will be revocable. However, Trust T may only be revoked on termination of Plan X or dissolution of Convention B. If Trust T is revoked because of termination of Plan X or dissolution of Convention B, the remaining trust assets may be returned to Convention B provided all obligations under Plan X have been satisfied. Convention B may terminate Plan X at any time.

Participants and their dependents have no preferred claim on, or any beneficial ownership interest in, any Trust T assets, and all rights created under Plan X in Trust T are unsecured contractual rights against Convention B. No benefits or assets under Trust T may be assigned, anticipated, or alienated by participants.

Trust T provides that the principal and income of Trust T are subject to the claims of Convention B's general creditors in the event of insolvency. If Convention B becomes insolvent, the trustee will immediately cease distributions and hold Trust T assets for the benefit of Convention B's creditors.

Foundation F will serve as the trustee of Trust T.

Specifically, Trust T contains the following provisions:

Paragraph 1(b) of Trust T's governing document provides that Trust T shall be revocable by Convention B. However, Convention B may only revoke Trust T upon the termination of Plan X or dissolution of Convention B.

Paragraph 1(c) provides that Trust T is intended to be a grantor trust, of which Convention B is the grantor, within the meaning of subpart E, part I, subchapter J, chapter 1, subtitle A of the Code and shall be construed accordingly.

Paragraph 1(d) provides that the principal of Trust T and any earnings thereon, shall be held separate and apart from other funds of Convention B and shall be used exclusively for the uses and purposes of Plan X participants and general creditors as provided in Trust T's governing document. Plan X participants and their beneficiaries shall have no preferred claim on, or any beneficial ownership interest in, any assets of Trust T. Any rights created under Plan X and Trust T's governing documents shall be mere unsecured contractual rights of the Plan X participants against Convention B.

Paragraph 1(d) also provides that any assets held by Trust T will be subject to the claims of Convention B's general creditors under federal and state law in the event of insolvency of Convention B.

Paragraph 3(a) provides that Convention B will be considered "Insolvent" if (i) Convention B is unable to pay its debts as they become due, or (ii) Convention B is subject to a pending proceeding as a debtor under the United States Bankruptcy Code. This paragraph also provides that the Trustee shall cease payment of insurance benefits on behalf of Plan X participants and their beneficiaries or dependents if Convention B is insolvent.

Paragraph 3(b)(3) provides that if at any time the Trustee has determined that Convention B is insolvent, the Trustee shall discontinue payments under Plan X and shall hold Trust T assets for the benefit of Convention B's general creditors.

Paragraph 4 provides that if Trust T is revoked because of the termination of Plan X or dissolution of Convention B, the remaining Trust T assets may be returned to Convention B provided all of Convention B's obligations under Plan X as of such date have been satisfied.

In its submission for rulings, Convention B has indicated that it plans to request a ruling from the Department of Labor that Plan X is a church plan for purposes of the Employee Retirement Income Security Act (ERISA). Pursuant to ERISA section 4(b)(2), the ERISA Title 1 provisions do not apply to an employee benefit plan that is a church plan with respect to which no election has been made under section 410(d) of the Code.

In a facsimile dated February \* \* \* 20\* \* \* it is represented that the notice required by Revenue Procedure 2011-44 was not issued to participants because Revenue Procedure 2011-44 applies to qualified retirement plans and not to retiree health insurance plans. Plan X is a retiree health and life insurance plan.

Based on the foregoing facts you request the following rulings:

1. That Trust T will be classified as a Trust under section 301.7701-4(a) of the P&A Regulations;
2. That Trust T is a Grantor Trust under section 671 of the Code;
3. That Trust T is not a welfare benefit fund under section 419(e)(1) of the Code;
4. That the contributions to Trust T will not be includible in the Participants' gross income under either section 83 of the Code or section 402(b) of the Code;
5. That the premiums paid under Plan X from Trust T will be excluded from gross income of retirees under sections 106(a) and 79 of the Code to the same extent as if paid directly by Convention B; and
6. That Plan X as described herein is a church plan under section 414(e) of the Code.

