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

TAX EXEMPT AND
GOVERNMENT ENTITIES
DIVISION

0414.08

APR 2 2003

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Attention: **********

Legend:

Corporation M = **********
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Corporation N = **********

State A = **********

Church A = **********

Archbishop B = **********

Order C = **********

Corporation C = **********

State N = **********

Council G = **********
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Individual S = **********

Plan X = **********
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Plan Y = **********
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Committee N = **********
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Dear **********

This is in response to a ruling request dated April 25, 2002, as supplemented by correspondence dated September 6, 2002, October 25, 2002, March 13, 2003, and March 21, 2003, submitted on your behalf by your authorized representative, with respect to the applicability of section 414(e) of the Internal Revenue Code to Plan X and Plan Y.

The following facts and representations have been submitted on your behalf:

Corporation M is a nursing home located in State A. Corporation M is listed in the Official Catholic Directory and is exempt from tax under section 501(a) of the Code based upon a group exemption letter applicable to organizations operated, supervised or controlled by or in connection with the Roman Catholic Church.

Corporation M was incorporated in 1953 by Archbishop B and several members of Order C. In 1982, its Articles of Organization were amended to change its name.

Corporation N is an assisted living facility located in State A. Corporation N is also listed in the Official Catholic Directory and is exempt from tax under section 501(a) of the Code based upon a group exemption letter applicable to organizations operated, supervised or controlled by or in connection with the Roman Catholic Church. Corporation N has also received its own exemption letter dated February 26, 1996. Corporation N was incorporated by several members of Order C in 1993.

Corporation C is a not-for-profit corporation organized under the laws of State N. Corporation C is a distinct Roman Catholic congregation of pontifical right whose members are members of Order C located throughout the United States and Ireland. The Holy See at the Vatican confers pontifical rights among the various Roman Catholic religious communities located throughout the world.

Corporation C was incorporated in 1946. Corporation C is the governing organization of Order C. Corporation C was formed for the following purpose:

> To enlist the services of young women for work in religion, and to prepare them for such life, and to carry on philanthropic and religious work by personal service and other practical means, to propagate and spread the doctrines and practices of the Roman Catholic Church, and in general to aid the Roman Catholic Church; to accept, receive, acquire by grant, gift, purchase, devise or bequest, and to hold, possess, enjoy, hire, lease, sell

> and dispose of property, real, personal or mixed or any interest therein, invest and keep invested any funds of the Corporation and to collect and receive income therefrom for its corporate purposes.

As a not-for-profit corporation organized under the laws of State N, Corporation C has members rather than stockholders. Corporation C's members consist of members of Council G. Council G consists of Individual S and four additional members of Order C, who together serve as the ruling body that conducts all of the business of Order C. Individual S (the Mother Superior) under the Constitutions of Corporation C is the head of the international community of Order C. Individual S is the Chair of the Members of all entities sponsored by Order C and is directly accountable to the Holy See at the Vatican.

Council G is elected every six years by an election process whereby Order C elects delegates from among its members and the delegates, in turn, elect Individual S and four additional Council G members from Order C. All members of Corporation C must be members of Order C. The five Order C members who comprise Council G are also the sole members of Corporation M and Corporation N. All members of Corporation M and Corporation N must be members of Order C.

Corporation M was formed for the following purpose:

> To voluntarily establish and provide a home for the care, support and maintenance of aged persons of both sexes; to surround them with cheer and comfort, nurse them when they are sick and bring them the consolation of religion during the remainder of their lives; to visit aged persons in their homes or in the homes of relatives or friends and in institutions; to advise and aid them in every way possible, and to nurse them when they are sick; to arrange for and supervise boarding homes for aged persons and to provide convalescent care as may be needed.

The initial directors and officers of Corporation M were Archbishop B and several members of Order C. As a charitable organization, Corporation M does not have stockholders, but rather it has members. Only members of Order C can be members of Corporation M. Corporation M's By-Laws provide, in part, that

> The Members of this Corporation are Roman Catholic religious of Order C who have founded and presently operate long term care facilities and housing for the elderly as part of their apostolate of charitable works. As such, the Corporation shall be managed and operated in accordance with the teachings, tradition and Canon law of the Roman Catholic Church, the Constitutions of Order C, and the Ethical and Religious Directives for Catholic Health Facilities promulgated by the National Conference of

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> Catholic Bishops. Nothing in these By-Laws should be interpreted contrary to these ecclesiastical laws and regulations.

Corporation N, a separate sister organization of Corporation M, was incorporated in 1993 by several members of Order C in order to expand the mission of Corporation M regarding the provision of services to the elderly and infirm. Corporation M provides a nursing home facility, and Corporation N provides an assisted living facility for elderly residents who cannot live on their own but who do not require nursing home care. Corporation N is located in State A. Corporation N was formed for the following purposes:

> To conduct all charitable, civic, educational and scientific purposes within the meaning of Chapter 180 of the General Laws and the Code, including but not limited to: the provision of housing for the elderly and the infirm, and supportive services; the promotion and establishment of services for elderly persons in a residential environment; the promotion of continued improvement of residential alternatives for elderly persons; and the provision of services that promote the health, safety and welfare of residents in assisted living residences, as well as the dignity, individuality and decision-making ability of such person.

