Internal Revenue Service

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Department of the Treasury

200149038

Washington, DC 20224

Contact Person:

Telephone Number:

In Reference to:

Date: JUL 26 2001

Atten:

Legend:

Entity A =

Entity B =

Entity C =

Entity D =

Religion E =

Religious Order F =

Federation G =

Association H =

Union I =

Union J =

Court K =

Church L =

Official M =

Committee V =

Committee W =

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Plan X =

City Y =

State Z =

Dear

This is in response to a request for a private letter ruling submitted on behalf of Entity A dated October 4, 2000 and supplemented by additional correspondence dated May 4, 2001 and June 28, 2001. The ruling request concerns whether Plan X qualifies as a church plan under section 414(e) of the Internal Revenue Code (the "Code").

The following facts and representations have been submitted:

Entity A is a not-for-profit corporation located in State Z. Founded in 1914, Entity A was organized by Religious Order F. Religious Order F operates within Religion E and is dedicated to helping needy families of Religion E, as well as housing and caring for the frail and elderly of Religion E.

According to its articles of association, Entity A is called upon to "establish a home for the aged of Religion E in City Y," as well as to provide maintenance, medical care, and attendance to its residents. This sense of purpose is further reflected in Entity A's mission statement, where Entity A pledges to enhance the quality of life of older persons by providing a broad range of residential and community based services in a professionally competent and financially responsible manner.

Entity A was granted an exemption from federal income tax on September 12, 1941 under section 101(6) of the Internal Revenue Code of 1939. Its exemption was reconfirmed by a letter dated January 27, 1978 under section 501(c)(3) of the Code. Entity A has been determined not to be an organization described in section 509(a) of the Code.

In order to expand the base of its activities, and to avail other organizations of its expertise in the area of care for the elderly, Entity A was reorganized in 1993 into a membership corporation with one member, Entity B, which has the right to elect the Board of Directors of Entity A.

Entity B is a State Z not-for-profit corporation that was incorporated in January 1993. Entity B was organized for charitable purposes. Entity B is the parent organization of Entity A, Entity C and Entity D. Entity B is organized as a corporation that has no member. As such, Entity B is governed by a self-perpetuating Board of Directors. Entity B was formed by three incorporators, each of whom was an officer of Entity A. The incorporators of Entity B elected Entity B's initial Board of Directors. The Board of

Directors elect their own successors in accordance with the Bylaws of Entity B. At least a majority of the Board of Directors of Entity B must be persons who are also members of the Board of Directors of Entity A. Thus, management and control of Entity A and Entity B will be vested in the same persons.

Entity C is a State Z not-for-profit corporation that was incorporated in February of 1993. Entity C was organized for charitable purposes to provide daycare to adults who need daytime supervision. The mission of Entity C is identical to the mission of Entity A. Entity C provides Religion E activities to its clients and Religion E dietary restrictions are adhered to. Religion E law is observed at the daycare facilities. Entity C is a membership corporation whose sole member is Entity B. At least a majority of the directors of Entity C must be persons who are also directors of Entity A and Entity B.

Entity D is a for-profit, stock corporation in State Z that provided catering services. Entity B is also the sole shareholder of Entity D. A majority of directors of Entity D must also be directors of Entity B.

As part of a reorganization of Entity A and the incorporation of Entity B, Entity C and Entity D, Entity B became the parent corporation of Entity A, Entity C and Entity D. It was intended that Entity A, Entity B and Entity C may transfer or share assets, personnel and services.

Entity A, Entity B and Entity C are recognized as organizations exempt from federal income tax under section 501(c)(3) of the Code and have been determined not to be organizations described in section 509(a) of the Code by a group exemption letter issued by the Internal Revenue Service in response to the group exemption application submitted by Entity B in August of 1993. Under the group exemption letter, Entity A retains its tax-exempt status and Entity B and Entity C are tax-exempt organizations from the date of their incorporation.

Entity A is associated with Religion E by virtue of sharing common religious bonds and convictions with Religion E organizations and Religion E as a whole. It is dedicated to carrying out its health care mission in keeping with Religion E life, beliefs and traditions. Under the Bylaws of Entity A, Committee V is established to set religious policy within Entity A. Committee V shall be comprised of at least three members of the Board of Directors of Entity A.

Entity A employs a full-time Official M to conduct morning and afternoon services in Church K, as well as weekly services and religious programs. Entity A also employs a pastoral counselor. Entity A observes all Religion E holidays and festivals. All residential activities must follow Religion E requirements and regulations, including special observance procedures for Religion E holidays. Entity A strictly adheres to Religion E dietary restrictions. All programming at Entity A is focused around Religion E calendar and holidays.

Entity A is associated with Federation G, a local organization which provides services to members of Religion E. On a national basis, Entity A is a member of Association H, an association of entities which provide services to the elderly members of Religion E. Entity A is actively affiliated and seeks guidance from Union I on issues affecting Entity A's compliance with the laws of Religion E. Furthermore, Entity A seeks guidance from Union J, an organization affiliated with Union I that provides guidance on what is or is not acceptable to be used at Entity A. In matters associated with the observance of religious days, Entity A seeks guidance from Court K, a form of Religion E court to resolve matters involving Religion E law.

It is represented that as to the governance of Entity A, all current members of the Board of Directors are adherents to Religion E. It is further represented that based on all the above factors, Entity A shares common religious bonds and convictions with Religion E and, therefore, is associated with or controlled by Religion E.

