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Internal Revenue Service

Department of the Treasury

Washington, DC 20224

Uniform Issue List No. 414.08-00

Contact Person:

Telephone Number:

In Reference to: T:EP:RA:T1

Date: JUN 15 2000

Association A =

Hospital A =

Plan A =

Corporation B =

Hospital B =

Plan B =

403(b) Plan =

Newco =

New Hospital =

Health System C =

Medical Center C =

Plan C =

State D =

275

Church E =

Denomination =

Dear Ms. :

This is in response to a letter dated March 5, 1999, as supplemented by additional correspondence dated October 27, 1999, April 14, 2000, and May 26, 2000, in which your authorized representative requested rulings on your behalf under section 414(e) of the Internal Revenue Code (the "Code").

You submitted the following facts and representations in support of your request. Association A was established to promote and strengthen the influence of Church E's teachings in health-care amenities by facilitating the development of an integrated health care delivery network in connection with Hospital A in State D. Association A, an organization described under Code section 501(c)(3) and exempt under section 501(a) ("501(c)(3) organization"), was the sole member of Hospital A. The primary purpose and function of Hospital A, also a 501(c)(3) organization, was to provide medical care. Association A maintained Plan A, a defined benefit pension plan, which the Service previously ruled was a church plan under Code section 414(e). By letter dated March 7, 1994, the Service also determined that Plan A was qualified under section 401(a).

Corporation B was established to facilitate the development of an integrated health care delivery network in connection with Hospital B, an independent acute care community hospital in State D. Corporation B was a 501(c)(3) organization and the sole general member of Hospital B, which was also a 501(c)(3) organization. Hospital B maintained Plan B, a defined benefit plan, for its employees. Plan B received a favorable determination letter from the Service dated June 25, 1996 that it was qualified under Code section 401(a).

Effective June 30, 1998 ("Merger Effective Date"), Association A and Corporation B were merged into Newco, whose name was subsequently changed to Health System C, a nonprofit corporation organized under the laws of State D. On the Merger Effective Date, Hospitals A and B also merged into New Hospital ("Mergers"), and all of the employees of Hospital A and Hospital B became employees of New Hospital. New Hospital's name was subsequently changed to Medical Center C, a nonprofit membership corporation organized under State D law. On the merger effective date, Health System C became the sponsor of Plan A and Medical Center C became the sponsor of Plan B. It is proposed that upon issuance of a favorable ruling, Plan B will be merged into Plan A ("Plan Merger"), and Plan A will then be restated, amended and renamed "Plan C" effective on the Plan Merger Effective Date. Plan C will contain language to the effect that no plan amendment will reduce or have the effect of reducing benefits accrued under Plan B

276

for any plan participant for any plan during which Plan B was administered by Hospital B and during which Hospital B was not controlled by or associated with Church E.

Both Health System C and Medical Center C qualify as 501(c)(3) organizations as of June 30, 1998. Health System C continues the same ties as Association A to Church E through its Board of Directors and its commitment to the teachings of Church E. Health System C and Medical Center C sponsor numerous programs that promote and strengthen the teachings of Church E, including sponsorship of a pastoral care program, academic scholarships to local Church E high school students, a duty chaplain program, a Christian television channel, a spiritual endowment program, and a clinical pastoral educational program. The Bylaws of Health System C and Medical Center C's Bylaws provide, respectively, that one of its purposes is to promote, maintain, and strengthen the philosophies of Church E relating to health care and establish health care facilities providing patient care, treatment, diagnosis, and medical services for the ill, injured or disabled. Health System C also established a 403(b) plan ("403(b) Plan") for its employees, which was effective on January 1, 2000.