The By-Laws of Corporation N provide, in part, that:

> The Members of this Corporation are Roman Catholic religious of Order C who have founded and presently operate long term care facilities and housing for the elderly as part of their apostolate of charitable works. As such, the Corporation shall be managed and operated in accordance with the teachings, tradition and Canon Law of the Roman Catholic Church, the Constitutions of Order C and the Ethical and Religious Directives for Catholic Health Facilities promulgated by the National Conference of Catholic Bishops. Nothing in these By-Laws should be interpreted contrary to these ecclesiastical laws and regulations.

Corporation M and Corporation N each have a Board of Directors that is elected or appointed by the members of Corporation M and Corporation N, respectively. While the Board of Directors of each corporation may include lay individuals, two members of the Board of Directors of each corporation must be members of Order C. The members of Corporation M and Corporation N are identical; they are the five individual members of Council G, all of whom are members of Order C and whose senior member, Individual S, is directly accountable to the Holy See at the Vatican. Except for Member-Directors, elected Directors of Corporation M and Corporation N are subject to removal without cause at any time by the affirmative vote of the majority of the Members of each corporation,

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respectively. Vacancies in the office of Directors of each corporation are filled by the majority votes of the members of each corporation.

You represent that the Roman Catholic Church's control of Corporation M and Corporation N is evidenced by four factors. First, because Corporation M and Corporation N are charitable organizations, they each have members rather than stockholders. The members of Corporation M and Corporation N are the same, namely members of Council G of Corporation C, all of whom must be members of Order C. Additionally, the Chair of Council G, Individual S, must be the Chair of the members and is directly accountable to the Holy See at the Vatican. Second, all of the Officers and Directors of each of Corporation M and Corporation N are elected or appointed entirely by members of Council G. Third, two of the members of the Board of Directors of each of Corporation M and Corporation N must be members of Order C who are also members of Council G. Fourth, Corporation M and Corporation N are subject to the requirements of the Canon Law of the Roman Catholic Church.

Corporation M established Plan X, effective January 15, 1972, to provide retirement benefits for its employees and the employees of Corporation N. Plan X is a defined contribution pension plan that was most recently restated on February 12, 2002. Corporation M established Plan Y, a tax-deferred annuity program under section 403(b) of the Code, effective January 1, 1996, to provide retirement benefits for its employees and the employees of Corporation N.

Effective October 13, 2000, Section 2 of Plan X and Section 8.1 of Plan Y were amended to provide that the Plan Administrator shall be Committee N. Committee N shall be appointed by the Board of Directors of Corporation M. All members of Committee N must be members of the Board of Directors. You represent that the sole function of Committee N is the administration of Plan X and Plan Y. The Board of Directors of Corporation M is elected or appointed by members of Council G, all of whom are members of Order C, and two members of the Board of Directors must be members of Order C. Prior to October 13, 2000, Corporation M was the Plan Administrator of Plan X and Plan Y.

You also represent that none of the employees covered under either Plan X or Plan Y are employed in an unrelated trade or business within the meaning of section 513 of the Code. Furthermore, all of the individuals participating in Plan X and Plan Y are employees (or former employees) of Corporation M or Corporation N.

Based on the aforementioned facts and representations, you requested the following rulings:

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1. That Plan X and Plan Y are "church plans" within the meaning of section 414(e) of the Code.

2. That Plan X is deemed to have been a church plan since the effective date of ERISA; and that Plan Y is deemed to have been a church plan since January 1, 1996, its effective date.

Section 414(e)(1) of the Code defines the term "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(a).

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

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" to include a duly ordained, commissioned, or licensed minister of a church in the exercise of a 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 taxation under section 501, 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 section 414(e)(3)(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 of

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association of churches if it shares common religious bonds and convictions with that church or convention or association of churches.

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

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. 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; (2) is controlled by or associated with a church or convention or association of churches; and (3) provides for administration or funding (or both) of the plan by an organization described in section 414(e)(3)(A) of the Code.

In this case, Corporation M and Corporation N are organizations that are associated with Church A, Order C, and Corporation C as follows:

Church A's control of Corporation M and Corporation N is evidenced by four factors. First, Corporation M and Corporation N are charitable organizations, and, as such, they have members rather than stockholders. The members of Corporation M and Corporation N are the same, namely members of Council G of Corporation C, all of whom must be members of Order C. Additionally, the Chair of Council G, Individual S, must be the Chair of the members and is directly accountable to the Holy See at the Vatican. Second, all of the Officers and Directors of each of Corporation M and Corporation N are elected or appointed entirely by the members of Council G. Third, two of the members of the Board of Directors of each of Corporation M and Corporation N must be members of Order C who are also members of Council G. Fourth, Corporation M and Corporation N are subject to the requirements of the Canon Law of the Roman Catholic Church.