With respect to ruling request number one, section 301.7701-4(a) of the P&A Regulations provides that, generally, an arrangement will be treated as a trust if it can be shown that the purpose of the arrangement is to vest in trustees responsibility for the protection and conservation of property for beneficiaries who cannot share in the discharge of the responsibility and, therefore, are not associates in a joint enterprise for the conduct of business for profit.

Section 671 of the Code provides that if the grantor or another person is treated as the owner of any portion of a trust, there shall then be included in computing the taxable income and credits of the grantor or the other person those items of income, deductions, and credits against tax of the trust which are attributable to that portion of the trust to the extent that such items would be taken into account in computing the taxable income or credits against the tax of an individual.

Sections 673 through 677 of the Code specify the circumstances that cause a grantor to be treated as the owner of any portion of a trust.

Section 677(a)(2) of the Code provides that the grantor is treated as the owner of any portion of a trust whose income without the approval or consent of an adverse party is, or in the discretion of the grantor or a non-adverse party, or both, may be distributed or accumulated for future distribution to the grantor.

Section 1.677(a)-1(d) of the Income Tax Regulations (I.T. Regulations) provides that under section 677 of the Code a grantor is treated as the owner of a portion of a trust whose income is, or in the discretion of the grantor or a non-adverse party or both, may be applied in the discharge of the legal obligation of the grantor.

Section 1.671-2(e)(1) of the I.T Regulations provides that for purposes of subchapter J, a grantor includes any person to the extent such person either creates a trust, or directly or indirectly makes a gratuitous transfer of property to a trust.

In this case, Convention B will transfer assets to Foundation F, the trustee, who will have responsibility for the management, protection, conservation, and investment of the assets. Neither the Plan X participants nor their beneficiaries share in this responsibility. Accordingly, with respect to ruling request number one, we conclude that Trust T will be classified as a trust for federal tax purposes under section 301.7701-4(a) of the P&A Regulations.

With respect to ruling request number two, the purpose of Trust T is to provide benefits to Plan X participants and their beneficiaries. However, if Convention B becomes insolvent, Foundation F has an obligation to cease payments from Trust T and hold Trust T's assets for the benefit of Convention B's creditors. Convention B is the grantor of Trust T because it creates and funds Trust T. As determined in ruling request number three below, and based solely on the facts described herein, Trust T is not a "welfare benefit fund" within the meaning of section 419(e)(1) of the Code. Accordingly, because the principal and income of Trust T can be applied to discharge legal obligations of Convention B, Convention B will be treated as the owner of Trust T under section 671 of the Code and section 1.677(a)-1(d) of the I.T. Regulations.

With respect to ruling request number three, section 419(a) of the Code provides that employer contributions to a welfare benefit plan are not deductible under Chapter 1 of the Code, but if they would otherwise be deductible, then they are deductible (subject to the limitation of section 419(b) of the Code) under section 419 of the Code for the taxable year in which paid.

Section 419(e) of the Code defines "welfare benefit fund" to include any fund that is part of a plan of an employer and through which the employer provides welfare benefits to employees. Section 419(e)(2) of the Code defines "welfare benefit" as any benefit other than a benefit with respect to which section 83(h) of the Code applies, section 404 of the Code applies (determined without regard to section 404(b)(2) of the Code), or section 404A of the Code applies. Section 419(e)(3)(A) of the Code provides that the term "fund" includes any organization described in section 501(c)(9) of the Code. Pursuant to section 419(e)(3)(B) of the Code, the term "fund" also includes any trusts not exempt from tax.

In the present case, Trust T is not exempt from tax. Trust T is subject to claims of Convention B's general creditors in the event of the insolvency of Convention B, and so its assets are not irrevocably set aside, apart from the claims of Convention B's creditors, for the provision of welfare benefits under Plan X. Accordingly, we conclude that Trust T is not a welfare benefit fund within the meaning of section 419(e)(1) of the Code. This conclusion is based on the assumption that Plan X is not

subject to the provisions of title 1 of ERISA.

