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DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

200235032

JUN - 3 2002

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Attn: **********
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Legend:

Corporation A = **********

Plan X = **********
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Supporting Congregations

Church A = **********
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Church B = **********
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Church C = **********
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Church D = **********
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Church E = **********
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Church F = **********
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Church G = **********
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Church H = **********
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Church I = **********
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Ladies and Gentlemen:

This is in response to a letter dated February 11, 2000, as supplemented by letters dated July 31, 2000, June 6, 2001, June 12, 2001, and April 23, 2002, in which your authorized representative requested a ruling letter on your behalf concerning whether Plan X is a church plan under section 414(e) of the Internal Revenue Code (the "Code").

In support of the ruling requests, the following facts and representations have been submitted:

In , a clergyman of a former supporting church founded a home for the aged, the predecessor to Corporation A. According to a recount of historical materials, the clergyman felt that churches had a direct responsibility for the welfare of the elderly, especially the elderly of their own congregations.

The current churches that support Corporation A are listed above as Church A through Church I, hereinafter sometimes referred to as the Supporting Congregations.

Corporation A is a church home - in spirit and in fact - for aging people. Half of its current residents are members of one of the Supporting Congregations. One of the goals of Corporation A is to provide a Christian environment for aging people, and this objective has remained in place through the years. A news release relating to the groundbreaking for a new facility in indicated that Corporation A will

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operate in a manner consistent with the philosophies of the Supporting Congregations. Representatives of the Supporting Congregations felt a need for a residence where aged men and women could enjoy security, maintain their independence to preserve their personal dignity and share in Christian fellowship with others of their own generation in a comfortable homelike environment. While priority is given to members of the Supporting Congregations, admission is open to all people of good character. Corporation A receives no federal monies and is privately supported through the assistance of the Supporting Congregations, plus bequests and resident fees. Corporation A is managed by a Board of Directors composed of delegates elected from each of the Supporting Congregations plus the Pastors of the Supporting Congregations. Corporation A operates under the auspices of the Supporting Congregations, and the requirements of the governing body are designed to ensure that the Supporting Congregations have retained and will continue to retain influence over Corporation A.

According to its Charter, Corporation A was formed in for the purpose of supporting and maintaining aging men and women and helping to educate orphaned, half-orphaned, and destitute children, and it is a corporation which does not contemplate pecuniary gain or profit incidental, or otherwise, to its members. The Charter also provides that Corporation A shall be managed by a Board of Directors, elected or appointed, as representatives from Supporting Congregations and other churches as may qualify in the future for membership in conformity with the by-laws. In the event of dissolution of Corporation A, all of its remaining assets shall be distributed to the organization or organizations that made contributions to Corporation A. The by-laws of Corporation A provide that each Supporting Congregation in good standing is entitled to be represented on the Board of Directors by its Pastor and one lay member for every one hundred church members with a minimum of two lay members per church. Other churches may make written application for membership to the Board of Corporation A. The Board of Directors shall be composed of members elected or appointed by the Supporting Congregations for a minimum of three years, and unlimited successive terms. The Church that elected or appointed the Directors fills vacancies. The officers of Corporation A shall be a President, Vice-President, Secretary, and Treasurer. Corporation A is exempt from tax under section 501(c)(3) of the Code.

Corporation A has maintained a pension plan (Plan X) for its employees since January 1 The plan received a favorable determination letter from the Service on It was represented that Plan X is still qualified under section 401(a) of the Code and the related trust is exempt from tax under section 501(a).

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On , a resolution of the Board of Directors of Corporation A adopted an amendment to Plan X, effective as of the original effective date of the Plan, to establish a retirement plan committee that has the sole purpose of administering Plan X. The Plan amendment provides that the Board of Directors of Corporation A appoints individual members to the retirement plan committee only if the individual shares common religious bonds and convictions with one of the related Supporting Congregations. Prior to this amendment, Corporation A was the plan administrator.

Neither Corporation A nor the retirement plan committee of Plan X have ever made an election under section 410(d) of the Code or section 1.410(d)-1(c) of the Income Tax Regulations to have the provisions of the Employee Retirement Income Security Act of 1974 (ERISA) apply to Plan X.

Based on these facts and representations, Corporation A requests a ruling that (a) Plan X, as amended by establishing a retirement plan committee, is a "church plan" described in section 414(e) of the Code, and (b) this ruling applies retroactively for all prior years to the effective date of Plan X under the provisions of section 414(e)(4)(A) of the Code.

To qualify under section 401(a) of the Code, an employees' plan generally must meet the minimum participation standards of section 410 and the minimum vesting standards of section 411. Qualified pension plans also must meet the minimum funding standards of section 412. Each of these sections, however, contains an exception for a "church plan" as defined in section 414(e), unless an election has been made in accordance with section 410(d). See, sections 410(c)(1)(B), 411(e)(1)(B) and 412(h)(4).

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) was added to the Code by section 1015 of ERISA, Public Law 93-406, 1974-3 C.B. 1, enacted September 2, 1974. Section 1017(e) of ERISA provides that section 414(e) applied as of the date of ERISA's enactment. However, section 414(e) was amended by section 407(b) of the Multiemployer Pension Plan Amendments Act of 1980, Public Law 96-364, to provide that section 414(e) was effective as of January 1, 1974.