Further, Corporation M and Corporation N share common religious bonds and convictions with the Roman Catholic Church as evidenced by their listing in the Official Catholic Directory as organizations of the Roman Catholic Church. In addition, the Bylaws provide, that the Members of Corporation M and Corporation N are the Roman Catholic Church religious of Corporation M and Corporation N who have founded and presently operate Corporation M and Corporation N as part of their apostolate of charitable works. As such, Corporation M and Corporation N shall be managed and operated in accordance with the teachings, tradition and Canon law of the Roman Catholic Church, the Constitutions of

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Corporation M and Corporation N, the Ethical and Religious Directives for the Roman Catholic Church Health Care Facilities promulgated by the National Conference of Catholic Bishops.

In view of the stated purposes of Corporation M and Corporation N, their organization and structure, their actual activities, and their common religious bonds with Church A and Order C, we conclude that the employees of Corporation M and Corporation N meet the definition of "employee" in section 414(e)(3)(B) of the Code and are deemed to be employees of an organization, whether a civil law corporation or otherwise, which is exempt from tax under section 501 and is controlled by or associated with a church or a convention or association of churches. Accordingly, pursuant to sections 414(e)(3)(B) and (C) of the Code, employees of Corporation M and Corporation N are deemed to be employees of the Roman Catholic Church through Corporation M's and Corporation N's affiliation with the Roman Catholic Church and the Roman Catholic Church is deemed to be the employer of such employees, for purposes of the church plan rules of section 414(e) of the Code.

However, an organization must also establish that its plan is established and maintained by a church or a convention or association of churches, or 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 of the plan and must also be controlled by or associated with a church or a convention or association of churches.

Until October 13, 2000, Plan X and Plan Y were administered by Corporation M. Corporation M is not an organization described in section 414(e)(3)(A) of the Code. As of October 13, 2000, Committee N began administering Plan X and Plan Y. The sole function of Committee N is the administration of Plan X and Plan Y. Committee N is comprised of individuals who are members of the Board of Directors of Corporation M. The Board of Directors of Corporation M is elected or appointed by members of Council G. All of Council G's members are members of Order C. Two members of Corporation M's Board of Directors must be members of Order C. Individual S, the head of the international community of Order C, is directly accountable to the Holy See at the Vatican. Therefore, Committee N is indirectly associated with or controlled by Church A, and would qualify as an organization described in section 414(e)(3)(A) of the Code for the period since October 13, 2000.

Corporation M administered Plan X, for the period from January 1, 1974 to October 13, 2000, and Plan Y, for the period from January 1, 1996 to October 13, 2000. As previously mentioned, Corporation M is not an organization described in section 414(e)(3)(A) of the Code. Therefore, Plan X and Plan Y failed to meet the church plan requirements before October 13, 2000. This defect was

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corrected on October 13, 2000. At that time, no notice of default with the requirements of section 414(e) had been mailed by the Secretary and no final determination had been made by a court of competent jurisdiction. Section 414(e)(4)(A) provides that where a 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 section 414(e) for the year in which correction is made and for all prior years. Thus, the defect has been corrected as provided under section 414(e)(3)(A) of the Code.

Accordingly, we conclude that Plan X and Plan Y are "church plans" within the meaning of section 414(e) of the Code; that Plan X is deemed to have been a church plan within the meaning of section 414(e) of the Code on January 1, 1974 (the effective date of section 414(e) of the Code) and thereafter; and that Plan Y is deemed to have been a church plan within the meaning of section 414(e) of the Code on January 1, 1996 and thereafter.

This ruling expresses no opinion as to whether Plan X satisfies the requirements for qualified plans under section 401(a) of the Code. The determination as to whether such plans constitute qualified programs under section 401(a) is within the jurisdiction of the Manager, Employee Plans Determinations, Cincinnati, Ohio.

This ruling expresses no opinion as to whether Plan Y, a Code section 403(b) arrangement, satisfies the requirements for a tax sheltered annuity program under section 403(b) of the Code. The determination as to whether such plans constitute qualified programs under section 403(b) requires the issuance of a separate private letter ruling by the Employee Plans Technical Office of Employee Plans Rulings and Agreements, Washington, D.C.

While not crucial to our holding above, we note that, under Code section 403(b)(1)(D), an arrangement intended to qualify under section 403(b) must satisfy the nondiscrimination requirements of section 403(b)(12). These rules do not, however, apply to plans maintained by "churches" of "qualified church-controlled organizations" as defined in sections 3121(w)(3)(A) and (B) of the Code. This ruling expresses no opinion as to whether Corporation M is a "church" or "qualified church-controlled organization" within the meaning of section 3121(w).

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

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A copy of this letter has been sent to your authorized representative in accordance with a power of attorney on file in this office. Should you have any questions, please contact **********.

Sincerely yours,

Joyce E. Floyd, Manager
Employee Plans Technical Group 2
Tax Exempt and Government Entities Division