**Internal Revenue Service**

Department of the Treasury
Washington, DC 20224

200136027

Index No.: 414.08-00

Contact Person:

Telephone Number:

In Reference to:

Date: T:EP:RA:T1

JUN 11 2001

Attn:

Church K.....

Congregation B.....

Congregation E.....

Corporation N.....

Hospital A.....

System F.....

System J.....

State Q.....

State R.....

State S.....

Country L.....

Plan R.....

Plan S.....

Plan T.....

Plan U.....

169

Dear :

This is in response to a letter dated April 18, 2000, as supplemented by additional correspondence dated December 1, 2000, and January 8, 2001, 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.

Hospital A is a not-for-profit corporation chartered under the laws of State R, and provides hospital services to residents in State R and State S. Hospital A, a State S not-for profit corporation, was founded in 1902 under the sponsorship of Congregation B, a congregation of Church K religious adherents. Article II of Hospital A's Bylaws provide that its purpose is to maintain and operate a hospital for the medical and surgical care and treatment of the sick, infirm and disabled persons without distinction of race, gender, or religion; to carry on educational activities related to the care of the sick and injured; to promote scientific research related to the care of the sick and injured; to participate in any activity designed to promote the general health of the community, as circumstances may warrant; to undertake charitable and religious purposes associated with the operation of the hospital; and to conduct all of the foregoing with a concern for all persons associated with the hospital and recognition of their dignity as human beings. The philosophy of Hospital A, as articulated in its Bylaws, is consistent with the philosophy of Congregation B, which is called on to witness God's love and concern for humanity through commitment to the sick through its individual members and institutions.

Hospital A's Articles of Incorporation, as amended on December 22, 1999 and effective January 1, 2000, provide that the sole member of Hospital A is System F, and that Hospital A cannot take any action until System F has exercised its reserved powers, or has delegated its reserved authority to Hospital A's Board of directors. These powers include the power to approve and interpret the mission and philosophy adopted by Hospital A; approve and amend the bylaws and certificate of incorporation; and fix the number of and elect, appoint, fill, and remove with or without cause the directors of Hospital A. Currently, there are 12 directors, all of whom are appointed by System F. Hospital A is listed in the official directory of Church K.

System F is a not-for-profit corporation organized under the laws of State R and a regional, Church K health care system that includes three community hospitals and their affiliates, including Hospital A. The mission statement of System F states that System F must be committed to accepting and implementing the teachings of Church K in each facility and service under its control. The physicians, staff members, and board members of System F and its affiliates must conform to Church K's standards of ethics when performing their duties, particularly in relation to the principle of respect for the sacredness of human life. System F's Certificate of Incorporation (as amended on December 21, 1999) provides that it is to be operated and organized exclusively for the charitable purposes of supporting and strengthening the religious ministries of Congregations B and E.

System F has two members, System J and Congregation B ("Members"). Both Members serve together with Corporation N as co-sponsors of System F. Power and authority are vested in System F's two Members, and the business and affairs of System F are subject to management by the Members at the Members' discretion. The Members jointly retain control of System F's philosophy, mission, and ethical and religious standards. The Members also retain the authority to amend the Certificate of Incorporation or the Bylaws in ways that would diminish Congregation B's rights and have the power to appoint or remove any member of the System F board of directors.

Other powers are reserved exclusively to System J, including the power to amend the Bylaws or Certificate of Incorporation in a way that does not diminish Congregation B's rights, dissolve or merge System F, and to engage in major financial transactions. System J also has the power to replace System F's top corporate officers, but only after consultation with Congregation B. System J has similar powers with respect to Hospital A, but exercise of these powers requires the approval of Congregation B. No action of System F may be taken without the approval of the Members unless this right has been delegated to F's board of directors. System F determines the number of directors, but the number must be at least nine and no more than 19. Currently System F has 14 directors, six of whom are religious persons, and five of these six are representatives of the co-sponsors. System F is listed in the official directory of Church K.

System J is a nonprofit corporation organized under the laws of State Q. System J's Articles of Incorporation provide that it is formed exclusively for the benefit of and to carry out the purposes of Congregation E (as well as other organizations operating for the benefit of Congregation E) in accordance with the teachings of Church K. Specifically, System J is responsible for managing and operating the health care facilities affiliated with Congregation E. The sole member of System J is Congregation E, incorporated as Corporation N. Powers reserved to Corporation N are to change the purposes of System J or its religious and ethical standards, to amend the Articles of Incorporation or Bylaws, and to appoint or remove the members of the board of directors of System J. System J's Articles of Incorporation further provide that it shall be managed by the board of directors which shall be comprised of 24 directors appointed by Corporation N. The Articles require that System J, the board of directors, the Member, and any officers of System J perform all duties in a manner consistent with the mission and philosophy of Congregation E and the teachings of Church K. System J is listed in the official directory of Church K.

Corporation N is a nonprofit corporation organized for purposes of carrying out the health care mission of Congregation E. The members of Corporation N and its board of directors are the same individuals, who serve as the four members governing council of the Country L division of Congregation E. The head of Congregation E in Country L is the President of Corporation N. Corporation N is listed in the official directory of Church K.