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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.

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 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 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)(4)(A) of the Code provides that if a plan, intended to be a church plan, fails to meet one or more of the church plan requirements and corrects its failure within the correction period, then that plan shall be deemed to meet the requirements of this subsection for the year in which the correction was made and for all prior years. Section 414(e)(4)(C)(i) provides, in pertinent part, that the term "correction period" means the period ending 270 days after the date of mailing by the Secretary of a notice of default with respect to the plan's failure to meet one or more of the church plan requirements.

Revenue Ruling 74-224, 1974-1 C.B. 61 concludes that an exempt organization whose governing membership is comprised of churches of different denominations qualifies as an association of churches within the meaning of section 170(b)(1)(A)(i) of the Code for purposes of classification as an organization that is not a private foundation within the meaning of section 509(a)(1). The revenue ruling also provides that although the term "convention or association of churches" has a

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historical meaning generally referring to a cooperative undertaking by churches of the same denomination, nothing in the legislative or religious history of the term prevents its application to a cooperative undertaking of churches of differing denominations, assuming such convention or association otherwise qualifies for recognition of exemption as an organization described in section 501(c)(3).

In order for an organization to have a qualified church plan, it must establish that its employees are employees or deemed employees of the church or convention or association of churches under section 414(e)(3)(B) of the Code. In addition, a "church plan" must be 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" as provided in section 414(e)(1), or by an organization described in section 414(e)(3)(A) of the Code.

In this case, Corporation A is exempt from tax under section 501(c)(3) of the Code. Each Supporting Congregation (Church A through Church I) appoints or elects representatives who compose the members of the Board of Directors of the Corporation A. Through the representation on the Board of Directors of Corporation A, the Supporting Congregations (Church A through Church I) exercise control of Corporation A. For this purpose, the Supporting Congregations are an association of churches within the meaning of section 414(e)(1) of the Code.

The members of the governing body of Corporation A are elected or appointed entirely from the Supporting Congregations, and the Pastors of the churches are members of the Board of Directors. The Supporting Congregations also provide financial support for Corporation A. These factors indicate that Corporation A is controlled by the Supporting Congregations within the meaning of section 414(e)(3)(A) of the Code.

In view of the control of the Board of Directors of Corporation A by the Supporting Congregations (Church A through Church I), and the relationship to the Supporting Congregations, we believe that the employees of Corporation A are deemed employees of an association of churches under section 414(e)(3)(B) of the Code for purposes of the church plan rules. Additionally, under the principles of section 414(e)(3)(C) of the Code, the association of churches is deemed the employer of employees of Corporation A, and therefore is treated as the employer of that organization's employees for purposes of the church plan rules of section 414(e) of the Code.

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Having established that the employees of Corporation A are deemed to be employees of a church or convention or association of churches, the remaining issue is whether the retirement plan committee which administers Plan X is controlled by or associated with a church or a convention or association of churches, the principal purpose or function of which is the administration or funding of a plan or program within the meaning of section 414(e)(3)(A) of the Code.

Prior to , Corporation A was the administrator of Plan X. Corporation A was not an organization whose principal stated purpose or function was the administration or funding of Plan X. Accordingly, Plan X failed to meet one of the requirements for a church plan prior to that date.

Plan X's failure to meet the requirement described above was corrected on within the meaning of section 414(e)(4) of the Code, when, by resolution of Corporation A's Board of Directors, a retirement plan committee was formed.

Plan X is currently administered by a retirement plan committee, and the principal purpose and function of the retirement plan committee is the administration of Plan X, as required under section 414(e)(3)(A) of the Code. Membership in the retirement plan committee consists of persons named by the Board of Directors of Corporation A, which is, in turn, controlled by an association of churches. Since the members of the retirement plan committee must share common religious bonds or convictions with the Supporting Congregations and the Pastors of the Churches are represented on the Board of Directors that appoints the members of the retirement plan committee, there is evidence that the retirement plan committee is controlled by or associated with the Supporting Congregations. Therefore, the retirement plan committee for Plan X is currently an organization controlled by or associated with an association of churches, the principal purpose or function of which is the administration of a plan for the provision of retirement benefits for individuals (and their beneficiaries) who are deemed to be employees of an association of churches within the meaning of section 414(e)(3)(A) of the Code.

The establishment of the retirement plan committee was made within the correction period defined in section 414(e)(4)(C)(i) of the Code.

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Accordingly, based on these facts and representations we conclude as follows:

(a) Plan X, as amended by establishing a retirement plan committee, is a "church plan" described in section 414(e) of the Code, and (b) this ruling applies retroactively for all prior years to the effective date of Plan X under the provisions of section 414(e)(4)(A) of the Code.

This letter expresses no opinion whether Plan X is a qualified plan under section 401(a) of the Code. The determination as to whether a plan remains qualified under section 401(a) is within the jurisdiction of the appropriate office of the Internal Revenue Service.

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

The original of this letter has been sent to your authorized representative in accordance with the current power of attorney on file in this office.

If you have any questions please contact at

Sincerely yours,

/s/ Ada M. Perry
for Alan C. Pipkin, Manager
Employee Plans Technical Group 4
Tax Exempt & Government Entities Division

Enclosures:
Deleted copy of this letter
Notice of Intention to Disclose, Notice 437