The Board of Directors of Health System C was initially selected as follows. Prior to the Mergers, Association A and Corporation B appointed a committee to nominate candidates for the initial Board of Directors of Health System C. As part of the Merger agreement, twelve nominees, including six members of Association A's Board and six members of Corporation B's Board, were presented to and approved by the combined boards of directors. All six of Association A's nominees and one Corporation B nominee were members of Church D. All members of the initial Board of Directors remain in office. On and after January 1, 2001, the members of the Board will no longer have to be members of Association A's and Corporation B's prior Boards of Directors, however, they must satisfy the requirements of Article IV of Health System C's Bylaws. Article IV of the Bylaws provides that the Board of Directors shall consist of 12 persons, excluding persons serving as non-voting ex-officio Directors, who meet the requirements of Section 4.4 of the Bylaws. Section 4.4 requires that a majority of Health System C's Board of Directors shall be comprised of individuals who are members in good standing of one or more nationally recognized Denominations of Church E; section 4.4 further provides that the Board will also include persons who are not affiliated with Church E. A majority of members will be comprised of non-provider community members (i.e., persons who are not physicians) who are not employees of Health System C.

Plan A is administered by a Committee which serves at the pleasure of Health System C's Board of Directors. The principal function or purpose of the Committee is the administration of Plan A and the 403(b) Plan. Plan A provides that if there is no committee, the responsibilities of the committee will be vested in the employer, but to date the committee has always been in existence to administer Plan A and the 403(b) Plan.

Health System C is the sole member of Medical Center C. Under Articles 4.2(B) and 5.5 of Medical Center C's Bylaws, Health System C's Board of Directors elects the Board of Directors of Medical Center C, and it may also remove members of Medical Center C's board, at any time,

with or without cause. Medical Center C's Bylaws also provide that its Board of Directors must consist of 12 members, a majority of whom must be members in good standing of one or more nationally recognized Denominations of Church E. The Board of Directors of Medical Center C also will include persons who are not affiliated with Church E, and a majority of Board members will be individuals from the community who are neither physicians nor employees of Medical Center C.

Under the provisions of Plan B, Plan B will be administered by a Committee the principal purpose of which is to administer the plan. The members of the Committee are appointed and removed by the Board of Directors of Medical Center C. Plan B provides that if there is no Committee, the responsibilities and functions of the Committee will be vested in the employer; however, this provision has never been activated.

Based on the above facts and representations, you request the following rulings:

(1) that Plan A has continued to be a church plan within the meaning of Code section 414(e) since the Merger Effective Date;

(2) that since the Merger Effective Date, Plan B has been a church plan within the meaning of Code section 414(e);

(3) that after the Plan Merger of Plan B into Plan A, Plan C will be a church plan under section 414(e); and

(4) that the 403(b) Plan satisfies the requirements of a church plan within the meaning of Code section 414(e) as of January 1, 2000.

To qualify under Code section 401(a), an employees' plan must meet certain requirements, including the minimum participation rules under section 410 and the minimum vesting requirements under section 411. A qualified plan may be subject to an excise tax under section 4971 if it does not comply with minimum funding standards under section 412. A church plan described in section 414(e), however, is excepted from these requirements unless an election is made in accordance with section 410(d). See sections 410(c)(1)(B), 411(a)(1)(B), 412(h)(4) and 4971(a).

Code section 414(e) 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.

Code section 414(e)(3)(A) provides that a plan will be treated as a church plan if it is 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.

Code section 414(e)(3)(B) provides that an employee of a church or convention or association of churches shall include 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.

Code section 414(e)(3)(C) 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).

Code section 414(e)(3)(D) provides that an organization, whether a civil law corporation or otherwise, is "associated" with a church or convention or association of churches if the organization shares common religious bonds and convictions with that church or convention or association of churches.

In order for an organization that is not itself a church or convention or association of churches to have a church plan under Code section 414(e), that organization 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). Employees of any organization maintaining a plan are considered to be a church employee if the organization: (1) is exempt from tax under section 501, (2) is controlled by or associated with a church or convention or association of churches, and (3) provides for administration or funding of the plan by an organization described in section 414(e)(3)(A).

