

Bond Case Briefs

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IRS LTR: Prep School's Defined Benefit Plan Is Church Plan.

Citations: LTR 201322051

The IRS ruled that a tax-exempt college preparatory school's defined benefit plan is a church plan within the meaning of section 414(e) and has been a church plan since January 1, 1974.

U.I.L 414.08-00

Date: March 8, 2013

Refer Reply To: T:EP:RA:T3

LEGEND:

School S = * * *

State A = * * *

City P = * * *

Society J = * * *

Year B = * * *

Religion C = * * *

Directory C = * * *

Conference C = * * *

Plan X = * * *

Dear * * *

This is in response to your letters dated, December 11, 2007, November 1, 2011, and January 8, 2013, submitted on your behalf by your authorized representative, in which you request a ruling that Plan X is a church plan described in Section 414(e) of the Internal Revenue Code of 1986, as amended (the "Code").

The following facts and representations have been submitted under penalty of perjury in support of the ruling requested.

School S is a private non-profit college preparatory school formed under the non-profit corporation law of State A. School S was founded in Year B in City P as a Society J secondary school for young men. The governing body of School S is a Board of Trustees which consists of no fewer than 18 or more than 25 members of which no less than one-third plus one shall be members of Society J, which

is a religious order of men. The Bylaws of School S provide that the Board of Trustees has the power and authority to (1) appoint or remove the President of School S; (2) approve diplomas, certificates and awards; (3) approve and adopt all major changes or renovations in the educational programs of School S; (4) review and take appropriate action as to the Budget, which shall be submitted to it upon recommendation of the President; (5) institute and promote major fund raising efforts of School S; and (6) authorize any changes in tuition and fees within School S.

The Bylaws of School S provide that the Board of Trustees has the authority to elect the President of School S by a two-thirds majority of the Board of Trustees and by a majority of the members of Society J then on the Board of Trustees, subject to the approval by the Provincial of the Society J Province in which School S is located.

The Bylaws require a vote of a two-thirds majority of the Board of Trustees and a vote of a majority of the members of the Society J then on the Board to approve any action effecting a change in the essential character of School S as a Religion C Society J secondary school.

School S is listed in Directory C and, consequently, is exempt from federal income taxes under section 501 of the Code, pursuant to group rulings issued to Conference C by the Internal Revenue Service (the "IRS").

School S has maintained Plan X, a defined benefit pension plan, since September 15, 19***. Plan X covers all employees of School S after their completion of one year of service. None of the eligible participants in Plan X are or can be considered employed in connection with one or more unrelated trades or businesses with the meaning of section 513 of the Code. All the eligible participants are employed by School S. Plan X does not include any employees of for-profit entities.

Prior to May 15, 20**, Plan X was administered by School S. By resolutions adopted on May 15, 20**, the Board of Trustees of School S established a benefits committee (the "Committee"), the sole purpose of which is to have the exclusive authority to control and manage the operation and administration of Plan X as well as any successor retirement plan that the Board may hereafter establish. The resolutions provide that the Board of Trustees shall appoint the members of the Committee, subject to the requirement that at all times the Committee must consist of not less than three members, the majority of whom must be vowed members of Society J. The resolutions further provide that the members of the Committee will serve at the pleasure of and are subject to removal by the Board of Trustees at any time with or without cause.

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

You represent that School S has not made an election under Code Section 410(d) to be subject to the provisions of the Code relating to vesting, funding, participation and other standards applicable to other retirement plans.

Based on your submission and the above facts and representations, you request a ruling that Plan X is a church plan, within the meaning of Section 414(e) of the Code, retroactively effective for all prior years that the Plan has been in effect.

Section 414(e) was added to the Code by section 1015 of ERISA. Section 1017(e) of ERISA provided that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) 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) 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.

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 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 a 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 administration or funding (or both) of the plan must be 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 view of the common religious bonds between School S and Society J, the inclusion of School S in Directory C, and the indirect control of School S by Society J through the Board of Trustees, we conclude that School S is associated with a church or convention or association of churches within the meaning of section 414(e)(3)(D) of the Code, that the employees of School S 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.

The administrative control of Plan X is vested in the Committee. The Committee is controlled by and shares common religious bonds with Society J through its control by the Board of Trustees and the common religious bonds of the members of the Committee with Society J. The sole purpose of the Committee is to have exclusive authority to control and manage the operation and administration of Plan X as well as any successor retirement plan that the Board of Trustees may hereafter establish. Thus, the administration of Plan X satisfies the requirements regarding church plan administration under section 414(e)(3)(A) of the Code.

Accordingly, in regard to your ruling request, we conclude that Plan X is a church plan as defined in section 414(e) of the Code and has been a church plan since January 1, 1974.

This letter expresses no opinion as to whether Plan X, satisfies the requirements for qualification under section 401(a) of 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.

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.

Pursuant to a power of attorney on file with this office, a copy of this letter ruling is being sent to your authorized representative.

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

Sincerely yours,

Laura B. Warshawsky, Manager

Employee Plans Technical Group 3

Enclosures:

Deleted Copy of Ruling Letter

Notice of Intention to Disclose