With respect to ruling request number four, section 83 of the Code provides, if, in connection with the performance of services, property is transferred to any person other than the service recipient, the excess of the fair market value of the property, on the first day that the rights to property are either transferable or not subject to substantial risk of forfeiture, over the amount paid for the property is included in the service provider's gross income for the first taxable year in which the rights to the property are either transferable or not subject to a substantial risk of forfeiture.

Section 1.83-3(e) of the I.T. Regulations states that the term "property" includes real and personal property, other than money or an unfunded and unsecured promise to pay money or property in the future. Thus, a promise to pay money or property in the future is "property" if it is either funded or secured. The term "property" also includes a beneficial interest in assets (including money) that are transferred or set aside from the claims of creditors of the transferor, such as in a trust or escrow account. In the case of a transfer of a life insurance contract, or other contract providing life insurance protection, only cash surrender value of the contract is considered to be property.

Section 1.83-3(a)(1) of the I.T. Regulations states that a "transfer" of property occurs when a person acquires a beneficial interest in the property, disregarding any lapse restriction as defined in section 1.83-3(i) of the I.T. Regulations.

Section 83(c)(1) of the Code states that the rights of a person in property are subject to a substantial risk of forfeiture if the person's rights to full enjoyment of the property are conditioned on the future performance of services by any individual. Section 1.83-3(c)(1) of the I.T. Regulations further states that whether a risk of forfeiture is substantial or not depends on the facts and circumstances. A substantial risk of forfeiture exists where rights in property that are transferred are conditioned, directly or indirectly, on the future performance (or refraining from performance) of substantial services by any person, or the occurrence of a condition related to the purpose of the transfer, and the possibility of forfeiture is substantial if the condition is not satisfied.

Section 402(b) of the Code generally provides that contributions to an employees' trust that is not exempt under section 501(a) of the Code are included in the gross income of the employee in accordance with section 83 of the Code except that the value of the employee's interest in the trust is substituted for the fair market value of the property for purposes of section 83 of the Code.

In this case, Convention B is providing life and health insurance benefits for participants in Plan X and Trust T contains employer contributions for these benefits. However, Trust T is subject to the claims of the general creditors of Convention B. Further, participants in Plan X have no preferred claim on, or any beneficial ownership interest in, Trust T's assets. Plan X participants may not anticipate, assign, or alienate any of Trust T's assets. Accordingly, the amounts set aside on behalf of participants in Plan X for life and health benefits are not "property" and there is no "transfer of property" to the participants within the meaning of section 83(a) of the Code.

Based solely on the facts presented, we conclude, with respect to your ruling request number four that the contributions to Trust T will not be includible in the Plan X participants' gross income under either section 83 of the Code or section 402(b) of the Code.

As to ruling request number five, section 106(a) of the Code provides that the gross income of an employee does not include employer-provided coverage under an accident or health plan.

Section 1.106-1 of the I.T. Regulations states that the gross income of an employee does not include contributions which his employer makes to an accident or health plan for compensation (through

insurance or otherwise) to the employee for personal injuries or sickness incurred by the employee, the employee's spouse, or the employee's dependents as defined in section 152 of the Code. The employer may contribute to an accident or health plan either by paying the premium on a policy of accident or health insurance covering one or more of the employees or by contributing to a separate trust or fund which provides accident or health benefits directly or through insurance to one or more employees. However, if the insurance policy, trust or fund provides other benefits in addition to accident or health, section 106 of the Code applies only to the portion of the contributions allocable to accident or health benefits.

Revenue Ruling 62-199, 1962-2 C.B. 38, provides that the exclusion under section 106 of the Code for employer-provided accident or health plan coverage applies to retired employees as well as active employees.

Section 79(a) of the Code generally provides that an employee must include in gross income an amount equal to the cost of group-term life insurance on the life of the employee under a policy (or policies) carried directly or indirectly by his or her employer, but only to the extent that the cost exceeds: (1) the sum of the cost of \$50,000 of insurance; and, (2) the amount, if any, paid by the employee toward the purchase of the insurance.

For purposes of section 79 of the Code, section 79(e) of the Code provides that the term "employee" includes a former employee.

Section 1.79-0 of the I.T. Regulations provides, in part, that a policy of life insurance is "carried directly or indirectly" by an employer if the employer pays any cost of the life insurance directly or through another person.

In this case, Convention B will make contributions to Trust T that will be used by Trust T, in connection with Plan X, to pay premiums for health insurance and life insurance on the lives of Convention B's retired employees. Retirees are employees for purposes of sections 106 and 79 of the Code. Pursuant to section 1.106-1 of the I.T. Regulations, the health insurance coverage will be provided by the employer since Convention B is paying the cost of health insurance through a separate trust. Pursuant to section 1.79-0 of the I.T. Regulations, the life insurance coverage will be carried directly or indirectly by the employer since Convention B is paying the cost of insurance through Trust T. Thus, the fact that the premiums for retiree health insurance and life insurance are paid to the insurance company by Trust T rather than Convention B does not change the taxation to the retirees under sections 106 and 79 of the Code.

Therefore, based solely on the facts presented, we conclude, with regard to ruling request number five, that the cost of health insurance coverage provided to retired employees of Convention B as a result of premiums paid under Plan X from Trust T will be excluded from gross income of retirees under section 106 of the Code to the same extent as if paid directly by Convention B; and the cost of group term life insurance coverage provided to retired employees of Convention B as a result of premiums paid under Plan X from Trust T will be excluded from the gross income of retirees under section 79 of the Code to the same extent as if paid directly by Convention B.

As to ruling request number six, 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 Amendment 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 by 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)(3)(E) of the Code provides, in general, that if an employee who is included in a church plan separates from the service of a church or a convention or association of churches or an organization described in clause (ii) of paragraph(3)(B), the church plan shall not fail to meet the requirements of this subsection merely because the plan (i) retains the employee's accrued benefit or account for the payment of benefits to the employee or his beneficiaries pursuant to the terms of the plan, or (ii) receives contributions on the employee's behalf after the employee's separation from service but only for a period of 5 years after such separation, unless the employee is disabled (within the meaning of the disability provisions of the church plan or, if there are no such provisions in the church plan, within the meaning of section 72(m)(7) of the Code) at the time of such separation from service.

In this case, Convention B qualifies as a church or association of churches for purposes of the church plan rules. Additionally, all of the employees that participant in Plan X share the same common bonds and convictions of Denomination D churches, and Convention B is a nonprofit organization described under section 501(c)(3) of the Code which is exempt from tax under section 501(a) of the Code.

Convention B was created to institute, pursue, adopt and carry into effect such measures for the

promotion of morality, benevolence and religion consistent with the laws of State A. Convention B receives its funding from various Denomination D churches throughout State A which are affiliated with and/or working in cooperation with Convention B.

To the extent that some participants in Plan X are not employees of Convention B but are employed by Local Denomination D Associations, and in view of the fact that there are common religious bonds between Local Denomination D Associations and Convention B, and that Convention B receives its funding from various Denomination D churches, we conclude that the Local Denomination D Associations are 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 the Local Denomination D Associations 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.

In addition, the fact that Convention B may make contributions to Trust T and Trust T will then pay premiums directly under Plan X on behalf of retired employees who may have been retired for over five years does not take away the Plan's status as a church plan because benefits under Plan X fully accrued while the retiree was an active employee and no contributions are made with respect to any periods after the employee's separation from service.

Based on the foregoing facts and representations, with respect to ruling request number six, we conclude that Plan X is a church plan within the meaning of section 414(e) of the Code.

No opinion is expressed as to the tax treatment of the transaction described herein under the provisions of any other section of either the Code or regulations, which may be applicable thereto.

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 ruling 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 \*\*\*, I.D. Number \*\*\*, at \*\*\*. Please address all correspondence to SE:T:EP:RA:T3.

Sincerely yours,

Laura B. Warshawsky, Manager

Employee Plans Technical Group 3