Congregation B is a congregation of religious persons organized under the auspices of Church K. Congregation B is governed by a top official and the council. Congregation B's mission is to

work with and for the poor and underserved, to alleviate suffering and dispel ignorance, and to promote justice. Congregation B participates in the mission of Church K fundamentally through ministry supported and nourished by prayer and vowed life in community. Congregation B carries out its mission through sponsorship of ministries chosen in accordance with whether a ministry will carry out Congregation B's religious mission, continue the Church K tradition of service, and provide a competent and compassionate response to the needs of the people of God. Congregation B is listed in the official directory of Church K.

The Internal Revenue Service has determined that organizations listed or appearing in the Official Directory of Church K for Country L is an organization described in Code section 501(c)(3), and exempt from tax under section 501(a).

Hospital A maintains a pension plan (Plan R) established for its employees on July 1, 1983. Plan R received a favorable determination letter from the Service dated December 15, 1992 that it is qualified under Code section 401(a). Only employees of Hospital A participate in Plan R. Plan R is administered by a Committee of one to five members appointed by the Board of Trustees of System F. The Committee's principal purpose and function is to administer Plans R, S, T and U. This Committee was established on December 16, 1999. Plans S, T, and U provide various welfare benefits to Hospital A employees.

Based on the above facts and representations, you request rulings that Plans R, S, T and U constitute church plans as described in Code section 414(e).

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). Further, church plans not filing a 410(d) election are not subject to ERISA, including Form 5500 (Annual Return/Report of Employee Benefit Plan) series filing requirements.

Code section 414(e) generally defines a church plan as a plan established and maintained for its employee (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.

Code section 414(e)(4) provides that if a plan established and maintained for its employees by a church or by a convention or association of churches which is exempt from tax under section 501 fails to meet one or more of the requirements of section 414(e) and corrects its failure within the correction period specified in section 414(e)(4)(C), the plan shall be deemed to meet the requirements of section 414(e) for the year in which the correction was made and for all prior years.

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 a plan or plans by an organization described in section 414(e)(3)(A).

In this case, Hospital A is listed in the national directory of Church K. The Service has determined that any organization listed or appearing in the Church's official directory is an organization described in Code section 501(c)(3) and exempt from tax under section 501(a). Hospital A's purpose is to maintain a hospital for the medical care of sick and disabled persons, carry on educational activities and promote scientific research relating to the care of the sick and injured, and undertake religious charitable purposes associated with Hospital A, as consistent with the philosophy of Congregation B and Church K. Congregation B is a congregation of religious individuals whose mission is to work with and for the poor and to alleviate suffering. System F, the sole member of Hospital A, appoints Hospital A's board of directors. System F is committed to accepting and implementing the teachings of Church K, and System F's and Hospital A's physicians, staff, and board members must conform to Church K's standards of ethics, particularly in relation to the principle of respect for the sacredness of human life. System F's Certificate of Incorporation provides that it is to be operated and organized exclusively for

the charitable purposes of supporting and furthering the religious ministries of Congregations B and E (through System J). System F is listed in the national directory of Church K. System F's board of directors are appointed by its members, System J and Congregation B. The sole member of System J is Congregation E (incorporated as Corporation N). Congregations B and E are also listed in the Church K's official directory. Because Hospital A, Congregations B and E, and Systems F and J all are listed in the Church K official directory, they share common religious bonds and convictions with Church K (and with each other). Also, because Hospital A shares common religious bonds and convictions with Church K, it is considered to be "associated" with Church K under the church plan rules. Accordingly, because Hospital A employees are employed by an organization that is exempt from tax under Code section 501(a) and associated with a church or convention or association of churches (i.e., Church K), Hospital A employees are deemed to be Church K employees under section 414(e)(3)(B). Conversely, Church K is considered to be the employer of Hospital A employees under section 414(e)(3)(C).

In addition, Plans R, S, T, and U are administered by a Committee of one to five members who are appointed and may be removed by the board of trustees of System F. The principal purpose or function of the Committee is to administer these plans. Upon issuance of this ruling, the plan documents will be amended to specifically provide that the Committee's principal purpose is the administration of Plans R, S, T, and U. Thus, the Committee is associated with or controlled by a church or a convention or association of churches. Accordingly, we rule that, with respect to your ruling requests, Plan R, Plan S, Plan T, and Plan U each constitute a church plan as described under Code section 414(e). This ruling is effective after Plans R, S, T and U are amended as described in this paragraph.

You have also requested retroactive relief under Code section 414(e)(4) with respect to Plan R. The Committee was established no later than 1989. The Committee was established and the documents will be amended within the correction period specified in section 414(e)(4)(C). Thus, Plan R is deemed to meet the requirements of section 414(e)(3)(A) for the year of correction and all prior years. Accordingly, Plan R is deemed to have been a church plan since its inception on July 1, 1983.

This letter expresses no opinion as to whether the Plan satisfies 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 Determinations Programs, Cincinnati, Ohio, and the appropriate Area Office of the Employee Plans Examination Division.

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

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

175