Entity A has maintained Plan X for its eligible employees since January 1, 1983. Beginning January 1, 1994, employees of Entity C and Entity D also participate in Plan X. It is represented that the total number of employees of taxable Entity D that participate in Plan X is less than three percent of the total of all employees who participate in Plan X. Entity A has not made an election under section 410(d) of the Code to have certain provisions of the Code apply to Plan X, including section 410 (relating to participation), section 411 (relating to vesting), and section 412 (relating to minimum funding).

Plan X provides for the establishment of Committee W. It is further represented that Plan X has since its inception been administered by Committee W whose sole purpose is the administration of Plan X. Members of Committee W are appointed by the Board of Directors of Entity A.

Based upon the previous representations, Entity A requests a ruling that beginning January 1, 1994, Plan X qualifies as a church plan under section 414(e) of the Code.

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)(B) of the Code provides, in pertinent part, that the term "church plan" does not include a plan if less than substantially all of the individuals included in the plan are individuals described in section 414(e)(1) or section 414(e)(3)(B), or their beneficiaries.

Under section 414(e)(3)(A) of the Code, a plan established for its employees by an employer which is not itself a church or a convention or association of churches but is associated with a church or a convention or association of churches 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.

In pertinent part, section 414(e)(3)(B) of the Code provides that an "employee" of a church or a 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 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) of section 414(e)(3).

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 1.414(e)-1(e) of the Income Tax Regulations provides that, for purposes of section 414(e) of the Code, the term "church" includes a religious order or a religious organization if such order or organization (1) is an integral part of a church, and (2) is engaged in carrying out the functions of a church, whether as a civil law corporation or otherwise.

In order for an organization to have a church plan under section 414(e) of the Code, it must establish that its employees are employees or deemed employees of a church or a convention or association of churches under section 414(e)(3)(B) of the Code by virtue of the organization's affiliation with a church or a convention or association of churches. In addition, in the case of a plan established by an organization that is not itself a church or a convention or association of churches, the plan must be maintained by an organization described in section 414(e)(3)(A) of the Code.

In this case, Entity A is a non-profit corporation organized under the laws of State Z. Entity A was organized by Religious Order F. Religious Order F operates within Religion E and is dedicated to helping needy families of Religion E, as well as housing and caring for the frail and elderly of Religion E.

Entity A established a home for the aged of Religion E in City Y and provides maintenance, medical care, and attendance to its residents. Entity A is exempt from federal income tax under section 501(a) of the Code as an organization described in section 501(c)(3).

It is represented that Entity A shares common religious bonds and convictions with Religion E organizations and Religion E as a whole and that it is dedicated to carrying out its health care mission in keeping with Religion E life, beliefs and traditions. Committee V has been established to set religious policy within Entity A.

It is represented that as to the governance of Entity A, all current members of the Board of Directors are adherents to Religion E. It is further represented that based on all the factors describing Entity A, its mission and purpose, and its association with Religion E organizations, that Entity A shares common religious bonds and convictions with Religion E and, therefore, is associated with or controlled by Religion E.

It is represented that the mission of Entity C is identical to the mission of Entity A and that Entity C observes Religion E law at the daycare facilities.

Effective January 1, 1994, due to a reorganization, Entity A became a member of a controlled group with Entity B, Entity C and Entity D. Entity A, Entity B and Entity C are recognized as organizations exempt from federal income tax under section 501(c)(3) of the Code.

Entity A established Plan X for its employees January 1, 1983. As part of the reorganization of Entity A, employees of Entity C and Entity D began participating in Plan X on January 1, 1994. In view of the common religious bonds and convictions between Entity A and Entity C with Religion E, the employees of Entity A and Entity C are deemed employees of an organization associated with Religion E and are therefore church employees described in section 414(e)(3)(B) of the Code for purposes of the church plan rules.

In addition, it is represented that the number of employees of taxable Entity D who participate in Plan X is less than 3 percent of the total number of participants in Plan X. Therefore, pursuant to section 414(e)(2)(B) of the Code, substantially all of the individuals included in Plan X are individuals described in section 414(e)(1) or section 414(e)(3)(B) of the Code.

It is represented that Plan X is administered by Committee W, whose members are appointed by the Board of Directors of Entity A. It is further represented that the sole purpose of Committee W is the administration and oversight of Plan X. Under the rules of section 414(e)(3)(A) of the Code, Committee W is an organization the principal purpose of which is the administration of Plan X, and is controlled by Entity A, an organization associated with Religion E.

Accordingly, based on the above facts and representations, we conclude that Plan X qualifies as a church plan under section 414(e) of the Code on and after January 1, 1994.

This letter expresses no opinion as to whether Plan X satisfies the requirements for qualification under section 401(a) of the Code. The determination as to whether a plan is qualified under section 401(a) of the Code is with the jurisdiction of the appropriate Area Manager's Office of the Internal Revenue Service.

This letter expresses no opinion as to whether any organization referred to above is a "church" or a "qualified church-controlled organization" within the meaning of section 3121 of the Code.

This ruling is directed only to the taxpayer that requested it and applies only with respect to Plan X as submitted with this request. Section 6110(k)(3) of the Code provides that this private letter ruling may not be used or cited as precedent.

In accordance with a power of attorney on file with this office, the original of this letter is being sent to your authorized representative.

Sincerely yours,

Richard Wickersham

Richard Wickersham, Manager
Employee Plans Technical Guidance and Quality Assurance
Tax Exempt and Government Entities Division

Enclosures:
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