Regarding ruling requests (1) and (4), the Service previously ruled that Plan A was a church plan under Code section 414(e). Since the Merger Effective Date, Health System C, a 501(c)(3) organization, has maintained Plan A and has established and maintained the 403(b) Plan effective as of January 1, 2000. As indicated above, one of the purposes of Health System C is to promote, strengthen and maintain the influence of Church E teachings relating to health care delivery and facilities. The Board of Directors consists of a majority of members in good standing of one or more nationally recognized Denominations of Church E. Because Health System C shares common religious bonds and convictions with Church E, it is considered to be "associated" with Church E under the rules of section 414(e)(3)(D). Therefore, the employees of Health System C are considered to be employees of a church or a convention or association of churches under Code section 414(e)(3)(B), and employees of Church E under the church plan rules. Conversely, Church E is considered to be the employer of Health System C employees under the rules of section 414(e)(3)(C).

In addition, Plan A and the 403(b) Plan are administered by a Committee the principal purpose of which is the administration or funding of Plan A and the 403(b) Plan. The Committee serves at the pleasure of the Board of Directors of Health System C, which is associated with Church E.

Thus, the Committee is associated with or controlled by a church or a convention or association of churches. Consequently, we conclude that, with respect to ruling request number (1), Plan A has been a church plan under Code section 414(e) since the Merger Effective Date. For these reasons, we also conclude that the 403(b) plan has been a church plan under section 414(e) since January 1, 2000.

Regarding ruling request (2), Medical Center C is an organization described in section 501(c)(3). Hospital B employees became employees of Medical Center C as of the Merger Effective Date. As provided in its Bylaws, one of the purposes of Medical Center C is to promote and accomplish purposes consistent with the teachings and traditions of Church E and to promote and strengthen the influence of Church E teachings in health care facilities. A majority of the Board of Directors of Medical Center C will be comprised of individuals who are members in good standing of one or more Denominations of Church E. The right to elect and remove the Board of Directors is retained by Medical Center C's sole member, Health System C, whose own Board must be comprised of a majority who are members of Church E. Medical Center C is therefore controlled by or associated with Church E for purposes of the church plan rules. Accordingly, Medical Center C's employees are considered to be employees of Church E under the provisions of Code section 414(e)(3)(B). Conversely, pursuant to section 414(e)(3)(C), Church E is deemed the employer of Medical Center C's employees.

In addition, as indicated in Medical Center C's Bylaws, Plan B is administered by a Committee the principal purpose or function of which is the administration or funding of Plan B. The person or persons on the Committee are appointed by the Board of Directors of Medical Center C, which is in turn appointed by Health System C's Board of Directors . For these reasons, we conclude that Plan B has been a church plan under Code section 414(e) since the Merger Effective Date.

Regarding ruling request number (3), no changes will be made to the governance or 501(c)(3) status of Health System C and Medical Center C after the Plan Merger Effective Date, and the employees of Health System C and Medical Center C will participate in Plan C. Therefore, the employees participating in Plan C will continue to be considered employees of Church E. After the Plan Merger Effective Date, Plan C will provide that it will be administered by a Committee the principal purpose or function of which is to administer the plan, and administration of Plan C will not revert to the employer. Health System C's Board of Directors will appoint and remove persons on the Committee. Thus, we conclude that Plan C will be a church plan within the meaning of Code section 414(e).

We note, however, that Plan A, Plan B, and the 403(b) Plan will cease to be church plans described in Code section 414(e) if and at such time as the responsibilities of the Committees that administer the Plans, respectively, revert to the respective employers.

This letter expresses no opinion as to whether Plans A, B or C satisfy the requirements for qualification under Code section 401(a). The determination as to whether a plan is qualified under section 401(a) is within the jurisdiction of the Manager, Employee Plans Determination

Programs,

This ruling is directed only to the taxpayer who requested it. Code section 6110(k)(3) provides that it may not be used or cited by others as precedent.

A copy of this ruling has been sent to your authorized representative in accordance with a power of attorney on file in this office.

Sincerely yours,

John Swieca, Manager
Employee Plans Technical Group 1
Tax Exempt and Government Entities Division

Enclosures:
Copy of letter ruling
Copy of deleted letter ruling
Notice 437

cc: